



MINUTES OF MEETING HELD DECEMBER 14, 2016 IN HOUSTON, TEXAS

Meeting of the Multistate Tax Commission Uniformity Committee

Westin Houston, Memorial City
945 Gessner Road
Houston, Texas 77024

December 14, 2016
8:30am-4:30pm Central Time

I. Welcome and Introductions

The chair, Wood Miller, Mo., called the meeting to order at 8:30am and asked members and participants to introduce themselves. The following is a list of members and participants:

Holly Coon	Alabama Dept. of Revenue	Katie Lolley	Oregon Dept. of Revenue
Christy Vandevender	Alabama Dept. of Revenue	Tommy Hoyt	Texas Comptroller of Public Accounts
Phillip Horwitz	Colorado Dept. of Revenue	Matthew Jones	Texas Comptroller of Public Accounts
Richard Jackson	Idaho State Tax Commission	Murl Miller	Texas Comptroller of Public Accounts
Randy Tilley	Idaho State Tax Commission	Frank Hales	Utah State Tax Commission
Latoria Dooley	Kentucky Dept. of Revenue	Karolyn Bishop	Washington State Dept. of Revenue
Marcia Ann Oakman	Kentucky Dept. of Revenue	David Hesford	Washington State Dept. of Revenue
Jennifer Hays	KY Legislative Research Commission	Drew Shirk	Washington State Dept. of Revenue
Luke Morris	Louisiana Dept. of Revenue	Gil Brewer	West Virginia State Tax Dept.

*If you would like additional information about this meeting, contact Helen Hecht, General Counsel,
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Michael Fatale	Massachusetts Dept. of Revenue	Michelle Biermeier	Wisconsin Dept. of Revenue
Wood Miller	Missouri Dept. of Revenue	Jayne Kulberg	Wisconsin Dept. of Revenue
Tracee Abel	Montana Dept. of Revenue	Melissa Smith	Amazon.com
Lee Baerlocher	Montana Dept. of Revenue	Joe Crosby	Multistate Associates
Gene Walborn	Montana Dept. of Revenue	Beth Sosidka	AT&T
Richard Cram	Multistate Tax Commission	Deborah Bierbaum	AT&T
Lila Disque	Multistate Tax Commission	Shirley Sicilian	KPMG LLP
Cathy Felix	Multistate Tax Commission	Karl Friedan	Council on State Taxation
Bruce Fort	Multistate Tax Commission	Lindsay Saneke	MLPA
Helen Hecht	Multistate Tax Commission	Nikki Dobay	Council on State Taxation
Greg Matson	Multistate Tax Commission	Joe Huddleston	EY LLP
Paul Mond	Multistate Tax Commission	Tripp Baltz	Bloomberg BNA
Thomas Shimkin	Multistate Tax Commission	Pilar Mata	Tax Executives Institute
Jeff Silver	Multistate Tax Commission	Appearing by phone:	
Marshall Stranburg	Multistate Tax Commission	Deanna Munds-Smith	Arkansas Department of Finance and Administration
Steve Yang	Multistate Tax Commission	Karen Boucher	Deloitte
Josette Fullen	New Jersey Division of Taxation	Aaishah Hashmi	District of Columbia Office of Tax and Revenue
Joan Wittig	New Mexico Taxation and Revenue	Phil Skinner	Idaho State Tax Commission
Lennie Collins	North Carolina Dept. of Revenue	Alysse McLaughlin	McDermott Will & Emery
Dee Wald	North Dakota Office of State Tax Commissioner	Pat Calore	Michigan Department of Treasury
Matt Peyerl	North Dakota Office of State Tax Commissioner	Corey Laughlin	Montana Dept. of Revenue
Don Jones	Oregon Dept. of Revenue		

II. Approval of Minutes of the Prior In-Person Meeting

Frank Hales, Utah, will be added to the list of attendees at the prior meeting. The minutes as amended were approved by voice vote.

