



MULTISTATE TAX COMMISSION

## Minutes

### Multistate Tax Commission Uniformity Committee Meeting

The Boston Westin Waterfront

425 Summer Street

Boston, Massachusetts

Tuesday, July 24, 2018

1:00 p.m. – 5:00 p.m. Eastern Time

#### I. Welcome and Introductions

Holly Coon, Chair, Alabama, and Tommy Hoyt, Vice Chair, opened the meeting at 1:02 p.m. and invited those who wished to introduce themselves. The following people were in attendance (based on the sign-in sheet):

Holly Coon	AL DOR	Daniel D'Alessandro	ME Revenue Services
Tommy Hoyt	TX Comptroller	Ella Dillon	NJ DOT
Steven Alvarez	GA DOR	Ryan Doerflein	CO DOR
Julie Anderson	OR DOR	Latonia Dooley	KY DOR
Parker Armstrong	MTC	Elliott Dubin	MTC
Tom Atchley	AR DFA	Robert Dudley	NH DOR
Chris Barber	MTC	Michael Emfinger	AL DOR
Derek Bell	MT DOR	Michael Fatale	MA DOR
Michelle Biermeier	WI DOR	Cathy Felix	MTC
Sharonne Bonardi	MD Comptroller	Antonio Ferachi	LA DOR
Karen Boucher	FIST Coalition	John Ficara	NJ DOT
Gil Brewer	WA State DOR	Rosann Fitzpatrick	WA AG
Colleen Chipman	NJ DOT	John Frasier	New Hampshire
Tripp Baltz	Bloomberg Tax	Karl Frieden	COST
Nikki Dobay	COST	Scott Fryer	AR DFA
Pilar Mata	TEI	Darrick Gartley	NH DOR
Lenny Collins	NC DOR	Keith Getschel	MTC
Edward Collins	HI DOT	Brian Hamer	MTC
Anita Conner	PA DOR	Aaisha Hashmi	DC OTR
Susan Courson-Smith	Pfizer Inc.	Scott Hathaway	CO DOR
Richard Cram	MTC	Phil Horwitz	Moss Adams
Jayne Kulberg	WI DOR	Don Kuriki	HI DOT
Madelaina Lai	HI DOT	Ray Langenberg	TX Comptroller
Katie Lolley	OR DOR	Pilar Mata	TEI
Greg Matson	MTC	Ashley McGhee	NC DOR
Renee Nacrelli	MD AG	Nathan Nielson	ID AG
Marcia Ann Oakman	KY DOR	Daniel O'Connell	MA DOR

