



MULTISTATE TAX COMMISSION

Minutes of Uniformity Committee
Wednesday, November 7, 2018
8:30 A.M. to 4:00 P.M. Eastern

Rosen Centre Hotel
9840 International Drive
Orlando, Florida 3281900

I. Welcome and Introductions

Holly Coon, Chair, Ala., called the meeting to order at 8:30 AM. The following people were in attendance in person or by phone:

Holly Coon	Alabama Department of Revenue
Michael Emfinger	Alabama Department of Revenue
Christy Vandevender	Alabama Department of Revenue
Deanna Munds-Smith	Arkansas Department of Finance and Administration
Josh Pens	Colorado Department of Revenue
Brendon Reese	Colorado Department of Revenue
John Biello	Connecticut Department of Revenue Services
John Kutsukos	Connecticut Department of Revenue Services
Aaishah Hashmi	District of Columbia Office of Tax & Revenue
Keith Richardson	District of Columbia Office of Tax and Revenue
Steven Alvarez	Georgia Department of Revenue
Layne Hadlock	Idaho State Tax Commission
Ken Roberts	Idaho State Tax Commission
Randy Tilley	Idaho State Tax Commission
Elisa Magnuson	Idaho State Tax Commission - Office of the Attorney General
Phil Skinner	Idaho State Tax Commission - Office of the Attorney General
Nathan Nielson	Idaho State Tax Commission- Office of the Attorney General
Adam Humes	Iowa Department of Revenue
Alana Stamas	Iowa Department of Revenue
Luke Morris	Louisiana Department of Revenue
Renee Nacrelli	Maryland Office of the Attorney General
John Whiteman	Missouri Department of Revenue
William Barber	Multistate Tax Commission
Richard Cram	Multistate Tax Commission

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Jacqueline Dalenberg	Multistate Tax Commission
Lila Disque	Multistate Tax Commission
Bruce Fort	Multistate Tax Commission
Keith Getschel	Multistate Tax Commission
Brian Hamer	Multistate Tax Commission
Helen Hecht	Multistate Tax Commission
Greg Matson	Multistate Tax Commission
Thomas Shimkin	Multistate Tax Commission
Lawrence B Shinder	Multistate Tax Commission
Jeff Silver	Multistate Tax Commission
Marshall Stranburg	Multistate Tax Commission
Steve Yang	Multistate Tax Commission
John Ficara	New Jersey Division of Taxation
Ashley McGhee	North Carolina Department of Revenue
Matthew Peyerl	North Dakota Office of State Tax Commissioner
Donnita Wald	North Dakota Office of State Tax Commissioner
Jeff Henderson	Oregon Department of Revenue
Nia Ray	Oregon Department of Revenue
John Frasier	State of New Hampshire Department of Revenue Administration
Lara Abi Habib	Texas Comptroller of Public Accounts
Tommy Hoyt	Texas Comptroller of Public Accounts
Nancy Prosser	Texas Comptroller of Public Accounts
Frank Hales	Utah State Tax Commission
John Valentine	Utah State Tax Commission
Gilbert Brewer	Washington State Department of Revenue
Michelle Biermeier	Wisconsin Department of Revenue
Jayne Kulberg	Wisconsin Department of Revenue
Melissa Smith	Amazon
Robert Plattner	Amazon
Nikki Dobay	Council on State Taxation
Karl Friedan	Council on State Taxation
Jesse Eisenmenger	Eversheds Sutherland
Todd Lard	Eversheds Sutherland
PJ Hoffman	The Electronic Transactions Association
<i>Appearing telephonically:</i>	
Marcia Oakman	Kentucky Department of Revenue
Dan Armer	New Mexico Taxation and Revenue Department
Todd Talbot	Electronic Transactions Association

II. Initial Public Comment Period

There were no initial public comments.

III. Approval of Minutes of Meeting Held July 24, 2018

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

IV. Report – General Uniformity Update

Helen Hecht, MTC General Counsel, gave a report on developments in enacting or adopting the Commission’s uniformity recommendations and other related matters.

V. Strategic Planning – Committee Information

Mr. Stranburg, MTC Deputy Executive Director and Nancy Prosser, Texas, Chair of the Strategic Planning Committee, reported on the activities of the Strategic Planning Committee and how those activities may affect the Commission’s uniformity efforts. They encouraged attendance and participation in Strategic Planning meetings.

VI. Proposed Amended Uniformity Charter

Helen Hecht presented a draft of a revised charter for the Uniformity Committee and discussed why the charter should be updated. The structure of the uniformity committee has changed in that it no longer has ongoing subcommittees for sales and use tax and income tax, and also in the ways in which business is done, which has been somewhat simplified.

Dee Wald, North Dakota, moved to adopt the amended charter as written. The motion passed by unanimous voice vote.

