

Uniformity Committee Meeting

Tuesday, August 6, 2019

The Grove Hotel - Downtown Boise
245 South Capitol Blvd.
Boise, Idaho 83702

Welcome and Introductions

Tommy Hoyt, Chair, Texas and Maria Sanders, Vice Chair, Missouri

I. Welcome.

The meeting opened at 10:15 a.m. The following people were in attendance:

David Avery	Alabama Department of Revenue
Craig Banks	Alabama Department of Revenue
Cameran Clark	Alabama Department of Revenue
Laura Cumbie	Alabama Department of Revenue
Kelley Gillikin	Alabama Department of Revenue
Christy Vandevender	Alabama Department of Revenue
Brandon Spanos	Alaska Department of Revenue, Tax Division
Carla Haugen	Arkansas Department of Finance & Administration
Tom Atchley	Arkansas Department of Finance and Administration
Alicia Austin Smith	Arkansas Department of Finance and Administration
Joel DiPippa	Arkansas Department of Finance and Administration
Deanna Munds-Smith	Arkansas Department of Finance and Administration
Laurie McElhatton	California Franchise Tax Board
Betsy Clancy	Colorado Department of Revenue
Scott Hathaway	Colorado Department of Revenue
Misgana Tesfaye	Colorado Department of Revenue
Josh Pens	Colorado Department of Revenue
Sammy Khakame	Colorado Department of Revenue
Brendon Reese	Colorado Department of Revenue
Rondenet Mwangi	Georgia Department of Revenue
Amber Kauffman	Idaho Office of the Attorney General
Elisa Magnuson	Idaho Office of the Attorney General
Phil Skinner	Idaho Office of the Attorney General

Rebecca Danley	Idaho State Tax Commission
Tawnya Eldredge Carpender	Idaho State Tax Commission
Layne Hadlock	Idaho State Tax Commission
Tom Harris	Idaho State Tax Commission
Leah Parsons	Idaho State Tax Commission
Thomas Shaner	Idaho State Tax Commission
Randy Tilley	Idaho State Tax Commission
Leland Wassmuth	Idaho State Tax Commission
Stephanie Wills	Idaho State Tax Commission
Kim Wind	Idaho State Tax Commission
Meg Inouye	Idaho State Tax Commission
Ben Clough	Iowa Department of Revenue
Michael Mertens	Iowa Department of Revenue
Alana Stamas	Iowa Department of Revenue
Scott Reed	Kansas Department of Revenue
Marcia Oakman	Kentucky Department of Revenue
Krystal Bolton	Louisiana Department of Revenue
Antonio Ferachi	Louisiana Department of Revenue
Michael Fatale	Massachusetts Department of Revenue
Maria Sanders	Missouri Department of Revenue
Lee Baerlocher	Montana Department of Revenue
Chris Barber	Multistate Tax Commission
Lindsay Buerkle	Multistate Tax Commission
Holly Coon	Multistate Tax Commission
Richard Cram	Multistate Tax Commission
Lila Disque	Multistate Tax Commission
Elliott Dubin	Multistate Tax Commission
Cathy Felix	Multistate Tax Commission
Bruce Fort	Multistate Tax Commission
Brian Hamer	Multistate Tax Commission
Helen Hecht	Multistate Tax Commission
Greg Matson	Multistate Tax Commission
Marshall Stranburg	Multistate Tax Commission
Steve Yang	Multistate Tax Commission
Alan Kline	New Jersey Division of Taxation
Marek Grabowski	New Mexico Tax and Revenue Department
Tim Van Valen	New Mexico Tax and Revenue Department
Dan Armer	New Mexico Taxation and Revenue
Matt Peyerl	North Dakota Office of State Tax Commissioner
Donnita Wald	North Dakota Tax Department