<b>Matt Peyerl</b>	ND Tax Commission	<b>Robert Plattner</b>	Consultant
<b>Cory Rayner</b>	NH DOR	<b>Brendon Reese</b>	CO DOR
<b>Keith Richardson</b>	DC OTR	<b>Karryl Romain</b>	LA DOR
<b>Janice Shannon</b>	NM TRD	<b>Shirley Sicilian</b>	KPMG
<b>Jeff Silver</b>	MTC	<b>Phil Skinner</b>	ID AG
<b>Eric Smith</b>	OR DOR	<b>Jenny Starr</b>	MN DOR
<b>Marshall Stranburg</b>	MTC	<b>Melisa Tape</b>	MN DOR
<b>Misgana Tesfaye</b>	CO DOR	<b>John Theis</b>	AR DFA
<b>Randy Tilley</b>	ID Tax Commission	<b>John Tracy</b>	MTC
<b>Audrey Tyndall-Hoyle</b>	NJ DOT	<b>Gene Walborn</b>	MT DOR
<b>Dee Wald</b>	ND Tax Commission	<b>David Wiest</b>	SD DOR
<b>Keen Wong</b>	NH DOR	<b>Steve Wynn</b>	ID Tax Commission
<b>Steve Yang</b>	MTC	<b>Mireille Eastman</b>	MA DOR
<b>Maria Sanders</b>	MO DOR	<b>Sal Tomaselli</b>	MO DOR
<b>Mike Gamble</b>	AL DOR	<b>Robert Kindred</b>	DC OTR
<b>Tom Shaner</b>	ID Tax Commission	<b>Frank Hales</b>	UT Tax Commission
<b>Christopher Russell</b>	IN DOR	<b>Adam Krupp</b>	IN DOR
<b>Fred Campbell-Craven</b>	CA FTB	<b>Laurie McEllhatton</b>	CA FTB
<b>Elissa Borges</b>	DC OTR	<b>Brandon Spanos</b>	AK DOR
<b>Bret Goldberg</b>	MA DOR	<b>Melissa Smith</b>	Amazon
<b>John Richter</b>	SD DOR	<b>Shaun Thomas</b>	NH DOR
<b>Tiffany Southworth</b>	UT Tax Commission	<b>Nick Sequeira</b>	KPMG
<b>John Valentine</b>	UT Tax Commission	<b>Luke Morris</b>	LA DOR
<b>Miranda Scroggins</b>	LA DOR	<b>Virgil Helton</b>	FAST
<b>Gale Garriott</b>	FTA	<b>Andrew Saleeby</b>	SC DOR
<b>Anne Mangiardi</b>	CO AG		
<b>By Phone:</b>			
<b>Tom Bloombach</b>	DC OTR	<b>Nirmail S. Dhaliwal</b>	DC OTR
<b>Jeffrey Henderson</b>	OR DOR	<b>Daron Prara</b>	OR DOR
<b>Erick Shaner</b>	ID AG	<b>Dan Armer</b>	NM TRD
<b>Jerry Johnson</b>	TaxCloud		

Ms. Coon publicly recognized Lennie Collins, N.C., longtime chair of the Nexus Committee, for his contributions to the Commission and particularly his heading up of the MTC’s Financial Institutions model work group. Mr. Collins is retiring and will be greatly missed by his state and by his friends at the MTC.

## II. Initial Public Comment Period

There were no initial public comments.

**III. Approval of Minutes of Meeting Held April 25, 2018**

Tommy Hoyt, Texas, moved to adopt the minutes as written. The motion passed by voice vote.

**IV. Report – General Uniformity Update**

Helen Hecht, MTC General Counsel, provided a written recap of the status of state adoption of certain uniformity projects and litigation with respect to MTC models. That report is part of the record of the meeting.

**V. Federal Tax Update & State Roundtable**

Bruce Fort, MTC Counsel, provided an update on federal tax reform and outlined state conformity efforts. The state representatives then gave an update on developments in their states, with emphasis on the ways in which they will or will not conform to federal law.

**VI. Project: Partnership/RAR Model Work Group**

Helen Hecht, MTC General Counsel, along with Katie Lolley, Oregon, work group chair, submitted the model as drafted by the work group. The model was revised to address the issue of how the partnership-pays election will work where there is a multi-tiered structure, addressing the issue raised at the April, 2018 committee meeting and the direction of the committee to retain the partnership-pays election but create sufficient “guardrails” to address taxes owed by resident indirect partners. Ms. Hecht also noted minor changes with the draft as submitted.

There was some discussion on the model. Michael Fatale, Massachusetts, recommended delaying the vote to let additional states consider the proposed draft. Minnesota agreed. Ms. Lolley pointed out that the work group had concluded its work and, therefore, sending it back to the work group was unnecessary. Further, states that have participated in the work group are looking for a model to present to their legislature. Ms. Coon reminded the committee that the process is not complete; the model will go before the executive committee and to a public hearing before it can be adopted. Pilar Mata, TEI, who also worked on the model, noted that the work group recognized states may make adjustments to the model, but it would be good to have a uniform model to move forward with. Mr. Hoyt concurred and moved to refer the model to the executive committee, with the minor edits as noted.

