



MULTISTATE TAX COMMISSION

Resolution Adopting Amendment to Model Combined Reporting Statute; Definition of “Tax Haven” for Water’s Edge Election

Whereas, in 2006 the Multistate Tax Commission (the Commission”) adopted a Model Combined Reporting Statute which included provisions for a “water’s edge” election that called for inclusion of the income and apportionment factors of certain foreign and domestic entities on that report to discourage inappropriate income shifting among components of a unitary business; and

Whereas, the current Model Combined Reporting Statute provides for the inclusion on the Combined Report of certain entities doing business in “tax havens” and other jurisdictions with “harmful preferential tax regimes” as identified by Organization for Economic Cooperation and Development (“the OECD”); and

Whereas, the Uniformity Committee has determined that continued reference to the OECD in defining a “tax haven” is no longer appropriate because that organization has adopted new classifications and standards to describe a jurisdiction’s tax policies and no longer maintains its “tax haven” list; and

Whereas, the Uniformity Committee developed an amendment to the Model Combined Reporting Statute that eliminates reference to the OECD but continues to define “tax havens” by reference to nominal tax rates and other appropriate criteria; and

Whereas, the Uniformity Committee on December 8, 2010 voted to recommend to the Executive Committee an amendment to the Model Combined Reporting Statute to be considered at a public hearing, and the Executive Committee having approved that recommendation on March 10, 2011; and

Whereas, a public hearing was held on the proposed amendment to the Model Combined Reporting Statute on April 22, 2011 and a hearing officer’s report was provided to the Executive Committee on May 27, 2011; and

Whereas, the Executive Committee recommended the Commission approve the amendment to the Model Combined Reporting Statute on June 6, 2011; and

Whereas, a Bylaw 7 Survey was sent to the States on June 7, 2011, with a majority of affected compact member States indicating they would consider adoption of such an amendment to the Model Combined Reporting Statute;

Now, therefore, be it:

RESOLVED, that the compact member States adopt the attached amendment to the Model Combined Reporting Statute as a Multistate Tax Commission uniformity recommendation to the States.

Steve Cordi, Chair

Joe Huddleston, Executive Director
Multistate Tax Commission

Dated: July 27, 2011



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

**Amendments to the
Recommended Model Statute for Combined Reporting
Definitions' Section
(as approved by the Commission on July 27, 2011)ⁱ**

Section 1. Definitions.

- I.** “Tax haven” means a jurisdiction that, during the tax year in question:
- ~~i.~~ ~~is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven or as having a harmful preferential tax regime, or~~
 - ~~ii.~~ ~~exhibits the following characteristics established by the OECD in its 1998 report entitled Harmful Tax Competition: An Emerging Global Issue as indicative of a tax haven or as a jurisdiction having a harmful preferential tax regime, regardless of whether it is listed by the OECD as an un-cooperative tax haven:~~
 - ~~(a)~~ has no or nominal effective tax on the relevant income; and
 - ~~i.~~ ~~(1)~~ has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;
 - ~~ii.~~ ~~(2)~~ has tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer’s correct tax liability, such as accounting records and underlying documentation, is not adequately available;
 - ~~iii.~~ ~~(3)~~ facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;
 - ~~iv.~~ ~~(4)~~ explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or
 - ~~v.~~ ~~(5)~~ has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

ⁱ Because of the length of the Proposed Model Statute for Combined Reporting, only the relevant portions of the statute (Section 1.I) are set forth here.