



MULTISTATE TAX COMMISSION

**MINUTES of**  
**Sales and Use Tax Subcommittee Meeting**  
**Monday, July 28, 2014**  
**1:00 p.m. Mountain Time**

**I. Welcome and Introductions**

Richard Cram, Chair of the Sales and Use Tax Subcommittee, (KS) opened the meeting. The following persons were in attendance:

Chris Sherlock	Alabama Department of Revenue	Ben Abalos	Multistate Tax Commission	
Craig Banks		Ken Beier		
Kelley Gillikin		Roxanne Bland		
Mary Majors		Lila Disque		
Rouen Reynolds		Elliott Dubin		
Tom Atchley	AR Department of Finance and Administration	Helen Hecht	State of New Mexico Tax & Revenue Department	
Deanna Munds-Smith		Sheldon Laskin		
Grant Sullivan	Colorado Attorney General's Office	Janice McGee		North Dakota Office of State Tax Commissioner
Phillip Horwitz	Colorado Department of Revenue	Myles Vosberg		Oregon Department of Revenue
Charles Wilson	DC Office of Tax and Revenue	Christi Daniken		Texas Comptroller of Public Accounts
Phil Skinner	Idaho Attorney General / State Tax Commission	Gary Humphrey	State of Washington, Dept. of Revenue	
Michael Chakarun		Rusty Johnson	Utah State Tax Commission	
Richard Jackson		Chris Coffman		
Randy Tilley		Frank Hales		
William von		Bruce Johnson		

Tagen			
Steve Wynn		Deborah Bierbaum	AT&T
Jennifer Hays	Kentucky Legislative Research Commission	Shirley Sicilian	KPMG LLP
J. A. Cline, Jr.	Louisiana Department of Revenue	Bill Smith	Organization of MISO States
Wood Miller	Missouri Department of Revenue	Jonathan Gerth	PRA Government Services, LLC
Lee Baerlocher	Montana Department of Revenue	James Green	Revenue Discovery Systems
Eugene Walborn		Jamie Fenwick	Time Warner Cable
		Christopher Rants	Verus Financial Services, LLC
		Peter Slover	
<b>Appearing by phone:</b>			
Stewart Binke	Michigan Department of Treasury	Donnita Wald	North Dakota Office of State Tax Commissioner
Tripp Baltz	Bloomberg BNA		

**II. Approval of Minutes of In-person Meeting, Wednesday, March 12, 2014**

Randy Tilley (ID) moved for approval of the minutes. The minutes of the March 12 meeting were approved by unanimous voice vote

**III. Public Comment Period**

Jamie Fenwick (Time Warner) and Deborah Bierbaum (AT&T) wanted to raise awareness of the Internet Tax Freedom Act, which is scheduled to expire on Nov. 1, 2014 (although it may be extended retroactively). Affected companies are reaching out to the states to figure out what to do on Nov. 1 - ideally they would like to use the definition of internet access as defined by federal law until the state has its own measure or the ITFA issue is resolved in Congress. Ms. Fenwick and Ms. Bierbaum wanted to make the states aware they'll likely be requesting advisory opinions, since they are willing to cooperate but require more guidance. Since the companies will need to give notice to their customers, the issue will need to be resolved by September.

**IV. Reports and Updates**

**a. Federal Issues Affecting State Taxation**

**1. S. 31, H.R. 434, Permanent Internet Tax Freedom Act**

The House passed ITFA by a large margin. But in the Senate, Enzi has tied ITFA to the MFA (see below), and it is now called MITFA. Title I is the MFA, and Title II is the ITFA, which extends the moratorium for 10 years and keeps grandfathered states. As far as ITFA, Sen. Harry Reid has introduced legislation to extend the current ITFA from Nov. 1 to Dec. 31 in order to give the senate more time to consider MITFA (there will be an August recess, and this is an election year, so there are relatively few days left for consid-

eration). It's expected the Senate will go Republican after the election, so the House may be waiting for the election. On Sept. 18, 2013, Rep. Goodlatte set out his 7 principles he would like to see in any MFA, and Rep. Chaffetz is doing the draft.

**2. S. 743, H.R. 684, Marketplace Fairness Act**

Ratifies the Streamlined Sales and Use Tax Agreement. For those states that are not members of SST, provides a set of criteria to simplify their sales and use taxes that once met, allows them to require tax collection by remote sellers. S. 743 introduced April 16, 2013, by Senator Enzi (R-WY). S. 336 (laid aside) introduced February 14, 2013. H.R. 684 introduced February 14, 2013, Rep. Womack (R-AR). Passed the Senate on May 6, 2013. On September 18, 2013, Rep. Goodlatte (R-VA). Chair of the House Judiciary Committee, issued a list of seven basic principles which have been characterized as a starting point for discussions to resolve the issue.

