



**Minutes of the Executive Committee Meeting
August 2, 2007**

Minneapolis Marriott City Center
30 South Seventh Street
Minneapolis, Minnesota

I. Welcome and Introductions

Joan Wagnon, Chair of the Commission, called the meeting to order at 9:00 a.m. Central Time. The following individuals attended:

Name	State or Affiliation	Name	State or Affiliation
Joan Wagnon	Kansas	Dan Salomone	Minnesota
Michael Mason	Alabama	Trish Vincent	Missouri
Tom Surtees	Alabama	Wood Miller	Missouri
Robynn Wilson	Alaska	Dan Bucks	Montana
Danny Walker	Arkansas	Jan Goodwin	New Mexico
Tom Atchley	Arkansas	Lennie Collins	North Carolina
Selvi Stanislaus	California FTB	Cory Fong	North Dakota
Ben Miller	California FTB	Donnita Wald	North Dakota
Neil Shah	California BOE	Elizabeth Harchenko	Oregon
Richard Moon	California BOE	Susan Combs	Texas
Charles Wilson	District of Columbia	Nancy Prosser	Texas
Anita DeGumbia	Georgia	Bruce Johnson	Utah
Tu Duc Pham	Hawaii	Rod Marrelli	Utah
Royce C. Chigbrow	Idaho	Russ Brubaker	Washington State
Ted Spangler	Idaho	Virgil Helton	West Virginia
Private Sector			
Mack Wolski	BNA	Matt Den Hartigh	PricewaterhouseCoopers
Dan Schibley	CCH	Kevin Borg	PricewaterhouseCoopers
Beth Cooley	COST	Diann Smith	Sutherland Asbill & Brennan LLP
Todd Lard	COST	John Bull	Tax Analysts
Commission Staff & Consultants			
Joe Huddleston	Ken Beier	Gregory Matson	Jim Rosapepe
Shirley Sicilian	Les Koenig	Jerry Schleeter	(Patuxent Consulting)
Thomas Shimkin	Elliott Dubin		
Bill Six			

II. Public Comment Period

There were no public comments at this time. Members of the public were invited to make comments during the discussion of specific agenda items as reflected in these minutes.

III. Approval of Minutes

Elizabeth Harchenko moved and Jan Goodwin seconded acceptance of the minutes of the Executive Committee meeting open sessions of May 10, 2007 and July 12, 2007 as presented. These minutes were approved.

IV. Report of the Chair

The report of the Chair was deferred to the Annual Commission meeting immediately following this meeting.

V. Report of the Treasurer

Mr. Salomone gave the Treasurer's report for the period ending June 30, 2007. He noted higher than expected income from investments due to higher interest rates and the expense for new notebook computers for the audit staff. Joe Huddleston commented that the high cost of employee healthcare was being controlled by a self-insured program and that this expense is being monitored very closely. There being no objections, the treasurer's report was accepted. Dan Bucks moved to create a reserve fund to account for the additional insurance expense. This was seconded by Elizabeth Harchenko and passed.

VI. Report of the Executive Director

This was deferred to the Annual Commission meeting.

VII. Report on Revamping the Commission's Audit Process

The Chair moved discussion to the issue of audits and the problems of waivers not being signed by some taxpayers. It was noted that the audit staff has increased by four over the last couple of years. Les Koenig commented on taxpayer refusal to sign waivers and noted that the Audit Committee is working on speeding up the audit selection process. Joan Wagnon recommended that the incoming Chair and Vice-Chair have someone from the Executive Committee work with the Audit Committee to explore ways to conduct audits in the future, including the use of technology to support the audit process. Dan Bucks suggested that the scope of the audits be re-evaluated. Mike Mason agreed to work with the Audit Committee on this issue. Joan Wagnon suggested and Jan Goodwin concurred that we pay attention to a pending COST audit study that was mentioned by Todd Lard.

VIII. Report on Tax Sheltering Compliance Project

Thomas Shimkin reported on the Multi-state Tax Shelter Voluntary Compliance Program. Seventy-five hundred letters have been sent out to taxpayers inviting them to consider participation. Taxpayers have until October 1 to take advantage of this opportunity.

IX. Committee & Program Reports

Reports by the committees and programs were deferred to the Annual Commission meeting immediately following this meeting.

Shirley Sicilian reported on a proposed state tax attorney award in memory of the late Paull Mines. The proposal is for an award to a current or former state tax attorney who has contributed significantly with respect to legal and policy aspects of state taxation. Following favorable comments by Bruce Johnson, Dan Bucks moved approval for the award by the Litigation Committee. This was seconded by Mike Mason and passed.

X. Uniformity Projects

A. Report on UDITPA Revision Project

Joe Huddleston reported on events relating to revision of the Uniform Division of Income for Tax Purposes Act (UDITPA). He noted that the National Conference of Commissioners of Uniform State Laws (NCCUSL) has approved going ahead with a review of and possible changes to UDITPA. Charles Trost has been named chair of the drafting committee. The additional five to seven members have not yet been selected. Joe emphasized the need to parallel MTC efforts with the NCCUSL effort and noted that he is acting as liaison with NCCUSL.