VII. PROJECT: *Finnigan* Combined Filing Working Group Report

Phil Skinner, Idaho, Work Group Chair, and Bruce Fort, Senior Counsel, MTC, presented an update on the activities of the work group. The group has been discussing how to structure a *Finnigan* alternative to the Commission’s Model Statute for Combined Reporting, which follows *Joyce*. The group presented their conclusion that Utah’s method of treating the unitary business as a single entity is the best approach for that purpose, but that this may necessitate some rewriting of the model since the model computes the taxable income and tax for each member of the group. They asked whether the committee agreed.

Nikki Dobay, COST, said they did some polling of their members. There was no general preference in regard to which approach to use.

Regarding: Utah, Holly Coon, Alabama, Chair of the Committee, asked if there had been any challenges to the model or problems administering it. Frank Hales, Utah, responded that they had not identified any significant issues and enforcement had been relatively simple.

Michael Fatale, Massachusetts, questioned the wisdom of using a single-entity approach since it is theoretically inconsistent with the current MTC model, which follows the California approach. He advised against “starting over” and noted that the transition in Massachusetts had been a year-long endeavor. Mr. Fort noted that the converting the model to the single-entity approach would require more structural changes to the model.

Karen Boucher, Deloitte, stated she does not think states would readily adopt the California method. Mr. Fort noted the California and Massachusetts approaches are different. He also observed that, at least in the past, only a few states used the Utah approach—which primarily affects how tax attributes such as NOLs are treated, and whether they can be shared. Ms. Coon asked the committee members whether the work group should proceed using the California approach or the Utah approach. A majority of the members expressed a preference for the Utah method.

VIII. PROJECT: *Wayfair* Implementation Project Work Group Report

Tommy Hoyt, Texas, Chair of the work group, and Richard Cram, Nexus Director, MTC, updated the committee and presented a white paper summarizing its findings for discussion by the committee.

PJ Hoffman, the Electronic Transactions Association, emphasized a comment he had made that was incorporated in the white paper – a concern among payment processors that they could inadvertently be brought into the definition of “marketplace facilitator.” He did not advocate for one definition or another, but expressed a concern that it could group in payment processors. Ms. Hecht asked Mr. Hoffman for a standard definition of “payment processor.” Mr. Hoffman said there is no specific definition.

Rob Plattner, Amazon (formerly of New York), said the broad definition given as the example (Washington state’s) is not perfect in its construction, but it is the best of the broad definitions and there was no time for the work group to tinker with it. The states should make a better broad definition they can rely on.

The work group requested guidance regarding whether to recommend the white paper to the Executive Committee for endorsement as guidance. Randy Tilley, Idaho, noted that in the appendices they recommend language. There are many comments

from the parties involved in the discussion, and he asked whether the paper incorporated any of the discussions regarding payment processors. Mr. Cram confirmed that those are incorporated. Ms. Wald acknowledged the time constraints, but asked whether the group will in the future address the other five issues on the list. Mr. Cram discussed the remaining issues and clarified why they were not being addressed (mostly because they were found to be beyond the scope of the project).

Ms. Prosser joined those commending the work of the group and recommended moving the white paper to the Executive Committee and placing the project on the April agenda to consider taking up the remaining issues.

Mr. Tilley moved to adopt the white paper as presented, along with the edits mentioned by Mr. Cram, and forward it to the executive committee with the recommendation that the paper be published and disseminated to the states. The motion passed by unanimous voice vote.

Ms. Coon asked for a show of hands of those who would like MTC staff to look at the sales and use tax nexus model and either revise or revoke it. Three voted in favor, and seven voted in favor of tabling any discussion indefinitely.

IX. REPORT: State Responses to Federal Tax Reform

Mr. Fort presented a brief update on the measures states have taken to respond to federal tax reform.

X. STATE ROUNDTABLE

State representatives in attendance gave updates on recent statutory or regulatory changes in their states affecting taxation of multistate businesses and provided information on their upcoming legislative sessions. The primary issues raised by the attendees were state conformity to federal measures and adaptation to *Wayfair*.

XI. REPORT – Enforcement of Tax Obligations on Foreign Sellers

Brian Hamer, MTC Counsel, presented the report and answered questions concerning the “revenue rule” and its impact on the enforcement of domestic tax judgments in foreign courts.

XII. NEW BUSINESS – Pending Issues and Possible New Projects

There was some discussion regarding potential projects. Phil Skinner stated that the Finnigan project is likely to take a significant amount of time, but Ms. Coon pointed out that the Finnigan work would appear to be a good segue into working with a number of issues. Ms. Coon asked whether the states are seeking guidance about the

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specific section 18 models. After some discussion, the group prioritized updating guidance for P.L. 86-272. Mr. Tilley moved to recommend to the Executive Committee that the current rule be withdrawn effective July 1, 2018. The motion passed by voice vote.

XIII. Adjourn

The meeting adjourned at 4:00 P.M.