



MINUTES

**Meeting of the
Multistate Tax Commission
UNIFORMITY COMMITTEE
Held Jointly with the Sales & Use Tax Subcommittee
and the Income & Franchise Tax Subcommittee**

The Davenport Hotel
10 South Post Street
Spokane, Washington

July 28, 2015

I. Welcome and Introductions

The chair, Wood Miller, Missouri Department of Revenue called the meeting to order and asked members and participants to introduce themselves. The following is a list of members and participants:

II. Approval of Minutes of the Prior In-Person Committee and Subcommittee Meetings – March 9-10, 2015

Minutes of the committee and subcommittee meetings were discussed and approved by voice vote.

III. Initial Public Comment Period

No initial public comment was received.

IV. Federal Legislative Update

Sheldon Laskin, MTC Counsel, provided a brief update of federal legislation affecting state taxation.

V. Art. IV (UDITPA) Drafting Groups – Overview

Helen Hecht, MTC General Counsel, briefed the Committee on coordinating drafting efforts and solicited guidance on delivering draft model regulations.

*If you would like additional information about this meeting, contact Helen Hecht, General Counsel,
Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425
Washington, D.C. 20001 | Tel: (202) 650-0300 | e-mail: hhecht@mtc.gov*

VI. Sec. 1 Workgroup Report

Jennifer Hays provided a general overview of the project and the working draft. The workgroup has discussed a number of issues involving the definitions of business/apportionable income, sales/receipts and the use of the term “business” throughout the regulations. The workgroup requested advice from the committee on certain issues and the committee responded as follows:

1. Should the five-year rule for transitioning property from apportionable to nonapportionable income be maintained considering the statutory change?

The committee instructed the workgroup to retain the five-year rule.

2. Should certain reserved language within the “Determination of a Unitary Business” portion of the regulations be maintained considering the passive holding company regulation has not been promulgated?

The committee instructed the workgroup not to retain that language.

3. Should the draft regulations include lists of income types or sources which are or are not receipts?

The committee responded that a list of non-receipts is appropriate but that the cross-reference to Sec. 17 should be clarified so that it supports the reason for the receipts not being in the receipts factor. The committee also discussed and asked the workgroup to think about whether the language should be worded as a presumption, that the list of receipts excluded under the definition and under Sec. 17 should be treated separately (including the throw-out rule of Sec. 17), that regulations tie to the statutory language being interpreted, and to consider whether the listed items would be excluded in all or virtually all circumstances.

4. Is it appropriate for the Section 18 language to be removed at this time, pending new Section 18 regulations to reflect the changes to market based sourcing in Section 17, as well as the elimination of the functional test for receipts?

Committee agreed that it was appropriate to remove the Section 18 references.

5. Are additional definitions required; e.g., “hedging,” “securities,” “non-apportionable receipts,” etc.?

Committee responded that definitions were needed.

In addition, the committee raised concerns about subsection E on page 34 of the redline draft and whether that rule should be a Sec. 18 rule or a Sec. 17 rule of reasonable approximation? The committee agreed to revisit this issue after the working group considered it.

Another question was raised about subsection (5) on page 22 and whether the workgroup should consider the treatment of receipts of foreign entities included in combined returns under tax haven rules.

VII. Sec. 17 Workgroup Report

Phil Skinner provided an overview of project and the working draft along with a written report from Bruce Fort, MTC Counsel. The workgroup requested advice from the committee on certain issues and the committee responded as follows:

1. Should examples be included in the draft regulations or set forth as a separate document?

Committee directed the workgroup to integrate the examples into the regulatory sections to which the examples exemplify.

2. Should “credit card processing services” be included in the definition of professional services?

Committee agreed with the workgroup’s decision to include it.

3. Should the Section 17 regulations include an incidental receipts (“de minimis”) rule allowing taxpayers to exclude certain categories of receipts as an administrative and compliance convenience?

Committee discussed the statutory authority, whether it was Section 18 or Section 17’s rule of reasonable approximation. Some states may have such a rule now (Oregon). The question is how to formulate the rule, whether it should be a percentage of all receipts or just receipts that are part of the sales factor, etc. The committee instructed MTC staff and the workgroup to continue to discuss the issue and consider additional proposed drafts if submitted.

4. Should the uniformity committee consider changes to the current model apportionment regulation defining “subject to tax” in light of possible concerns with the receipts factor denominator?

There was discussing that the committee has attempted this before without making any particular progress, so the committee decided to continue this as an open item for the next meeting.

5. How should the interaction of Section 17 and Section 18 (equitable apportionment) be handled?

The committee agreed that the cross-reference to the Section 18 rules that a state might have in place (and that the MTC has adopted as uniform rules) is an appropriate way to address this issue.

6. Should the model rules address the possibility that related party transactions could be used as a means of inappropriately apportioning income, or save that issue for “equitable apportionment” regulations?

The committee agreed that the workgroup should form a special subgroup to consider this issue and propose rules as part of the regulations.

VIII. Sales & Use Tax Subcommittee Report – Draft Model Sales & Use Tax

Nexus (“Engaging in Business”) Statute

Richard Cram, Kansas Department of Revenue, presented the draft model to the Committee for consideration of its approval for referral to the Executive Committee. Chris Coffman, Washington Department of Revenue, moved approval. The committee voted in favor of the motion 12-0-2.

IX. Report of Staff on Other Issues

Sheldon Laskin reported on the Status of Whistleblower Model Act Project, which is looking at the IRS model. Helen Hecht reported that the Federal Adjustment Project Proposal has not found an approach to the issue that appears workable yet.

X. Roundtable Discussion

States participated in a discussion of the important developments in their states. The outgoing Executive Director of the Commission, Joe Huddleston, gave the committee a “pep talk” noting that its efforts have paid off over the long term.

VIII. New Business

No new business.

IX. Adjournment