Melisse Cunningham	Oregon Department of Justice
James Strong	Oregon Department of Justice
Nia Ray	Oregon Department of Revenue
Deanna Mack	Oregon Department of Revenue
Shannon Johns	Oregon State Department of Revenue
Katie Lolley	Oregon State Department of Revenue
Anita Conner	Pennsylvania Department of Revenue
Morgan Nelson	South Dakota Department of Revenue
John Richter	South Dakota Department of Revenue
David Wiest	South Dakota Department of Revenue
Harold Jones	Tennessee Department of Revenue
Jack Hohengarten	Texas Attorney General
Ray Langenberg	Texas Comptroller of Public Accounts
Sarah Pai	Texas Comptroller of Public Accounts
Rusty Jognson	Texas Comptroller of Public Accounts
Nathan Nielson	Utah Office of the Attorney General
Frank Hales	Utah State Tax Commission
Tiffany Southworth	Utah State Tax Commission
John Valentine	Utah State Tax Commission
Chuck Zalesky	Washington Attorney General
Michelle Biermeier	Wisconsin Department of Revenue
Jayne Kulberg	Wisconsin Department of Revenue
Terry Ryan	Apple Inc
Beth Sasidka	AT&T
Scott Peterson	Avalara
Jamie Fenwick	Charter Communications
Natalie Friedman	Charter Communications
Karl Frieden	COST
Joe Huddleston	Ernst & Young, LLP
Jeff Friedman	Eversheds Sutherland
Virgil Holtin	FAST Enterprises
Karen Boucher	FIST Coalition LLC
John Mollenkamp	Intuit
Andrea Madsen	ISTC-ID
Shirley Sicilian	KPMG LLP
Paul Williams	Law360
Christie Comanita	Streamlined Sales Tax Governing Board
Bruce Johnson	Taxometry
John Crelak	Verizon
<i>By phone:</i>	
Ashley McGee	North Carolina Department of Revenue

Scott Fryer	Arkansas Department of Revenue
McKenzie Ferris	Minnesota Department of Revenue
Swati Shah	New Jersey Department of Revenue
Audrey Tyndall-Hoyle	New Jersey Department of Revenue
Angela Doyle	Jones Day

II. Initial Public Comment Period

There was no public comment

III. Approval of Minutes of Uniformity Committee Meeting on April 25, 2019 Tommy Hoyt

Dee Wald, N.D., moved to approve the minutes as written. The motion passed unanimously by voice vote.

IV. Report of Staff on State Developments Related to Uniformity Efforts Helen Hecht, General Counsel, MTC

Ms. Hecht provided an update on state developments, noting that she expects to see the results of changes to the federal partnership audit regime as the year proceeds. She encouraged the states to discuss new developments during the upcoming roundtable.

V. Report of the Combined Reporting – Finnigan Work Group Phil Skinner, Idaho, Work Group Chair, Bruce Fort, Senior Counsel, MTC, and Helen Hecht, General Counsel, MTC

Mr. Skinner summarized the history of the project. Ms. Hecht gave a presentation addressing the issues that have arisen regarding whether to allow NOL sharing.

Mr. Skinner then requested some direction from the uniformity committee. Specifically, he asked for a consensus on whether the draft should have model language for sharing or no sharing, or whether it should have neither and outline the considerations? Michael Fatale, Mass., asked whether there was the option to retain the draft the way it previously existed, and include the white paper. There was some discussion on that point. Mr. Fatale pointed out that there are dozens of policy issues, and people will be forced to deal with the issues presented in the white paper in order to produce functional legislation. He feels explanation is necessary as part of the process. Nikki Dobay, COST, noted that, if the issue is uniformity, a white paper setting out the issues is an incomplete solution. She argued in favor of selecting and recommending a single approach. Brandon Spanos, Alaska, agreed. John Valentine, Utah, said that the Uniformity

Committee should make a uniform recommendation and back it up with a white paper. States will make their own policy decisions anyway.

Mr. Hoyt requested a motion on whether to include a model NOL provision in the draft or, instead, simply include a drafters' note referring to the white paper. Scott Hathaway, Colo., so moved. By show of hands, 11 were in favor of model language and 6 voted in favor of omitting model language and referencing the white paper. He then requested a vote on whether the draft NOL provision should or should not permit sharing of NOLs. Mr. Hathaway so moved. By show of hands, there were 9 in favor of sharing the NOLs and 8 opposed. By way of clarification, Mr. Skinner stated that his intent was to keep the white paper for reference in any case. Mr. Valentine moved to include the white paper as part of any of the materials produced. The motion passed by voice vote.

