



MULTISTATE TAX COMMISSION

MINUTES OF MEETING HELD MARCH 10, 2015 IN KANSAS CITY

Meeting of the Multistate Tax Commission Sales and Use Tax Subcommittee

The Davenport Hotel
10 South Post Street
Spokane, Washington

July 28, 2015
10am Pacific

I. Welcome and Introductions

The chair, Richard Cram, Kansas, called the meeting to order and asked members and participants to introduce themselves. The following is a list of members and participants. (Note that the sign-in sheet for this meeting was misplaced and the list here is recreated using the sign-in sheet for the Uniformity Committee meeting later on the same day:

Ben Abalos, MTC	Deborah Bierbaum, AT&T	Roxanne Bland, MTC
Gil Brewer, WA	Lennie Collins, NC	Holly Coon, AL
Richard Cram, KS	Christi Daniken, OR	Michael Fatale, MA
Jamie Fenwick, Time Warner	Bruce Fort, MTC	Frank Hales, UT
Jack Harper, Walmart	Lenore Heavey, LA	Helen Hecht, MTC
Gary Humphrey, OR	Rich Jackson, ID	Don Jones, ID
Tom Katsilometes, ID	Geemon Kurian, DC	Sheldon Laskin, MTC
Michele Mayberry, AL	Wood Miller, MO	Rouen Reynolds, AL
Kathleen Sher, NH	Phil Skinner, ID	Randy Tilley, ID
Warren Townsend, Walmart	Jack Trachtenberg, Reed Smith	Eric Wayne, NC

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[City, State]

[Date of Meeting]

Adam Beckerink, Reed
Smith

Deanna Munds-Smith, AL

Robyn Wilson, AK

Karl Frieden, COST

Janice McGee, NM

II. Initial Public Comment Period

There were no public comments.

III. Approval of Minutes of the Prior In-Person Meeting

Upon a motion by Phil Horwitz, Colorado, the minutes of the meeting of December 11, 2014 were approved on a voice vote.

IV. Reports and Updates – Federal Issues Affecting State Taxation

Roxane Bland, MTC, gave an oral report on two pieces of legislation, the Permanent Internet Tax Freedom Act and the sales tax related legislation.

V. Sales and Use Tax Nexus Model Statute

Helen Hecht gave a report on staff changes to the nexus model statute being drafted by the workgroup comprised of Richard Cram, Kansas, Pat Calore, Michigan, and Kelley Gillikin, Alabama. The Uniformity Committee in December 2014 had returned the draft to the subcommittee for a final review and any changes to style that might be necessary. MTC staff proposed to the committee leadership that the model be conformed to the Uniform Law Commission drafting rules for model state laws. A draft including revisions for this purpose was also prepared. The staff report explaining the changes and the draft were provided prior to the meeting.

The report explained that there were two changes to the model that were made for other reasons. The first was that the first subsection, which imposed tax to which the nexus definitions in the other subsections were related, was removed. The reasoning was that every state already has a tax imposition statute that keys off of certain defined terms (“seller,” “retailer,” “vendor,” “dealer” and “doing business,” “engaging in business,” etc.) Therefore a drafter’s note that the model is intended to define, in part, these terms in the states’ existing imposition statutes is sufficient.

The second change was a minor change to the introduction of the descriptions of activities that are being given as examples of nexus-creating activities. Some states define and use “engaging in business” or something similar as the operative term in the imposition statute, others, like the model, use “seller engaging in business” or something similar as the operative term. The difference has an effect on how the descriptions of activities are worded. The change in the introductory language makes it somewhat easier for either type of state to adopt the model.

The group had extensive discussions about the remainder of the changes. In particular, Mr. Horwitz asked that the provision anticipating federal authorizing legislation be reworded to clarify that retailers are subject to tax duties if the Constitution does not prevent it or if federal legislation authorizes it. Staff agreed to make additional revisions based on this discussion for the workgroup’s review.

VI. Model Provisions Concerning Class Actions and False Claims – Transaction Taxes

Sheldon Laskin, MTC, presented his written report on the activities of the workgroup considering possible model provisions on class actions and false claims act cases involving state taxes. In summary, the workgroup has recently heard presentations by New York on its false claims activities, the IRS on its whistleblower program and Professor Ventry of the University of California, Davis. Mr. Laskin noted one mistake in his written report – the New York false claims act statute does allow treble damages in tax cases.

Karl Frieden, COST, provided public comments noting that the members of COST have serious concerns with the New York model. Those concerns primarily have to do with the difference between treatment of taxpayers in a normal tax audit versus in a false claims act case. Those differences include whether information is kept confidential, the procedural rules that apply, the safeguards taxpayers are entitled to, the role of the tax authority in the litigation and how matters of interpretation of tax law are handled. Between the two models – the NY litigation model and the IRS whistleblower model – COST would prefer the latter.

Jack Trachtenberg, Reed Smith, spoke concerning the problems with New York and Illinois false claims acts and the kinds of cases being brought involving taxes. Mr. Trachtenberg noted that when the litigation model is used, decisions are taken out of the hands of the tax agency and it becomes a more public matter. Rather than being resolved, issues are often settled, which raises questions about the force of any results. Mr. Frieden agreed, noting that there are a host of uncertainties in the tax law. Mr. Frieden also reiterated that this is a very important issue to the business community.

Mr. Laskin noted that the Uniformity Committee would also be hearing summaries by NY, the IRS and Professor Ventry and that there would be further discussion, in order to seek the Uniformity Committee's guidance about future working group efforts.

VII. New Business

There was no new business.

VIII. Adjournment

Frank Hales, UT, moved that the meeting be adjourned. The meeting was adjourned.

MTC [Name of Body]
[City, State]
[Date of Meeting]

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