



UNIFORMITY COMMITTEE MINUTES OF MEETING

Wednesday, March 8, 2017
 8:30 a.m. – 5:00 p.m. Pacific Time
 San Diego, California

I. Welcome and Introductions

The Uniformity Committee meeting started at 8:32 a.m. with a welcome and introduction from Greg Matson, Executive Director of the Multistate Tax Commission. He then ceded the floor to Holly Coon, chair of the uniformity committee. The following people were in attendance:

Rouen Reynolds	Alabama Department of Revenue	Lennie Collins	North Carolina Department of Revenue
Holly Coon	Alabama Department of Revenue	Christi Daniken	Oregon Department of Revenue
Phillip Horwitz	Colorado Department of Revenue	Tommy Hoyt	Texas Comptroller of Public Accounts
Misgana Tesfaye	Colorado Department of Revenue	Ray Langenberg	Texas Comptroller of Public Accounts
Nathan Nielson	Idaho Office of the Attorney General	Murl Miller	Texas Comptroller of Public Accounts
Phil Skinner	Idaho Office of the Attorney General	Frank Hales	Utah State Tax Commission
Steve Wynn	Idaho State Tax Commission	David Hesford	Washington State Department of Revenue
John Hale	Kansas Department of Revenue	Karolyn Bishop	Washington State Department of Revenue
Nathan Hoepfner	Kansas Department of Revenue	John Ryser	Washington State Department of Revenue
Stephen Sullivan	Missouri Department of Revenue	Melissa Smith	Amazon
Tracee Abel	Montana Department of Revenue	Beth Sosidka	AT&T
Derek Bell	Montana Department of Revenue	Tripp Baltz	Bloomberg BNA
Spencer Clarke	Multistate Tax Commission	Nikki Dobay	COST

Gregory Matson	Multistate Tax Commission	Robert Merten	Eversheds Sutherland (US) LLP
Steve Yang	Multistate Tax Commission	Todd Lard	Eversheds Sutherland (US) LLP
Richard Cram	Multistate Tax Commission	Tom Pucci	Expedia Inc.
Lila Disque	Multistate Tax Commission	Joe Huddleston	EY LLP
Cathy Felix	Multistate Tax Commission	Virgil Helton	Fast Enterprises, LLC
Harold Jennings	Multistate Tax Commission	Shirley Sicilian	KPMG LLP
Jeffrey Silver	Multistate Tax Commission	Appearing by Phone:	
Marshall Stranburg	Multistate Tax Commission	Katie Lolly	Oregon Department of Revenue
Helen Hecht	Multistate Tax Commission	Marcia Ann Oakley	Kentucky Department of Revenue
Sheldon Laskin	Multistate Tax Commission	Dan Armer	New Mexico Taxation and Revenue Department
Lila Disque	Multistate Tax Commission	Matt Peryl	North Dakota Office of State Tax Commissioner
Kerrin Rounds	New Hampshire Department of Revenue	Karen Boucher	Deloitte

II. Approval of Minutes of the In-Person Meeting of December 14, 2016

The minutes were approved by voice vote.

III. Initial Public Comment Period

There were no public comments at that time.

IV. Committee Leadership Changes

Mr. Matson informed the group that Wood Miller asked to step down as chair of the uniformity committee, and so Commission Chair Rich Jackson asked vice-chair Holly Coon to move into this role. Mr. Matson noted the need to replace the vice-chair position. He asked for volunteers and, at a later point in the meeting, Tommy Hoyt of Texas agreed to serve and was approved by general consent.

V. Report – General Uniformity Update

Helen Hecht, MTC, presented an overview of uniformity projects where there have been significant developments. She noted the recent special meeting of the Commission where the amendments to the General Allocation and Apportionment Regulations were approved. She also noted that MTC staff included in the document the drafter's notes that had been discussed at the last meeting and that this version is on the MTC website.

VI. Report & Discussion – Section 18 Work Group

As chair of this project, Ms. Coon gave an introduction, and then turned the floor over to Bruce Fort, MTC, for a discussion. He directed the committee's attention to the report provided, posted with the agenda, and slides setting out various examples. Mr. Fort's main question for the committee regarded the need for a throw-out rule. The committee had recommended that the work group add one to the draft, but it had been unexpectedly difficult to incorporate. Mr. Fort requested advice as to whether the work group should continue to make that change. Mr. Fort also discussed the draft model and the function of each section. A few attendees had comments on the language used in the draft.

Phil Horwitz, Colo., and Michael Fatale, Mass., questioned the change of language in Sec. 1(b) regarding percentage of ownership and the relationship of the business entity to the taxpayer's unitary business. Both objected to the change from "functionally connected" to "a part of." Mr. Horwitz questioned the phrase "activities or earnings" – this could be interpreted to refer to E&P. He also noted that the work group needs to be particularly careful about how they treat special entities like securities dealers. Mr. Fatale asked about the limits of "*de minimis*." These issues will be discussed further in the work group.

