



MULTISTATE TAX COMMISSION

MINUTES OF MEETING HELD JULY 26, 2018

Executive Committee Meeting

The Boston Westin Waterfront
425 Summer Street
Boston, Massachusetts

8:30 a.m. to 11:30 a.m. Eastern Time

I. Welcome and Introductions

Chair John Valentine, Utah, opened the meeting at 8:30 a.m. and asked the participants to identify themselves. The following people were in attendance:

Holly Coon	Alabama Department of Revenue
Joe Garrett	Alabama Department of Revenue
Brandon Spanos	Alaska Department of Revenue
Walter Anger	Arkansas Department of Finance and Administration
Tom Atchley	Arkansas Department of Finance and Administration
John Theis	Arkansas Department of Finance and Administration
Brendon Reese	Colorado Department of Revenue
Keith Richardson	DC Office of Tax & Revenue
Steven Alvarez	Georgia Department of Revenue
Edward Collins	Hawaii Department of Taxation
Don Kuriki	Hawaii Department of Taxation
Madelaina Lai	Hawaii Department of Taxation
Mike Chakarun	Idaho State Tax Commission
Ken Roberts	Idaho State Tax Commission
Phil Skinner	Idaho State Tax Commission - Office of the Attorney General
Jenny Starr	Minnesota Department of Revenue
Joel Walters	Missouri Department of Revenue

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Sal Tomaselli	Missouri Department of Revenue
Gene Walborn	Montana Department of Revenue
William Barber	Multistate Tax Commission
Richard Cram	Multistate Tax Commission
Lila Disque	Multistate Tax Commission
Elliott Dubin	Multistate Tax Commission
Keith Getschel	Multistate Tax Commission
Brian Hamer	Multistate Tax Commission
Helen Hecht	Multistate Tax Commission
Gregory Matson	Multistate Tax Commission
Thomas Shimkin	Multistate Tax Commission
Marshall Stranburg	Multistate Tax Commission
Lindsey Stepp	New Hampshire Department of Revenue
John Ficara	New Jersey Division of Taxation
Dee Wald	North Dakota Office of State Tax Commissioner
Katie Lolley	Oregon Department of Revenue
Eric Smith	Oregon Department of Revenue
Janice Shannon	State of New Mexico Taxation & Revenue Dept.
Nancy Prosser	Texas Comptroller of Public Accounts
John Valentine	Utah State Tax Commission
Frank Hales	Utah State Tax Commission
Rosann Fitzpatrick	Washington State Attorney General
Gil Brewer	Washington State Department of Revenue
Hamilton Davis	A.C.M.A
George Isaacson	Brann Law
Nikki Dobay	Council On State Taxation
Karl Frieden	Council On State Taxation
Joe Huddleston	Ernst & Young, LLP

Matthew Nesto	Law360
Steve DelBianco	NetChoice
Craig Johnson	Streamlined Sales Tax Governing Board, Inc.
Scott Clark	Dentons

Chair Valentine confirmed the presence of a quorum and opened the floor for public comment.

II. Initial Public Comment Period

There was no public comment at this time.

III. Discussion with the Direct Marketing Industry on Use Tax Collection

George Isaacson of Brann & Isaacson, Steve DelBianco of NetChoice, and Hamilton Davison of the American Catalog Mailers Association were present to request states consider a set of principles concerning sales and use tax collection. Mr. Isaacson expressed his goal of producing model legislation for congressional enactment. The industry representatives circulated a list of 20 possible simplification measures.

Ken Roberts, Idaho, thanked the representatives and asked the timeframe. Mr. Isaacson stated his opinion that time is of the essence. In a response to Nancy Prosser, Tex., Mr. Isaacson also said that he could imagine the items could be addressed by the first quarter of 2019. Ms. Prosser also asked about the process Mr. Isaacson was imagining. He clarified that he imagined a state-industry work group.

Gil Brewer, Wash., asked a question concerning whether the industry groups wanted destination sourcing for interstate sales. Mr. Del Bianco confirmed this, but also criticized destination sourcing reiterating that it would be for Congress to determine.

Ms. Prosser asked about Item #3 on the list of simplification measures: no caps or thresholds on taxable value of goods or services. Mr. Isaacson clarified that this did not refer to the small business threshold, but to taxable thresholds on particular items for sale. Ms. Prosser also discussed with Mr. Isaacson what would be a preferred threshold. The industry representatives discussed various factors they believed should go into those thresholds. Mr. Roberts asked whether, if the burdens are relieved by free software, the threshold discussion would be off the table. Mr. Hamilton said no, because there are still implementation costs with incorporating the software.

After the discussion of these and other questions, Chair Valentine thanked the industry representatives.

Greg Matson, MTC Executive Director, noted that similar discussions that took place in the 1990s were assisted by support from governors. Mr. Matson emphasized his willingness to coordinate with the National Governors Association, the National Conference of State Legislatures, and other groups that wish to participate. There was general agreement, but Ms. Prosser asked those in

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attendance to remember that in Texas and some other states the governor is not the elected executive in charge of tax administration.

