



Working together since 1967 to preserve federalism and tax fairness

To: Compact Member States
From: Roxanne Bland, Counsel
Date: July 31, 2008
Subject: MTC 2008 Policy Statements and Resolutions

I. Honorary Resolutions for Commission Consideration to Adopt

1. Resolution No. 2008A, Appreciation of the New Mexico Department of Taxation, Host of the 2008 Annual Meeting
2. Resolution No. 2008B, Appreciation of Jan Goodwin, New Mexico Department of Taxation and Revenue
3. Resolution No. 2008C, Appreciation of Harley Duncan, Federation of Tax Administrators
4. Resolution No. 2008D, In Recognition of Janelle Lipscomb, Audit Committee Chair, and Rick DeBano, Audit Committee Vice-Chair.
5. Resolution No. 2008E, In Recognition of Marshall Stranburg, Litigation Committee Chair, Mark Wainwright and Clark Snelson, Committee Co-Vice-Chairs
6. Resolution No. 2008F, In Recognition of Joseph Thomas, Nexus Committee Chair
7. Resolution No. 2008G, In Recognition of Ted Spangler, Uniformity Committee Chair, Wood Miller, Income and Franchise Tax Subcommittee Chair, and Richard Cram, Sales and Use Tax Subcommittee Chair
8. Resolution No. 2008H, In Recognition of Tim Blevins, Technology Committee Chair

II. Policy Statements and Resolutions for Commission Consideration to Adopt or Renew

1. Policy Statement 2002-02, Ensuring the Equity, Integrity and Viability of State Income Tax Systems

A. This policy statement sunset at the end of the Commission's 2007 Annual Business meeting, and further research revealed that it has not been renewed since. Therefore, as it is unlikely that the Commission will want to abandon its position opposing federal preemption of state authority to impose business activity taxes, its opposition to the use of abusive tax shelters, etc., this policy statement is now before the Commission for re-adoption in 2008.

B. It has been suggested that in response to recent activity in the U.S. Congress to pre-empt state authority to impose individual income taxes on wages earned by employees who telecommute from out of state, this policy statement should be amended to address this issue. As it currently stands, the text addresses only business activity taxes. However, the purposes of the Commission, as set forth in Article I of the Compact addresses multistate taxpayers, without reference to whether that taxpayer is a business entity or individual.¹ Should the Commission determine that it is appropriate to amend the statement to include individual taxpayers, it might consider the following language:

[NEW] 2.4 Opposing Federal Efforts to Restrict State Individual Income Tax Authority

The Multistate Tax Commission strongly urges Congress to respect the sovereignty of states in exercising their jurisdiction to impose individual income taxes within constitutional limits. The Multistate Tax Commission is prepared to assist states in developing uniform de minimis thresholds for withholding obligations on tax due from multistate individual income taxpayers.

2. Draft New Resolution in Support of the NCCUSL Effort to Revise UDITPA
The draft is before the Committee for consideration to adopt (with or without amendment).

3. Policy Resolution 2003-01: State-Tribal Tax Issues. The Resolution is before the Committee for consideration to renew (with or without amendment) or allow to sunset.

II. Application of Existing Policy Statements to Federal Legislation in the 110th Congress

¹ Article I states: "The purposes of this Compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers including the equitable apportionment of tax bases and the settlement of apportionment disputes.

2. Promote uniformity or compatibility between significant components of state tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation."

A. H.R. 3396, S. 34, Sales Tax Fairness and Simplification Act. The Commission has long supported the States' efforts to reform the sales tax through the Streamlined Sales Tax Project, renamed the Streamlined Sales and Use Tax Agreement in 2002 (SSUTA), as evidenced by Policy Statement 2002-01, Improving State Sales Taxes to Achieve Fairness and Simplicity, and further supports Congressional legislation to approve the Agreement. Commission staff notes that S. 34 contains language requiring the SSUTA Governing Board to address petitions by Native American Tribes seeking to join the Agreement.² Commission staff further notes the provision in S. 34 concerning tribal membership in SSUTA has not been addressed by bills introduced in previous Congressional sessions and, of course, there is no guarantee that this provision will appear in any final Congressional enactment. The tribal provisions contained in S. 34 appears to be covered by the final clause contained in Policy Resolution 2003-01, State-Tribal Tax Issues, should the Commission determine to it appropriate to renew that resolution.³

B. H.R. 436, S. 166, Cell Phone Moratorium Act.

Pursuant to Policy Statement 2003-01 and Policy Resolution 01-09, the Multistate Tax Commission strongly opposes H.R. 436 and S. 166, insofar as it is an unwarranted preemption of state authority.

C. H.R. 5267, Business Activity Simplification Act of 2008, S. 1726, Business Activity Simplification Act of 2007

Pursuant to Policy Statements 2003-01 and 2002-02, the Multistate Tax Commission strongly opposes H.R. 5267 and S. 1726 insofar as they represent an unwarranted preemption of the states' authority to levy tax on the business activities of multistate enterprises, and encourages the creation and use of tax shelters to unfairly shift income away from the jurisdiction where that income is earned, thereby undermining a state's ability to provide government services not only to the general citizenry, but also to the enterprise doing business within the state.

D. H.R. 3679, State Video Tax Fairness Act of 2007

Pursuant to Policy Statement 2003-01, the Multistate Tax Commission strongly opposes H.R. 3679, insofar as it is an unwarranted preemption of state authority.

² S. 34, §5, Tribal Governments, provides that if a Tribe has reached an agreement with the "primary State" in which it is located, the Governing Board "shall consider such Tribe for admission as a Member State to the Agreement on the same basis as States." If the State and Tribe have attempted to negotiate an agreement with negative results, the Governing Board must act within two years to consider the Tribe for membership. This section also provides for Tribal representation on the Governing Board, as well as the effect of the provision on existing law, e.g., preserving the principles of federal law concerning the Tribes' political status within the federalist system.

³Policy Resolution 2003-01, "**RESOLVED**, that the Commission encourages that any federal legislation be supported by state and tribal efforts to resolve longstanding tax issues."

E. H.R. 2453, End Discriminatory Taxes for Automobile Renters Act of 2007

Pursuant to Policy Statements 2003-01, 2002-01, 2002-02 and Policy Resolution 01-09, the Multistate Tax Commission strongly opposes H.R. 2453, insofar as it is an unwarranted preemption of state authority. In addition, H.R. 2453 provides certain taxpayers special treatment by affording those taxpayers access to federal courts, thereby creating the potential for preferential treatment with respect to property taxpayers without such access.

F. H.R. 2230, To Prevent Certain Discriminatory Taxation of Natural Gas Pipeline Property

Pursuant to Policy Statements 2003-01 and Policy Resolution 01-09, the Multistate Tax Commission strongly opposes H.R. 2230, insofar as it is an unwarranted preemption of state authority, and creates tax discrimination among similarly situated taxpayers. In addition, H.R. 2230 provides certain taxpayers special treatment by affording those taxpayers access to federal courts, thereby creating the potential for preferential treatment with respect to property taxpayers without such access.