



To: MTC Executive Committee

**From: Wood Miller (Missouri), Uniformity Committee Chair
Holly Coon (Alabama), Vice Chair**

Re: Uniformity Committee Report to the Executive Committee

Date: December 15, 2016

The Uniformity Committee has met twice in person — in July 2016 in Kansas City, MO; in December 2016 in Houston, TX. Work groups established by the committee have met regularly by telephone. Those include the Compact Art. IV, Section 18 work group and the partnership work group. The Committee also met by phone on August 9, 2016.

Projects by Status

Before the Executive Committee:

- Model Sales and Use Tax Notice and Reporting Statute (tabled)

Pending Bylaw 7 Survey

- Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Section 1 and Section 17 Work Groups) as approved by the Executive Committee

Current Uniformity Committee Projects:

- Art. IV, Section 18 Work Group
- Partnership Work Group

Summaries of Projects

Model Sales and Use Tax Notice and Reporting Statute (tabled) - The model would require remote sellers to notify in-state purchasers of a potential tax liability at the time of sale and make annual reports to each in-state purchaser and to the state. De minimis exceptions and penalties are provided. The Uniformity Committee approved a draft in March, 2011. Later that month, the Executive Committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of a Bylaw 7 survey. The proposal came back before the Executive Committee in December 2011, after not passing the Bylaw 7 survey, and clarifications were requested. The Uniformity Committee made those clarifications and the Executive Committee took the matter up again in May, 2012. During that meeting, the Executive Committee voted to retain the proposal pending a decision in *Direct Marketing Ass'n v. Brohl*. The Tenth Circuit has now ruled that the Colorado statute is constitutional and that *Quill* does not apply to the information reporting requirements. *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (2016). The Direct Marketing Association has filed a petition with the U.S. Supreme Court and Colorado has filed

a conditional cross-petition. On December 12, 2016, the Court denied both the petition and cross-petition.

Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Sec. 1 and Sec. 17 Work Groups) - Work on regulations to implement changes to Compact, Art. IV, Sections 1 and 17 was begun November 6, 2014. The work groups completed their work which takes the form of draft amendments to the MTC Model Allocation and Apportionment Regulations, and submitted a draft to the Uniformity Committee, which approved that draft with one minor change on December 10, 2015. The Uniformity Committee submitted the draft to the Executive Committee on December 11, 2015 for its consideration. The Executive Committee approved the draft for public hearing on January 29, 2016. On March 9, 2016, the Brian Hamer, acting as the Commission's Hearing Officer, conducted a public hearing taking both written and oral comments and also extended the period for comments after the hearing. The report and recommendations of the Hearing Officer were made to the Executive Committee for consideration at its May meeting. The Executive Committee referred issues regarding the proposed amendments back to the Uniformity Committee and asked for a report back on July 28, 2016. The Uniformity Committee made a report and the Executive Committee accepted certain changes to the amendments and rejected others. It also asked the Uniformity Committee to make one clarification and also requested MTC staff to conduct a survey of states about the possible insertion of a mediation provision. The Uniformity Committee made the clarification and the staff reported on its survey of states to the Executive Committee in its phone meeting of October 4, 2016. The Executive Committee gave final approval to certain changes to the amendments and instructed that they be sent out for bylaw 7 survey of the states. That survey was sent on October 26, 2016.

Art. IV, Section 18 Work Group – The Uniformity Committee formed a work group to consider issues created by the Commission's adoption of amendments to Compact, Art. IV (both amendments to Section 18 itself and other sections) and to recommend rules or amendments to model rules to address those issues. Meetings of that work group were suspended while the Uniformity Committee considered issues referred by the Executive Committee related to proposed amendments to the model General Allocation and Apportionment Regulations. The work group resumed its meetings (by phone) and is continuing to work on issues as directed by the Uniformity Committee.

Partnership Work Group – The Uniformity Committee commenced an informational project and then formed a work group to begin consideration of issues that affect the application of state taxes to partnerships and to consider the implications of new federal audit and adjustment rules. A number of states have been participating in work group calls. The work group has requested guidance from the Uniformity Committee about how to proceed in light of the uncertainty of how the IRS will implement the new rules and whether Congress may make technical corrections to or otherwise change the rules.