III. Initial Public Comment Period

There was no public comment at this point.

IV. Federal Legislative Summary

Thomas Shimkin, MTC, gave an oral presentation on recent federal events. The Mobile Workforce Bill was approved by the House but not by the Senate. State tax professionals are remaining alert for language regarding digital goods that might be hidden in must-pass legislation. Mr. Shimkin will continue to monitor federal developments.

V. Report - Summary of Uniformity Projects & Litigation

Helen Hecht, MTC, presented an overview of Commission projects that remain active, and those that have been implicated in recent litigation. Most notable was the Supreme Court's denial of certiorari in *DMA v. Brohl*, a case addressing Colorado's sales and use tax notice and reporting requirement. The 10th Circuit found this requirement constitutional. Ms. Hecht therefore pointed out that it may now be appropriate to revisit the Commission's model notice and reporting statute, previously tabled pending a decision in *DMA*.

VI. Report & Discussion – Section 18 Work Group Review of Draft Regulation

The Uniformity Committee's "Section 18" working group has been meeting telephonically on a weekly basis to draft a proposed model regulation for apportioning the income of entities which lack "receipts" derived from transactions and activities in the regular course of business. Bruce Fort, MTC, discussed the proposed language as drafted, and outlined some questions for the committee. The report is available at the following [link](#).

Regarding subsection (1)(a), instead of "business activity," Michael Fatale, Mass., recommended looking to the apportionment factors of the entity that generated the dividend. He also objected to the language can be read to cover disposition of stock representing an ownership interest—a much broader concept than the working group intended. Mr. Fatale noted that, in Massachusetts, if a dividend paid by the subsidiary relates to income generated in a single year, they look to the subsidiary's apportionment factor for that year. If the dividend relates to income generated for several years, that approach is less feasible. It may be necessary to allow a blended approach. Several members of the group recommended clarifying the definition of

“related party,” which is defined under Section 17 but not in this Section 18 draft. The committee also discussed what to do if a subsidiary pays the dividend through an intermediate affiliate (e.g. holding company) and it was agreed that the rule should “look through” to the factors of the subsidiary that earned the income from which the dividend is paid. There was also some discussion of whether this rule was necessary in light of other provisions allowing for other approaches to reflect the source of dividend income.

As far as sourcing capital gains in subsection (1)(b), Mr. Miller recommended considering a hierarchical approach. Holly Coon, Ala., noted that the rules in subsections (2)-(4) might also suffice. The committee also discussed the sourcing of gains that are derived from goodwill. There was some agreement that the intro of that subsection is too broad and there were questions whether it needs to be a controlling interest. Also, it may be that the rule should reference the year realized, not recognized, so as to cover installment sales.

In subsection (1)(d) the committee recommended adding in the word “gross” to “receipts.”

In subsection (1)(e) the committee recommended taking out the reference to the Financial Institutions regulations, “(3)(n)”, and instead sourcing all investment activity receipts to where the investment is managed.

The committee asked whether both Sections (2) and (3) relating to receipts not sourced under Section 1 were necessary. It might be possible for states without payroll or property factors to reference the MTC general regulations when using those factors to determine a receipts factor.

The committee also discussed whether there should be a throw-out or throw-back rule in some situations where the taxpayer would not be subject to tax in the jurisdiction to which receipts are assigned, recognizing that throw-out might leave the taxpayer without a receipts factor, which is what the rule is meant to address. Chair Miller expressed a preference for some examples.

VII. Discussion of Other Section 18 Work Group Projects

Bruce Fort, MTC, discussed some possible topic areas for new projects, including securities dealers, financial services brokers, partnership distributions and updating existing special industry regulations, requesting committee's input on where to start. The report is available at the following [link](#).

Joe Huddleston, EY, noted that the new federal entity-level audit adjustment procedures might put additional pressure on state partnership distribution sourcing rules.

Mr. Fatale commented that he believes the model Section 17 regulations cover brokerage fees and most financial advisory services. Mutual funds service companies, however, are not covered.