Chair Valentine recommended that those in attendance talk with state governors and executives. Mr. Roberts recommended first addressing issues that enable states to begin to collect. Mr. Brewer pointed out that this is a complex process, and requested understanding from industry as the states move forward, particularly that they hold back on rhetoric that appears to be based in paranoid fear of the states. He emphasized that his state is enforcing its laws in good faith. Mr. Isaacson stated that time is of the essence, and requested a meeting in August. Karl Friedan, COST, emphasized that his organization will be a strong supporter of sales and use tax uniformity and simplicity. Mr. Roberts stated that it would be unfortunate to have Congress intervene at this point. Gene Walborn, Mont., emphasized that in order to keep Congress from acting the states need to act rapidly. He endorsed Ms. Prosser's idea that the states and industry identify simplification measures that can be implemented. Mr. Del Bianco stated his belief that it will ultimately be Congress that imposes uniformity, but strongly encouraged agreement on the suggested simplification measures. There was no objection to having staff coordinate with other organizations to continue discussions.

IV. Approval of Minutes of Executive Committee Meetings on November 17, 2017, and January 8, 2018

Ms. Prosser moved for approval of the minutes as written. The motion passed unanimously by voice vote.

V. Report of the Chair

Chair Valentine did not make a report due to time constraints.

VI. Report of the Treasurer

Financial Report for the Period July 1, 2017 – June 30, 2018

Ms. Prosser presented on behalf of Glenn Hegar. She pointed out an overall surplus of \$248,473 for the year, despite some unfavorable variances in consultant/contractor fees and furniture and equipment. Mr. Roberts moved to approve the report. The motion passed unanimously by voice vote.

VI. Report of Executive Director

Mr. Matson noted only one item of business in the report involving the MTC's move to participate in the Social Security system. Mr. Roberts moved for adoption of a resolution specifically authorizing current and future executive directors to sign an agreement with the Social Security administration, and any future modifications to the agreement. The motion passed by voice vote.

VII. Committee Reports

A. Uniformity Committee

Holly Coon, Ala., reported on the activities of the Uniformity Committee and asked for direction concerning a possible *Wayfair* implementation project. Ms. Prosser recommended that the Uniformity Committee continue to take direction on these implementation issues from Commission leadership as discussions with other state organizations proceed.

B. Other Committee Business (if any)

There was no other committee business.

VIII. Uniformity

A. Hearing Officer Report on Model Sales and Use Tax Notice and Reporting Statute

Brian Hamer, MTC Counsel and the hearing officer on the project, presented his report. In light of *South Dakota v. Wayfair*, he recommended sending the project back to the Uniformity Committee and encouraging them to, in an expeditious manner, discuss any necessary revisions to the proposed model statute. Ms. Prosser moved to send the proposed model back to the Uniformity Committee to study the hearing officer's suggestions in light of the *Wayfair* case and anything else of relevance. Ms. Coon, speaking for the Uniformity Committee, stated that she agreed and found it necessary. The motion passed unanimously by voice vote.

B. Model Uniform Statute and Regulation for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments – Update and Possible Action

In 2015, Congress passed the Bipartisan Budget Act which requires the IRS to conduct entity-level audits of large partnerships and assess the partnership, unless the partnership elects to do the administrative work of “pushing out” the audit adjustments to its partners. The Uniformity Committee initially established an informational project in 2016 to study these federal changes. That committee later determined that a work group should be established to draft model provisions that states may need in order to assess the additional tax that will result from any federal partnership audit adjustments. The Uniformity Committee was also approached by “Interested Parties” (ABA, AICPA, COST, TEI, & IPT) asking that the committee consider changes to its existing model for Reporting Federal Tax Adjustments and directed the work group to proceed.

The work group completed their work, and the model was passed by the Uniformity Committee at its meeting on July 24 and referred to the Executive Committee with a couple of minor amendments noted by the Uniformity Committee. Ms. Hecht presented the project. Chair Valentine noted that the Executive Committee had not looked at the model

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since it was sent forward, and noted the committee should be given time to review it. Marshall Stranburg, MTC Deputy Executive Director, noted it is possible to hold a telephonic meeting prior to the November meeting, if that is the committee's preference. Chair Valentine indicated the chair's preference would be to defer consideration of the model to a future telephonic meeting. Ms. Prosser so moved and the motion passed by unanimous voice vote.

C. Other Uniformity Matters (if any)

There were no other uniformity matters to discuss.

IX. Federal Issues with State Tax Implications

Tom Shimkin, MTC Legislative Director, presented the legislative report.

X. Upcoming Meetings & Events

Mr. Matson reminded attendees to mark their calendars for the upcoming meetings: the 2018 Fall Committee Meetings, November 5-8, 2018, in Orlando, Florida; the 2019 Spring Committee Meetings, April 23-26, 2019, in Denver, Colorado; and the 52nd Annual Conference & Meetings, August 5-8, 2019, in Boise, Idaho.

----- CLOSED SESSION -----

XI. Consideration of Confidential Matters during Closed Session

Ms. Prosser moved to go into closed session for consideration of confidential matters. The motion passed by unanimous voice vote.

----- PUBLIC SESSION RECONVENED -----

XII. Resumption of Public Session and Reports from Closed Session

Chair Valentine reported that there had been a discussion on whether to have the MTC file a brief in the U.S. Supreme Court in the *Cougar Den* case from the State of Washington. The consensus was to allow it, as long as the brief was circulated for review before filing.

XIII. Adjournment

The meeting adjourned at 11:30 a.m. by unanimous consent.