MULTISTATE TAX COMMISSION

MINUTES of

Sales and Use Tax Subcommittee Meeting

Thursday, December 11, 2014

8:30 a.m. Central Time

I. Welcome and Introductions

Richard Cram, Chair of the Sales and Use Tax Subcommittee, (KS) opened the meeting at 8:33 a.m. The following persons were in attendance:

Holly Coon	Alabama Department of Revenue	Lennie Collins	North Carolina Department of Revenue
Michele Mayberry		Demesia Padilla	New Mexico Taxation & Revenue
Rouen Reynolds		Matt Peyerl	North Dakota Office of State Tax Commissioner
Joe Garrett			
Deanna Munds-Smith	Arkansas	Myles Vosberg	
Phillip Horwitz	Colorado Department of Revenue	Ryan Rauschenberger	
Monica BestJames	Comptroller of Maryland	Don Jones	Oregon Department of Revenue
Aaishah Hashmi	DC Office of Tax & Revenue	Gary Humphrey	
Charles Wilson		Jason Weimer	Pennsylvania Department of Revenue
		Kathryn Lewis	State of CT, Dept. of Revenue
Richard Jackson	Idaho State Tax Commission	Andrea Taylor	
Steve Wynn		Doug Schinkel	State of South Dakota
Richard Cram	Kansas Department of Revenue	Karolyn Bishop	State of Washington Department of Revenue
Marcia Oakman	Kentucky Department of	John Ryser	

Donald Richardson	Revenue	Gilbert Brewer	
J. A. Cline	Louisiana Department of Revenue	Tommy Hoyt	Texas Comptroller of Public Accounts
Michael Fatale	Massachusetts Department of Revenue	**Private Representatives:**	
Wood Miller	Missouri Department of Revenue	Todd Lard	Sutherland
Lee Baerlocher	Montana Department of Revenue	Virgil Helton	Fast Enterprises, LLC
Gene Walborn		Karl Frieden	Council On State Taxation
Roxanne Bland	Multistate Tax Commission	Deborah Bierbaum	AT&T
Bruce Fort		**By Phone:**	
Keith Getschel		Pat Calore	Michigan Department of Treasury
Helen Hecht		Chris Coffman	State of Washington Department of Revenue
Sheldon Laskin		Christie Comanita	New Mexico Taxation & Revenue
Jeff Silver		Andrew Glancy	West Virginia State Tax Department
Ben Abalos		Dan Harbor	New Mexico Taxation & Revenue
Ken Beier		Kimberley Davis	Florida Department of Revenue
Lila Disque			
Joe Huddleston			
Thomas Shimkin			

II. Approval of Minutes of In-person Meeting, Wednesday, July 28, 2014

Phil Horwitz (CO) moved for approval of the minutes. The minutes of the July 28 meeting were approved by unanimous voice vote

III. Public Comment Period

There were no comments.

IV. Reports and Updates

A. Federal Issues Affecting State Taxation

Roxanne Bland, MTC Counsel, gave an update of federal legislation affecting state taxes, specifically S. 31, H.R. 434, Permanent Internet Tax Freedom Act; S. 743, H.R. 684, Marketplace Fairness Act; S. 2609, Marketplace and Internet Tax Fairness Act; S. 1235, H.R. 2309, Wireless Tax Fairness Act; S. 1364, H.R. 3724, Digital Goods and Services Tax Fairness Act; H.R. 2543, End Discriminatory State Tax on Automobile Rentals (EDSTAR) Act; H.R. 2361, Protecting Honest, Everyday Americans from Senseless And Needless Taxes (PHEASANT) Act of 2013; and H.R. 2877, Nat-

ural Gas Pipeline Property. The Congressional lame duck session ended on the date of Ms. Bland's presentation; the Senate planned to conclude a couple of days later. The Permanent Internet Tax Freedom Act was not enacted; instead, the existing Internet Tax Freedom Act was extended for 1 year, ending Dec 11, 2015. The Marketplace Fairness Act was not voted upon or considered during this lame duck session. It will likely be introduced in the 114th Congress. None of the remaining bills will be considered in the lame duck session. Some may reappear next year – most likely the Wireless Tax Fairness Act, the End Discriminatory State Tax on Automobile Rentals (EDSTAR) Act, and the Digital Goods and Services Tax Fairness Act.