Ms. Coon took a vote by show of hands. The motion passed with 13 for, 6 against, and 2 abstaining.

**VII. Potential Project: *Finnigan* Issues**

At the April, 2018 meeting, Michael Mazerov, CBPP, had asked the committee to consider adopting a *Finnigan* option under the Commission’s model combined

filing statute. Phil Skinner, Idaho, agreed to study the issue, with the help of staff, and lead a discussion of what the committee would like to do. Staff prepared a briefing document which is part of the record of the meeting. Mr. Skinner gave a brief history and analysis of the *Joyce* and *Finnigan* approaches to combined filing. He also noted that there had been a trend in states moving to *Finnigan*. Mr. Skinner asked the group to consider first whether they wanted to take on the project, and second whether they would prefer to replace *Joyce* in the MTC's combined filing model, or add *Finnigan* to the existing model. Ms. Lolley expressed interest in participating in the project, particularly since Oregon has some background involving consideration of both models. Mr. Fatale pointed out that depending on the facts, the difference between a *Joyce* approach and a *Finnigan* approach can be significant. Mr. Valentine questioned why a state would not adopt *Finnigan*. Ms. Hecht noted that based on the Commission's files, the primary concern at the time the model was adopted was that there might be litigation over whether PL 86-272 permits the *Finnigan* approach. That litigation has not materialized.

Ms. Lolley made a motion to establish a work group to draft a *Finnigan* approach to combined filing. Ms. Coon first requested a show of hands indicating whether there was interest in the issue. There were 11 in favor and 7 abstentions. Ms. Coon then asked for a show of hands for two possible alternatives – first, changing the combined reporting model from *Joyce* to *Finnigan* (6 in favor); second adding a *Finnigan* option to the existing model (10 in favor). There were also 5 abstentions. Ms. Lolley amended her motion to have the work group draft a *Finnigan* option for the existing combined filing model. The motion passed by voice vote. Ms. Coon then solicited work group participants. Mr. Skinner volunteered to head up the work group.

## VIII New Business

**Wayfair discussion:** On Friday, July 6, 2018, the Commission's Uniformity Committee held a conference call to solicit input from states and the public on implementation issues the committee might consider in light of the recent *Wayfair* decision. Richard Cram, MTC Director of Nexus, discussed the issues that had been raised and presented additional information on those issues. His report is part of the record of the meeting. Ms. Hecht gave a summary of the SSUTA governing board emergency meeting the MTC attended via teleconference the week prior. Ms. Coon asked for input on how to move forward addressing these issues as a group—keeping in mind that it should be an expedited project.

Jenny Starr, Minnesota, commented that this might not be the time for a formal work group. Nancy Prosser, Texas, stated that this is the one forum where the non-streamlined and streamlined states could both participate. Randy Tilley, Idaho, moved to address the implementation issues that had already been identified and provide some consensus guidance to the states. Gil Brewer offered Washington's assistance. Joe Garrett, Alabama, agreed with moving forward and noted that participation of industry would be welcome also. Craig Johnson, Streamlined, noted his organization was prepared to work on the issues and to do what is necessary to avoid congressional action. Ken Roberts, Idaho (and president of the FTA), agreed

and committed FTA to being part of the process. Fred Nicely, COST, recommended that the uniformity committee defer to Streamlined to address the issues. Ms. Prosser suggested referring the matter to the executive committee for further discussion. Mr. Tilley renewed his motion subject to executive committee approval. The motion passed by voice vote.

**Sec. 18 Special Industry Rules – Update:** MTC staff brought up a possible project to update and conform Section 18 special industry rules based on an analysis created by Sheldon Laskin for the Winter 2016 meeting. Ms. Coon emphasized the need to make those regulations uniform so that states that can't adopt Section 17 may still have some uniformity with regard to those industries. However, since there are more pressing projects in the works, this project will be deferred for consideration until the November meeting.

**IX. Adjourn**

The meeting adjourned at 4:52.