



MINUTES

Uniformity Committee Meeting

Crowne Plaza – Kansas City Downtown hotel
 1301 Wyandotte Street
 Kansas City, Missouri 64105

Tuesday, July 26, 2016
10 a.m. to 5 p.m. Central Time

I. Welcome and Introductions – Chair Wood Miller, Missouri

Mr. Miller began the meeting at 10:03 a.m. central time by welcoming attendees. Attendees identified themselves verbally. In addition, a sign-in sheet was passed around for those physically present. Mr. Miller asked those on the telephone to send an email to note their attendance.

ATTENDEES –

Coon	Holly	Alabama Dep't of Revenue
Joe	Garrett	Alabama Dep't of Revenue
Magee	Julie	Alabama Dep't of Revenue
Reynolds	Rouen	Alabama Dep't of Revenue
Vandevender	Christy	Alabama Dep't of Revenue
Anger	Walter	Arkansas Dep't of Finance and Administration
Atchley	Tom	Arkansas Dep't of Finance and Administration
Fryer	Scott	Arkansas Dep't of Finance and Administration
Munds-Smith	Deanna	Arkansas Dep't of Finance and Administration
DiPippa	Joel	Arkansas Dep't of Finance and Administration, Revenue Div.
McLoughlin	Jennifer	Bloomberg BNA
Fenwick	Jamie	Charter Communications
Horwitz	Phillip	Colorado Dep't of Revenue
Dobay	Nikki	Council On State Taxation
Frieden	Karl	Council On State Taxation (telephone)
Kurian	Geemon	District of Columbia
Huddleston	Joe	Ernst and Young, LLP
Boucher	Karen	FIST Coalition LLC
Shiraishi	Ted	Hawaii Dep't of Taxation
Wakayama	Kevin	Hawaii Dep't of Taxation
Jackson	Richard	Idaho State Tax Commission
Skinner	Phil	Idaho State Tax Commission
Wynn	Steve	Idaho State Tax Commission (telephone)
Tilley	Randy	Idaho State Tax Commission
Beshears	Mark	Kansas Dep't of Revenue
Oakman	Marcia Ann	Kentucky Dep't of Revenue
Richardson	Don	Kentucky Dep't of Revenue
Stacy	Shawn	Kentucky Dep't of Revenue
Hays	Jennifer	Kentucky Legislative Research Comm.
Sicilian	Shirley	KPMG LLP
Morris	Luke	Louisiana Dep't of Revenue
Fatale	Michael	Massachusetts Dep't of Revenue
Miller	Wood	Missouri Dep't of Revenue
Abel	Tracee	Montana Dep't of Revenue
Baerlocher	Lee	Montana Dep't of Revenue
Hofland	Kory	Montana Dep't of Revenue

Kadas	Mike	Montana Dep't of Revenue
Cram	Richard	Multistate Tax Commission
Disque	Lila	Multistate Tax Commission
Dubin	Elliott	Multistate Tax Commission
Fort	Bruce	Multistate Tax Commission
Hecht	Helen	Multistate Tax Commission
Laskin	Sheldon	Multistate Tax Commission
Matson	Gregory	Multistate Tax Commission
Polimeros	Nick	Multistate Tax Commission
Shimkin	Thomas	Multistate Tax Commission
Silver	Jeff	Multistate Tax Commission
Stranburg	Marshall	Multistate Tax Commission
Yang	Steve	Multistate tax Commission
Sher	Kathleen	New Hampshire Dep't of Revenue Administration
Armer	Dan	New Mexico Taxation & Revenue
Crociata	Frank	New Mexico Taxation & Revenue Dep't
Padilla	Demesia	New Mexico Taxation & Revenue Dep't
Collins	Lennie	North Carolina Dep't of Revenue
Peyerl	Matt	North Dakota Office of State Tax Commissioner
Harbur	Marilyn	Oregon Dep't of Justice
Weirnick	Darren	Oregon Dep't of Justice
Humphrey	Gary	Oregon Dep't of Revenue
Jones	Don	Oregon Dep't of Revenue
Smith	Eric	Oregon Dep't of Revenue
Wallace	Tyler	Oregon Dep't of Revenue
Conner	Anita	Pennsylvania Dep't of Revenue
Nancy	Lancia	Securities Industry and Financial Market Association (telephone). Did not confirm identity by email)
Hamilton	Amy	Tax Analysts (did not sign in)
Hoyt	Tommy	Texas Comptroller of Public Accounts
Johnson	Rusty	Texas Comptroller of Public Accounts
Miller	Murl	Texas Comptroller of Public Accounts
Christensen	Mike	Utah State Tax Commission
Valentine	John	Utah State Tax Commission
Coffman	Chris	Washington State Dep't of Revenue
Hesford	David	Washington State Dep't of Revenue
Shirk	Drew	Washington State Dep't of Revenue
Bishop	Karolyn	Washington State Dep't of Revenue
Golden	Ellen	West Virginia Tax Dep't
Glancy	Andrew	West Virginia Tax Dep't (telephone)
Biermeier	Michelle	Wisconsin Dep't of Revenue
Kulberg	Jayne	Wisconsin Dep't of Revenue

