



**Uniformity Committee Meeting**  
**Thursday, April 25, 2019**  
**Denver, Colorado**

## **Report on Developments Relevant to the Uniformity Committee**

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### **Reflection on the Recommendations of the Strategic Planning Project Team**

This report typically summarizes the most recent developments affecting uniformity efforts. But this April marks five years since the Project Team on Barriers to Adoption of Uniformity Measures submitted its findings. That group determined that “very few” states had adopted MTC models developed in the prior ten years and that the chief barriers to adoption were political opposition and existing state law addressing the particular issue. They also observed that the committee lacked a “structured process to evaluate whether a suggested model will be adopted by a significant number of states.” Given the commission’s limited resources, the project team recommended more attention be given to this upfront process.

Therefore, this report takes the opportunity to briefly review uniformity projects worked on in the last five years. In 2014, the committee had just finished most amendments to Compact Article IV (UDITPA). Since that time, the committee has worked on the following projects:

- **Amendments to Compact Article IV (UDITPA) – Section 18 (Adopted)** – which amended rules for alternative apportionment.
- **Marketplace Fairness Act Model Uniform Language (Tabled)** – which would have developed uniform rules for implementing that federal legislation.
- **Tax Under-Collection Class Action and Over-Collection False Claims Act (Endorsed ABA Model and Tabled)** – which was in response to a request from the telecommunications industry. (The commission endorsed the ABA model excluding taxes from class action suits and briefly considered adopting a model whistleblower act, which was eventually tabled.)

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- **Trusts Uniformity Project (Tabled)** - This project was tabled in recognition that the committee had more pressing issues to address.
- **Model Sales and Use Tax Nexus (Engaging in Business) Statute (Adopted)** – This model was adopted in 2016 and has been eclipsed by the U.S. Supreme Court’s decision *Wayfair* decision in 2018.
- **Amendments to Model Allocation and Apportionment Regulations (Adopted)** – These amendments were drafted by two different work groups to implement changes to Sections 1 and 17 of Compact, Article IV (UDITPA) – particularly market sourcing.
- **Amendments to Model Allocation and Apportionment Regulations (Adopted)** – These amendments were for the purpose of adopting a regulation under Section 18 of Compact, Article IV (UDITPA) to address taxpayers that might lack a receipts factor under the new narrower definition of “receipts.”
- **Model Sales and Use Tax Notice and Reporting Statute (Tabled)** – After the *Wayfair* case was decided, the Executive Committee again referred the model back to the Uniformity Committee for any additional consideration. The committee has not taken up the model since that time.
- **Partnership Informational – Federal Adjustments Project (Adopted)** - After Congress passed the 2015 Bipartisan Budget Act, adopting changes to the federal partnership audit regime, the committee directed staff to commence an informational project to educate committee members about the changes. Ultimately, the committee agreed to begin a project to adopt uniform rules for assessing taxes based on federal partnership audits, using as a base, the Model Uniform Statute for Reporting Adjustments to Federal Taxable Income, working with other interested parties.
- **Wayfair Implementation and Marketplace Facilitator Work Group (General Recommendations)** – After *Wayfair*, members of the public asked the commission to consider implementation issues, particularly marketplace provider tax collection. Rather than adopt a model statute, it was agreed that the best use of the time available and the activities already going on at the state level would be to identify issues and best practices which took the form of a white paper.
- **Model Option for Combined Filing Under a Finnigan Approach (Ongoing)** – This project was begun in April 2018 at the suggestion of a member of the public. The committee first studied the issue and found that states were moving toward Finnigan as a general approach. The committee then created a work group which is finishing its drafting.
- **P.L. 86-272 Statement of Information Update Project (Ongoing)** – At the last meeting, staff noted that the statement had not been updated in 15 years and the committee agreed that this project was a priority.

While the committee has not adopted a formal process for evaluating projects, it appears to be adapting to the recommendations of the strategic planning project team. It has prioritized projects that either reflect the direction states are moving, lack opposition, or would otherwise fill an important gap in existing state law.

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The committee has also adapted to the need, at times, for a faster response to certain issues—an example of which is the *Wayfair* project which made a point of focusing on the most critical issues and also comparing existing state rules and identifying issues with various alternatives.

### **Recent Developments**

In the last few months, the states have had to triage tax issues—dealing first with *Wayfair* related issues, then federal tax changes, and then other state tax reform measures.

The white paper recommendations issued by the committee on *Wayfair* had two general recommendations—adopt marketplace provider collection requirements, and consider either omitting the alternative number-of-transactions threshold. In just in the last few weeks, several states have adopted marketplace provider collection and reporting requirements – Arkansas, New Mexico, Idaho, Nebraska, Kentucky, Virginia, Wyoming, California (pending signature of the governor), Hawaii (clarifying), Utah, New York, Rhode Island, West Virginia, and North Dakota. This is in addition to the states that had previously adopted similar requirements. Also, recent enactments have excluded the alternative number-of-sales threshold—including California, Colorado, North Dakota and South Carolina.

Other recent state level developments that relate to past or current uniformity projects:

- Kentucky adopted a change to its mandatory combined filing law that would allow members of the combined group to share losses (also part of the proposed Finnigan draft).
- Kentucky adopted regulations based on the MTC market sourcing regulations.
- Louisiana has also adopted changes to regulations that appear to be based, in part, on those MTC regulations.
- New Mexico has recently enacted the MTC approach to market sourcing.
- West Virginia enacted a statute based on the provisions in the RAR model for assessment of partnerships.

Similar proposals have been introduced in other states.