**3. S.1235, H.R. 2309, Wireless Tax Fairness Act**

Prohibits states or local governments from imposing any new discriminatory tax on mobile services, mobile service providers, or mobile service property for five years after the enactment of this Act. Defines "new discriminatory tax" as a tax imposed on mobile services, providers, or property that is not generally imposed on other types of services, providers or property, or that is generally imposed on others at a lower rate. "Principles" of the 4-R Act apply to any allegedly discriminatory treatment, including redress in federal courts. House and Senate bills are identical. Sponsors: Rep. Zoe Lofgren, D-CA and Sen. Ron Wyden, D-OR.

**4. S. 1364, H.R. 3724, Digital Goods and Services Tax Fairness Act**

Prohibits multiple or discriminatory taxes on or with respect to the sale or use of digital goods or digital services. Taxes on or with respect to sales of digital goods and services may only be imposed on the sale to a customer. Such taxes may only be imposed on and collected only from a customer or a seller. Taxes may be imposed only by the state and local jurisdictions whose territorial limits encompass the customer's tax address. For multiple locations, seller may determine customer's tax address or addresses as provided by the customer. Seller relying in good faith on address or addresses provided by customer shall be held harmless for any additional tax based on a determination of a different address. Bundling: digital goods and services bundled with other goods and services may be taxed at the same rate as the other goods and services unless seller can reasonably identify charges for digital goods and services from records kept in the regular course of business.

**5. H.R. 2543, End Discriminatory State Tax on Automobile Rentals Act**

A 4-R Act-like bill that prospectively prohibits discriminatory taxes against the rental of motor vehicles, the business of renting motor vehicles, and the motor vehicle property. Provides for federal district court jurisdiction for violations of the Act. Sponsor: Rep. Steve Cohen, (R-TN).

**V. Sales Tax Nexus Model Statute**

**a. Presentation of Draft Model Statute**

Bruce Fort, MTC counsel, presented some proposed amendments to the model statute. He would make a few technical corrections, and substitute the definition of nexus for the word "nexus."

**b. Public Comment**

There were no comments.

**c. Committee Discussion**

Kelly Gilliken (AL) noted that although there is language in subparagraph (f), the provision technically doesn't "levy" any taxes. Phil Horwitz (CO) clarified that "Act" in this context means the "article" in which it is contained. For consistency's sake, Dee Wald (ND) recommended putting it in brackets to make sure they denote the state's citation. Bruce Johnson (ID) asked about Use Tax Option A, "Every retailer engaged in business in this state..." in the context of situations where a wholesaler sells office supplies to an office supply company. It's not taxable at that time. Then the supply company takes them out and uses them for itself, at which point they're taxable. Does the wholesaler then have an obligation to pay tax that springs into effect? Richard Cram (KS) stated there were two different versions of use tax because the idea was to accommodate the different ways in which states impose their tax. But no one thought it would be specific enough to pick up the wholesaler situation. Mr. Horwitz stated the "by any other medium" part seems overly broad, and recommended "by any similar medium." Randy Tilley (ID) moved to refer the draft back to the drafting group for consideration of Mr. Fort's input and any other comments that were made during this discussion. Stewart Binke (MI) clarified that this would be for consideration of the comments provided today. The motion passed by show of hands, with 14 in favor and none opposed.

**VI. Model Provisions Concerning Class Actions and False Claims**

Bruce Johnson asked that the Committee support the ABA model act, which protects sellers from class actions and false claims act cases. Mr. Johnson stated that he had participated in the ABA process and thought it was important that the MTC support the ABA's efforts. Mr. Johnson made a motion to have the committee recommend to the Executive Committee the resolution in support of the ABA model. It was approved.

**VII. Project on State Requirements Under The Marketplace Fairness Act**

**A. Presentation of Activity Report**

At this point, the group has reviewed the MFA, identified potential policy and administrative issues, and compiled sample language from SSUTA member states. But a new version of the MFA is being drafted in the House, which is expected to differ significantly from the bill as introduced. Given that fact, the work group notified the subcommittee that it would be best to put the project on hold pending further action from Congress. The work group has reached a point where the project can be easily recommenced when there is progress in the House. The work group held a brief teleconference on June 18, 2014 for an update on the status of the project, but there was very little to report.

**B. Public Comment**

There were no comments

**C. Committee Discussion**

Since the project is on hold, there was no discussion

**VIII. New Business**

There was no new business

**IX. Adjourn**

Chris Coffman (WA) moved to adjourn. The motion passed by voice vote. The meeting adjourned at 2:35 p.m.