II. Initial Public Comment Period:

No one commented.

III. Approval of Minutes - In Person Meeting of March 2, 2016 and Phone Meeting of July 14, 2016 - Chair

These minutes are available on the MTC website as part of the agendas of the meetings. March 2 minutes were amended to reflect that Chris Coffman was from Washington, not Oregon. *Approved unanimously by voice vote as amended.*

IV. Strategic Planning Update.

Mr. Stranburg gave an oral report and informed the committee that he is in charge of ongoing strategic planning. He requested that states give feedback about mission, values, and goals.

V. Legislative Report.

Mr. Shimkin gave an oral report that reviewed pending and potential congressional legislation on issues affecting state taxes. He noted in particular S. 2555, Section 21, which he said would preempt taxation of certain commercial mobile radio service. He also compared and noted the statuses of the Marketplace Fairness Act (S. 698), the Remote Transactions Parity Act (H.R. 2775), and the outline proposal of Representative Goodlatte with respect to granting authority to states to collect use tax from remote vendors. He said that Representative Sensenbrenner introduced H.R. 5893, the No Taxation Without Representation Act of 2016 in mid-July, which would in short codify *Quill*.

VI. Consideration of Draft Report to the Executive Committee on Issues Referred Back to the Uniformity Committee and Draft Changes to Proposed Amendments to Model General Allocation and Apportionment Rules - Committee

Mr. Miller, Chair, reviewed the history of the project. He also referred to the draft report to the Executive Committee prepared by staff which summarizes the committee's recent discussion of various issues and the recommendations with respect to those issues.

Mr. Miller invited public comment.

Mr. Huddleston of Ernst and Young, LLP explained some of his clients' concerns and said that he detailed them in memoranda that are posted on the Commission's website (on the Section 17 & 1 project page: *Email from Joe Huddleston to Brian Hamer; E&Y Additional Comments on Hearing Officer Report*).¹

Ms. Boucher, representing the Financial Institutions State Tax Coalition, LLC (FIST), explained some of FIST's concerns. Her June 2 written explanation, entitled, *Proposed Draft Amendments to the Commission's Model General Allocation and Apportionment Regulations*, is posted on the Section 17 & 1 project page of the Commission's website.²

Mr. Frieden of the Council on State Taxation (COST) explained some of COST's concerns. COST's written comments of July 26, 2016 are entitled, *COST Comments on the Uniformity Committee's July 20, 2016 Report to the Executive Committee on Proposed Sections 1 and 17 Regulations*. They are posted on the Commission's website on the Section 17 & 1 project page.³ He said that he will submit additional comments [COST's additional comments are dated July 26, 2016. They are entitled, *COST Comments on Uniformity Committee's July 20, 2016 Report to the Executive Committee on Proposed*

¹<http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Section-17-Model-Market-Sourcing-Regulations/E-Y-Email.pdf.aspx> AND

<http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Section-17-Model-Market-Sourcing-Regulations/E-Y-Additional-Comments-on-Hearing-Officer-Report.pdf.aspx>

² <http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Section-17-Model-Market-Sourcing-Regulations/FIST-Coalition-Comments-Received-June-2-2016.pdf.aspx>

³ <http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Section-17-Model-Market-Sourcing-Regulations/72616-COST-Comments-to-MTC-Executive-Committee.pdf.aspx>

