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NCSL Task Force Questions MTC's Insurance Tax Project

by John Buhl

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Summary by **taxanalysts**

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The Multistate Tax Commission is again under the scrutiny of a National Conference of State Legislatures panel, this time as a result of an MTC proposal seeking to prevent tax avoidance by insurance companies.

At a November 17 meeting of the NCSL Executive Committee Task Force on State and Local Taxation in Santa Monica, Calif., several panelists questioned the MTC's pursuit of the project, arguing that no lawmakers have shown any interest in the model legislation.

The issue stems from the creation and use of passthrough entities by insurance companies for investment activities and whether states should have the authority to impose corporate income taxes on the investment income.

The MTC began work in March 2008 on a model bill that would levy corporate income taxes on passthrough entities that are majority owned by an insurance company.

Robert Montellione, vice president of state and local taxes at Prudential Financial Inc., said states already impose premiums taxes on insurance companies in lieu of the corporate income tax. As a result, he said, insurance companies already pay more in taxes than businesses subject to the corporate income tax.

"This really runs afoul of the premiums tax system," Montellione said. "We're paying more than our fair share, and this is going to add on to it."

While tax avoidance may occur in some cases, insurance companies often set up a passthrough entity for regulatory or liability purposes, Montellione said.

If states have concerns with certain insurance company transactions, they should use a more targeted approach, Montellione said. Combined reporting could address the problem in some states while others have the authority to disallow questionable corporate transactions, he said.

"This casts a very wide net," Montellione said of the MTC proposal.

Joe Crosby, senior vice president and principal of Multistate Associates, added that the insurance industry proposed a more targeted model. But the MTC has continued looking at a proposal to subject certain investment activities of every insurance company to the corporate income tax regardless of whether the company is engaged in tax avoidance, he said.

Rhode Island state Rep. Brian Kennedy (D) also criticized the MTC project, claiming it had a lack of support and had not involved input from lawmakers.

"There is a great deal of concern" about the MTC coming up with such a proposal, Kennedy said. "There has been

zero legislative input."

Kennedy is also a member of the National Conference of Insurance Legislators (NCOIL). At Kennedy's recommendation, the task force approved without opposition a motion to send a joint letter with NCOIL to the MTC noting their concerns about the project.

### MTC Responds

Utah State Tax Commission Chair Bruce Johnson, speaking on behalf of the MTC, emphasized that the commission has worked closely with the insurance industry on the issue.

"I don't think it's fair to say they weren't listened to," Johnson said.

Johnson acknowledged that he personally believes the current proposal may be too broad and that the MTC should consider an unrelated business income tax model. However, unlike years past, insurance companies no longer have to be segregated from other financial activities, Johnson said.

Recent MTC analysis of Securities and Exchange Commission filings by John Hancock, the Hartford Financial Services Group, and Penn Mutual raised questions about the restructuring of mutual funds into passthrough entities organized under insurance companies and whether those restructurings shielded management fee income from state corporate income taxes. (For coverage, see *State Tax Notes*, May 7, 2012, p. 348, *Doc 2012-8259* [☞](#), or *2012 STT 84-1* [☞](#).)

The debate over the current MTC project led to a general debate about the commission's practices and whether it should even draft model legislation. The issue dates back to the task force's opposition to a project by the Uniform Law Commission looking into a potential rewrite of the Uniform Division of Income for Tax Purposes Act.

Once the Uniform Law Commission decided against moving forward, the MTC began its own project. Since then, the task force has sent multiple letters to the MTC expressing its opposition to the effort and questioning whether any lawmakers support revising UDITPA. (For prior coverage, see *State Tax Notes*, Apr. 2, 2012, p. 7, *Doc 2012-6286* [☞](#), or *2012 STT 59-2* [☞](#).)

Colorado state Rep. Amy Stephens (R) said she does not want Colorado tax officials making policy decisions on her behalf.

Illinois state Sen. Pamela Althoff (R) said that she is content with the MTC discussing tax administration issues and alerting lawmakers of potential issues, but disagreed with having the MTC drafting model bills.

However, Johnson said that he believed it was appropriate for the MTC to draft proposals that tax administrators could then forward to lawmakers for consideration.

"We don't view this as making policy," Johnson said, reiterating that lawmakers have the final say over whether to adopt or ignore an MTC proposal. "We view this as providing policy options."

Johnson also questioned the utility of alerting lawmakers to potential issues without providing detailed proposals that may address them.

When approaching the chair of the Utah House Revenue and Taxation Committee, "I don't want to go to him with just a generalized concern," Johnson said. "I want to go to him with a potential solution."

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