Some committee members expressed an interest in updating the publishing and

broadcasting regulations to reflect industry changes.

No decisions were made at this point.

VIII. Report & Discussion - Partnership Work Group Status

Don Jones, Ore., reviewed the status of the project to conform state RAR rules to new federal audit and adjustment rules. Mr. Jones also announced that he has been reassigned in the Oregon DOR and will be stepping down as chair of the work group. He then ceded the floor to Ms. Hecht for greater detail. Ms. Hecht stated that the group started with an informal structure and then in July the committee decided the issue was important enough to begin working on a model. She described and analyzed the federal changes as well as recent developments which create uncertainty as to how the IRS will implement the changes. The work group sought guidance from the committee on (1) whether to suspend their work for the time being; and/or (2) whether to provide input to the IRS regarding the regulations that it is currently drafting.

Gene Walborn and Lee Baerlocher, Mont., encouraged proceeding on any possible items, and also advised the group to give input to the IRS. Jennifer Hays, Ky. Legislature, agreed it would be best to address areas where there is certainty while there is time to do so. Tracee Abel, Mont., pointed out that this is a complicated subject matter, and the work group will need a significant amount of education in order to understand and advise on how the IRS rules would work. She volunteered her assistance. Mr. Miller encouraged participation in the project, since it will be very important.

IX. Expected Public Comment on MTC RAR Model

Nikki Dobay, COST, and Pilar Mata, TEI, gave a presentation representing the ABA/AICPA Partnership Task Force. They encouraged the committee to take up a project to improve the MTC RAR Model, since this may be a good time to get widespread adoption. Greg Matson reminded the committee that they need to ensure that any project taken up is in line with the MTC mission, vision, values, and goals. He felt this project would be particularly worthy of the group's attention. However, he pointed out to Ms. Dobay and Ms. Mata that MTC groups are not best suited for advancing measures through the legislative process; it would be easier if they knew there would be people to promote this. Mr. Miller recommended putting this on the agenda to bring back in March, possibly as an educational/informational phase. The Committee in general approved of this proposal, and the matter will be put on the March agenda.

X. State Roundtable

Members of the committee discussed important legislative initiatives or regulatory projects (or litigation concerning related regulations) in their state that might be of general interest. State developments continue in the area of

sales and use taxation of goods purchased from remote sellers. Alabama adopted a sales and use tax with a \$250k threshold, and is moving toward *Newegg*-type litigation. In keeping with a nationwide trend, North Carolina is moving toward market sourcing.

XI. Presentation on Proposal to Allow Collection of Lodging Taxes

Troy Flanagan, American Hotel & Lodging Association, and Joe Crosby, MultiState Associates, gave a presentation regarding the tax implications for short-term rentals booked via online marketplaces. Their PowerPoint is available online at the following [link](#).

XII. Analysis – Conformity of Federal and State Tax Regulations: Are States Required to Give Effect to Federal Regulations Interpreting Comparable Federal Statutes?

Sheldon Laskin, MTC, gave a summary of preliminary analysis of when state courts will look to federal tax regulations in state tax matters. His presentation is available online via the following [link](#).

XIII. Presentation and Discussion – Proposed IRC Sec. 385 Regulations and State Conformity

Mr. Fatale discussed the revised (final) IRS regulations on treatment of debt versus equity transactions among related entities. His presentation is available online via the following [link](#).

XVI. Discussion of New Uniformity Projects

Ms. Hecht presented a proposal to compile drafter's notes to explain decisions made during drafting and highlight areas that may need editing to suit particular states' tax systems. Her proposal is available via the following [link](#). The suggestion met with general approval. Ms. Coon and Mr. Fatale brought up specific areas that would benefit from drafter's notes. Based on the committee's input, Mr. Miller said the project should move "full speed ahead." Staff will work on compiling drafter's notes.

XV. Adjourn

The meeting adjourned at 4:21 p.m.