Mr. Fort also presented a series of examples to illustrate how the rules should work. Mr. Horwitz and Ms. Coon raised a few questions regarding the practical application of the rules. Mr. Horwitz' comments related to his original objections to the language; Ms. Coon had concerns regarding the application of throw-out to two-tier entities. The uniformity committee took no action.

VII. Report & Discussion - Partnership Work Group Status

Chair of the partnership work group, Tracee Abel, Mont., gave an update on the work group's progress. The group engaged in substantive discussion with the public about the state tax issues that surround the federal audit changes. Ms. Hecht directed the committee's attention to a power point posted with the agenda for the meeting and to the web page for the work group that contains other materials. She then gave a presentation that addressed the MTC's history with pass-through entities and how states may need to address enforcement issues.

Note: after item IX, the scope of the work group was expanded to address entity-level taxes

VIII. Presentation & Discussion – Proposal to Revise Commission RAR Model

Sheldon Laskin, MTC, presented a preliminary analysis of the model recommended by a number of taxpayer representatives. (See his report, posted with the agenda for this meeting.) He compared it to the MTC model and found that the taxpayers' model is far more detailed, with some significant differences with the MTC model.

Nikki Dobay, COST, presented the ABA/AICPA task force proposal to the uniformity committee. She proposed having the MTC partnership working group work with the task force on changes to the MTC model. Ms. Coon asked whether anyone had a motion to broaden the working group's scope. There was no motion to do so, but Ms. Hecht, MTC, noted that it would be appropriate for MTC staff to monitor what the task force does and keep the partnership work group apprised, and also to review anything the task force asks us to evaluate.

IX. Presentation & Discussion – Proposal to Consider Model Entity-Level Tax on Partnerships, LLC's and Similar Business Entities

Frank Crociata, N.M. and Dan Armer, NM, had asked the committee to broaden the existing partnership project to encompass some provisions that would allow for an entity-level tax at the partnership level. Ms. Abel stated she believes it's well within the goals the project is meant to achieve, but might be controversial. Nevertheless, she felt that it

merited further discussion. She moved to broaden the existing partnership project to consider provisions that would allow for entity-level tax. The motion passed by voice vote.

X. State Roundtable

The states in attendance discussed current and ongoing tax issues. A number of states are in their legislative session, and some proposed legislation included tax packages. Several states are still working toward market sourcing and revised apportionment formulae. One has produced sales and use tax statutes similar to Colorado's. An ongoing concern among states is potential budget shortfall.

XI. Airbnb Presentation on Business Model

Beth Adair of Airbnb presented on the Airbnb business model and its method of transient occupancy tax collection. (That presentation is posted with the agenda for the meeting.) She fielded a number of questions regarding whether there had been customer pushback; whether the service fee Airbnb collects is considered part of the tax base; and the level of information shared with the state. By request, MTC staff will post contact information to Ms. Adair on the agenda on our website.

XII. Report & Discussion – Use Tax Information Reporting Model

Sheldon Laskin reported on the proposed model statute and the status of litigation and legislation. (That report is posted with the agenda for this meeting.) This was the model that was delayed pending Colorado's *DMA* litigation. Mr. Laskin reviewed the model and covered the history leading up to this point. A number of states now have similar statutes on the books, which he discussed. Mr. Horwitz noted that complications arise where there is a difference between the shipping and billing address. He recommended considering a cascading rule or a default rule. Mr. Horwitz was hesitant to send the model forward without having a work group review it again. He moved to reconvene a work group and reconsider the model statute for any necessary revisions. The motion passed by voice vote. Mr. Horwitz volunteered to serve as chair of the group.

XIII. Proposal to Revise Commission Model for Collection and Remittance of Lodging Taxes by Accommodations Intermediaries

Joe Crosby of MultiState Associates made a public request for the committee to consider revisions to the Commission's model for collection and remittance of lodging taxes by accommodations intermediaries. In response to a query from Mr. Horwitz, Ms. Hecht stated that, given the pending conclusion of other projects, MTC staff would have the resources to take on this project, provided the scope is limited to considering the specific proposal. Mr. Horwitz moved to have staff proceed appropriately to review the proposal and convene a work group if necessary. The motion passed by voice vote.

XIV. Information on Commission Training – Survey

Marshall Stranberg, MTC Deputy Executive Director, stated that one of the tasks he was asked to take on was working with the training program. He plans to do a survey of states – not just commission states – to see if there are training services the MTC can provide to states. He hopes to send out a survey soon.

XV. New Business

In response to a request, MTC staff will send out an e-mail requesting participants for the work groups.

Melissa Williams, as the primary drafter of the California market-based sourcing rules, did a presentation outlining California's new rules and the ways in which they differ from other models.

XVI. Adjourn.

The meeting adjourned at 4:10 p.m.