B. Proposals before the Executive Committee

1. Uniformity Recommendation for Review

a. Model Telecommunications Apportionment Regulation

Shirley Sicilian reported that the Model Telecommunications Apportionment Regulation was approved by the Uniformity Committee for consideration by the Executive Committee. Todd Lard of COST reviewed the conclusion by the Uniformity Committee that Section 17 did not work well and that a market approach was needed. He questioned whether it makes sense to pass a special industry rule when the Commission is looking at Section 17 in general. He also questioned the use of industry, rather than company, level date to assign wholesale sales. Diann Smith reinforced Mr. Lard's comments and cited examples of similar services that would be sourced differently under the proposal. She pointed out that this industry is changing rapidly and it should not be singled out for attention when it competes with other industries that have few taxes and apportionment rules that are not as stringent. She also noted that it is somewhat unfair to tax telecommunications companies using factors (for wholesale sales) that are two years

or more old, and that this provision will be challenged. The chair asked Ms. Smith if she had made these comments to the Uniformity Committee. She responded that she had not—that the proposal seemed like a done deal. Joe Huddleston noted that the Uniformity Committee was aware of these issues and had been looking at them and considering them for some time. Ted Spangler, Chair of the Uniformity Committee, commented that they have been struggling with these issues for a number of years. He noted that a number of telecommunication people helped the committee understand the issues and expressed his appreciation that they had hung in there while the committee struggled with the issues. He admitted that the rule is complicated, but it is a good attempt to achieve fairness in assignment of sales.

The Chair explained the decision before the Executive Committee—to send the proposal to a public hearing or send it back to the Uniformity Committee. Following a brief recess, Elizabeth Harchenko moved referral of the proposed Model Regulation for Apportionment of Income from the Sale of Telecommunications and Ancillary Services to public hearing. This was seconded by Trish Vincent and passed.

b. Model REIT Statute

Ted Spangler explained the issue of use of a captive Real Estate Investment Trust (REIT) to shelter income and that the proposal disallows the tax advantage for distributions from captive REITs. Dan Bucks suggested the following changes to the proposal: delete section (d), make two changes at the beginning, add “captive” (before real estate) to the title of the proposal and insertion of a new section a:

(a) The purpose of this statute is to address the taxation of captive real estate investment trusts. This statute shall not be interpreted as precluding the right of a state to tax the income earned by any type of real estate investment trust as source income in computing net income by measures including, but not limited to, the disallowance of, or required add back of, the dividends paid deduction otherwise allowed by federal law.

Section (d) (see below) of the proposal recommended by the uniformity committee was eliminated out of concern that the section could be interpreted as an endorsement of state conformity to federal tax treatment of REITs generally. That issue was felt to be beyond the intended scope of the project:

(d) The tax imposed by [the state corporate income tax statute] shall be imposed upon real estate investment trusts and shall be computed only upon that part of the net income of the real estate investment trust which is subject to federal income tax as provided in Sections 857 and 858 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this Section.

Mr. Bucks explained that changes in the late 1990s allow a parent company (with operating subsidiaries) to be a REIT and distribute capital gains to shareholders. Mr.

Bucks moved to forward the proposal, with the suggested changes, to a public hearing. This was seconded by Elizabeth Harchenko. In response to a question from Bruce Johnson, Bruce Fort stated that he did not have a problem with deleting Section (d). In addition, he noted that, for separate-entity states, the proposed captive REIT statute may prove not to be an effective long-range solution, and those states may wish to consider additional statutory measures such as add-backs of rental payments made to captive REITs. Ms. Harchenko explained that she views the new section (a) as more of a statement of scope than a preamble. The motion was then passed.

2. Hearing Officer Recommendations for Consideration

It was suggested that, due to the extensive nature of comments, the hearing officer recommendation on the Model Uniform Statistical Sampling Statute and Accompanying Regulation be referred back to the Uniformity Committee. A motion by New Mexico, seconded by Texas, was made to do so. This was passed.

XI. Federal Issues with State Tax Implications

Jim Rosapepe referred to his written report and stated that there is not a lot of focus on tax issues in Congress because of political issues and tensions between Congress and the President. Regarding business activity taxes, a House bill has not been introduced because Representative Conyers, Chair of the Committee on Judiciary is not interested in the issue. On the Internet issue, a House bill has not yet been introduced. Legislation on a cell phone tax moratorium has been introduced, and action on major telecomm legislation is unlikely. Regarding hotel intermediaries, there is no action. Virgil Helton asked Mr. Rosapepe to elaborate on prospects for Streamlined Sales Tax legislation. Mr. Rosepepe responded that chances for action on that issue were slim.

Dan Bucks requested an update at the next meeting on the success of the Streamlined Sales Tax program and a recap of the cost of collection study. Joe Huddleston commented on the recent completion of the cost of collection study, but added that there was some dissatisfaction with the study. Phase II of the study has not yet been released. Mr. Huddleston agreed to provide an update at the next meeting.

XII. Future Meeting and Event Plans

Joe Huddleston reviewed plans for the winter meeting in Tucson in March of 2008, and the Annual Meeting in Santa Fe in July of 2008. He noted plans for the 2009 Annual Meeting in Missouri and the 2010 Annual Meeting in Oregon. The program committees and Executive Committee will meet in New Orleans in November 2007 and the Executive Committee will meet in January 2008 in San Diego. The Spring 2008 meeting will be in Washington, DC. Fall of 2008 is open, and Texas offered to host this meeting in Austin. A motion to accept Austin in fall of 2008 and Missouri for the annual meeting in July of 2009 was moved by Jan Goodwin, seconded by Elizabeth Harchenko and passed. Dan Bucks commented, and Jan Goodwin concurred, that the Executive Committee should continue its practice of meeting in Washington, DC in May.

CLOSED SESSION

The Executive Committee then went into closed session to hear reports on the Nexus Committee, Audit Committee, pending litigation, and personnel matters. Minutes for these sessions are separately reported.

PUBLIC SESSION RESUMED

XIII. Resumption of Public Session and Reports from Closed Session

The public session resumed following the closed session. There was no formal report from the closed session.

XIV. Adjournment

The meeting was adjourned at noon.