V. Sales Tax Nexus Model Statute

A. Presentation of Draft Model Statute

Richard Cram introduced the project. Two options were offered for the use tax, because the group's purpose was to come up with versions that would work with any particular state, whether they impose their tax directly on seller or on the end consumer. At the last meeting, the work group brought the drafts to the subcommittee for discussion, and the subcommittee made several amendments. It was sent back to the work group, which worked to incorporate the amendments and finalize the model. The proposed model for adoption by the subcommittee was distributed to the attendees. Mr. Cram pointed out that some of the recommended amendments were not incorporated into the model brought before the group. He stated that unless the group objected, they would be inserted as follows:

- In (c)(3): "An agreement for advertising services…" the word "other" will be replaced with "similar." There was no objection.
- In paragraph (f) -- suggestion was made to put brackets around "levy" because some states may have levies or impositions in a different act. Ms. Bland, MTC counsel, asked whether there should be alternative language or something to indicate it may not work for all states. Mr. Cram recommended an asterisk.

B. Public Comment

There were no comments.

C. Committee Discussion

Gilbert Brewer (WA) posed a hypothetical relating to section (b)(2): if an entity had that activity related to a non-taxable service and then also sold tangible personal property (TPP) into the state but the activity wasn't related to the sale of the TPP, would this mean no nexus was created? Mr. Cram stated this would probably be a case-by-case analysis, looking at whether the taxpayer was building a market. Mr. Horwitz suggested that portions of (b)(2) would be better placed in (b)(4), because the language in question "for the purpose of taking of orders" relates to employees and not agents or salespeople.

After some discussion, the group decided insert change (b)(2) by ending the first sentence after the word "behalf" and starting a new sentence, "This includes . . .". Helen Hecht, MTC General Counsel, noted there is some concern regarding the word "temporarily," and recommended "on a regular basis."

Following a debate regarding whether to move the draft forward or send it back for revision, Mr. Brewer moved to move the draft as revised forward to the Uniformity Committee. Vote was taken by show of hands. The motion passed with 13 for, 2 against, and 3 abstaining.

VI. Model Provisions Concerning Class Actions and False Claims

Sheldon Laskin, MTC Counsel, gave an update on the status of the project. The revised resolution endorsing the ABA model tax act is ready to be presented to the Executive Committee. Regarding the False Claims act, Mr. Laskin had volunteered to draw up language that carved out transaction taxes with the exception of fraud claims. However, he has since realized this is probably overly restrictive

as an approach. In the area of undercollection, the consumer's interests are congruent with the seller's interests. If there are companies that know or should know they should be collecting tax (and are not), only third parties would possibly have information to bring this to light. So in the absence of some mechanism to bring the complaints to the attention of the revenue department, it would be too restrictive. He has considered some kind of Whistleblower Act, but requested guidance as to whether to go to the Executive Committee and what to ask for.

A. Public Comment

There were no comments

B. Committee Discussion

Mr. Horwitz stated the reason they undertook the project was because they were approached by industry with concerns regarding overcollection. It sounds as though the working group has decided that the false claims act with respect to undercollection should not extend to transactional taxes. Mr. Horwitz recommended directing the working group to continue and come up with a proposal on how to fill that gap; this seems to be part of the existing charge. Ultimately the committee charge was to include both taxes. The work group will pursue the possibility of drafting a model stand-alone tax whistleblower statute while at the same time considering limits on the use of general false claims act statutes for tax claims.

VII. Project on State Requirements Under The Marketplace Fairness Act

A. Presentation of Activity Report

The MFA remained stalled in the House, and as the lame duck session ends it is effectively dead. Work has ceased on the project.

B. Public Comment

There were no comments.

C. Committee Discussion

There was no discussion.

VIII. New Business

There was no new business

IX. Adjourn

Mr. Horwitz moved to adjourn. The motion passed by voice vote. The meeting adjourned at 9:32 p.m.