Sections 1 and 17. They are posted by a link on the page, *Executive-Committee-Agenda- 7-2016.*^{4]}

Nancy Lancia of the Securities Industry and Financial Market Association (SIFMA), on the telephone, asked that the committee consider her written comments of July 25, 2016. They are entitled, *Draft Amendments to Sections 1 & 17 of the General Allocation and Apportionment Regulations regarding the treatment of receipts from hedging, interest, and dividends.* They are posted by a link on the page, *Executive-Committee-Agenda-7-2016.*⁵ Mr. Miller asked for discussion from members of the committee. The members agreed that the report to the Executive Committee reflected the recommendations of the Uniformity Committee based on recent phone meetings held.

Ms. Hecht noted that there was one element of the report—language drafted by staff beginning on page 10 of the draft report that would be included in the draft amended regulations—that the committee needed to consider. This language concerned clarification that under Sec. 1, interest and dividends are excluded.

There was discussion on the proposed changes drafted by staff. Mr. Fatale suggested that Sec. 1 regulations should clarify that receipts from *holding* securities would also be excluded under the Art. IV amendments. So a regulation would clarify that in addition to receipts from maturity, redemption, sale, exchange, loan or other disposition of cash or securities, the receipts from holding securities would also be excluded.

Mr. Skinner also noted that he believed that the committee had discussed amending the Sec. 15 regulations that include incidental interest with the receipts from the sale of goods (e.g. on installment) would need to be changed—rather than continuing to include such interest (as the staff language had suggested). Others noted general agreement with this approach.

Mr. Fatale suggested that the Uniformity Committee simply tell the Executive Committee that minor changes to the draft regulations need to be made to clarify that interest and dividends are excluded. There was general agreement with this approach.

Mr. Miller said that the final version of the report to the Executive Committee could say that the Uniformity Committee would like to make minor changes to clarify that interest and dividends are excluded.

Mr. Horwitz noted that the report should also specify that the changes could be made to regulations under Sections 1, 15, and 17.

Mr. Horwitz moved that the Uniformity Committee present the report as discussed, with staff making changes comports with the discussion. The motion confirms that the Uniformity Committee recommends that dividends and interest are not included in the receipts factor under Sec. 1 and that the committee recommends that clarifying changes be made in Sections, 1, 15, and 17. There was no discussion on the motion. A total of 16 states voted aye and none voted nay. No state abstained.

⁴ <http://www.mtc.gov/getattachment/The-Commission/Committees/Executive-Committee/Executive-Committee-Agenda-7-2016/72616-COST-Comments-to-MTC-Executive-Committee.pdf.aspx>

⁵ <http://www.mtc.gov/getattachment/The-Commission/Committees/Executive-Committee/Executive-Committee-Agenda-7-2016/SIFMA-comment-letter-re-MTC-Sec-1-17.pdf.aspx>.

In concluding the discussion, Mr. Miller noted that the committee appreciates public comments, especially when made early in the deliberative process.

VII. Discussion of Section 18 Work-Group Issues

Mr. Coffman said some words of appreciation for staff assistance and then Mr. Fort presented the written report on the status of the Sec. 18 work group. (That report is posted on the MTC website as an attachment to the agenda for the meeting.) He said that the work group met weekly until the Executive Committee at its May meeting requested that it stop pending resolution of the review of issues by the Executive and Uniformity Committees. He summarized information in the written report. That report is available at a link on the page, *Uniformity-Committee-Agenda-7-2016*

VIII. The Role of Partnerships in Business

Richard Prisinzano of the U.S. Department of the Treasury presented a study of partnership income. That presentation is available at a link on the page, *Uniformity-Committee-Agenda-7-2016*. The presentation and other related materials are also available on the Partnership project page under the Uniformity tab on the Commission's website.

IX. Pass-Through Entity Taxation

Helen Hecht, MTC General Counsel, gave a presentation on the issues that states need to consider in conforming to new federal audit and adjustment procedures. That presentation is available at a link on the page, *Uniformity-Committee-Agenda-7-2016*

X. State Roundtable

State representatives gave brief updates of legal, legislative, and administrative tax matters in their states.

XI. Adjournment. The committee adjourned at 4:20 p.m. central time