Ms. Dobay stated that COST members recommended inclusion in the model of a federal consolidated filing election and a provision that would allow the MTC to act as an arbiter among taxpayers when states use different methodologies. Mr. Skinner stated the work group could discuss the consolidated filing option and return with a recommendation. Katie Lolley, Ore., asked whether this would be too far away from the original intent of the group, and asked them to consider this. Dee Wald, N.D. moved to ask industry to put forth their proposed provision for a federal consolidated filing election and bring it back to the committee for consideration. The motion passed unanimously. Regarding the MTC acting as arbiter, Ms. Wald pointed out that there are already procedures for mediation.

- See [link to project page](#) and [Report](#).
- See [NOL White Paper](#)
- See [briefing book](#) on Finnigan issue.

VI. Lunch

VII. Roundtable Discussion - All

The state representatives in attendance reported their recent developments.

VIII. Report of the P.L. 86.272 Work Group Laurie McElhatton, CA, Work Group Chair, and Brian Hamer, Counsel, MTC

Brian Hamer and Laurie McElhatton outlined the background of the project, and provided a list of work group straw votes that had showed a strong majority regarding whether a remote contact was protected or unprotected.

Jeff Friedman, Sutherland, characterized the project as an attempt to obliterate 86-272. Mr. Hamer noted that he had received minimal participation from the business community, although he had requested as much input as possible. Mr. Friedman stated the notion of what is “ancillary” to solicitation seems to be lost in this project. Karl Friedan, COST, agreed that it was an overreach, and warned that the project could attract congressional attention if it was adopted by enough states.

Mr. Fatale stated that one of the points made on the calls was that the statute references business activity, but business activity is not necessarily human activity. So it *can* take place via other means. Mr. Langenberg brought up the issue of online credit card applications and the varying ways in which that type of contact could happen. He asked whether the work group was distinguishing basically the same activity by the manner in which the contact is made with the state? He feels the same types of activity should be categorized the same way. Furthermore, he feels the credit card example does not constitute sale of TPP and therefore does not fall under 86-272 at all. He believes the de minimis calculation should be revised to reflect purposeful contact with a state in order to retain some meaning in 86-272. The work group will continue to work through the issues list and will report back at the next meeting.

- [Presentation slides](#)
- See [link to project page](#).

IX. BREAK

X. Report on New Business Undertaken at Prior Meeting – Wayfair Implementation Issue Update - Richard Cram, National Nexus Director, MTC

Richard Cram, MTC National Nexus Director, presented a summary of state collection laws and other developments, including state responses regarding their most pressing post-*Wayfair* issues. He also recommended updating the Uniform Sales & Use Tax Exemption Certificate in the wake of *Wayfair*.

Google’s representative, Paul Klopping, spoke up to recommend *not* complicating the process. Nancy Prosser, Tex., recommended asking for input from industry before making any final decision about how to proceed, and coming

to some consensus as far as what issues are the most important. That could change the ranking of some of the issues. Jamie Fenwick, Charter, thanked Mr. Cram for the list, and noted their primary issue is the definition of a facilitator – they fall under the broader definitions, but are excluded under narrower ones. Mr. Hoyt volunteered to lead a work group again. Beth Sodsicka, AT&T, noted the industry is changing so quickly that, last time the group convened, they didn't think the issue of definitions was as important. In response to a question from Randy Tilley, Idaho, Mr. Hoyt stated the group would likely produce another white paper. Terry Ryan, Apple, encouraged attempting to produce a model act. Ms. Hecht pointed out the procedure necessary to get to a final model, which can take some significant time.

Ray Langenburg moved that the work group commence regular teleconference meetings to address the prioritized issue list and develop recommendations to present back to the committee to be commenced by the start of the state 2020 sessions. The motion passed by voice vote.

Regarding the Uniform Sales & Use Tax Exemption Certificate, Scott Hathaway, Colo., recommended that there not be a requirement that sellers have to register and use state-specific certificates for drop shipments but be allowed to use the uniform certificate. Randy Tilley, Idaho, made a motion for the work group to consider updating the certificate.

- [Presentation slides](#)
- [Survey Results](#): Prioritization of Draft Issues List
- Memo on [Uniform Sales & Use Tax Exemption Certificate](#)
- See [link to project page and report](#).

XI.

Other New Business

There was no new business

XII.

Adjourn

The group adjourned at 3:52pm.