



**MINUTES**  
**Uniformity Subcommittee and Committee Meetings**  
**San Diego, CA**  
**March 20 and 21, 2007**

**I. Welcome and Introductions**

The following state personnel and other individuals participated in the meetings.

<b>Name</b>	<b>State or Affiliation</b>	<b>Name</b>	<b>State or Affiliation</b>
Richard Cram	KS	Joe Garrett	AL
Pat Verschelden	KS	Tom Condon	MA
Charlie Rhilinger	OH	Charles Wilson	WDC
Johnn Kutsukos	CT	Joe Thomas	CT
Lennie Collins	NC	Eric Smith	OR
Janielle Lipscomb	OR	Marilyn Harbur	OR
Phil Horowitz	CO	Carl Joseph	CA FTB
Michael Fatale	MA	Reva Tisdale	ID
Wood Miller	MO	Heidi Chowning	NM
Rebecca Abbo	NM	Ted Spangler	ID
Andrea Chang	CA FTB	Marshall Stranburg	FL
Frank Hales	UT	Rod Morrelli	UT
Robynn Wilson	AK	Keith Getschel	MN
Deborah Bierbaum	ATT	Lisa Robinson	ICI
Jamie Fenwich	TWC	Tom Gilroy	BNA
Jared Moss	PWC	Beth Cooley	COST
Natalie Haynes	PWC	Dara Bernstein	NAREIT
Michele Borens	Southerland, Asbil & Bennan		
<b>MTC Staff</b>			
Jeff Silver	Les Koenig	Tom Shimkin	Bruce Fort
Kathy Owens	Ben Morris	Shirley Sicilian	

**II. Public Comment Period**

There was no public comment during the initial public comment period.

**Income/Franchise Tax Subcommittee**

**I. Welcome and Introductions**

**II. Public Comment Period**

No public comments were received at this time.

**III. Reports and Updates**

**A. Report on Commission Action on Uniformity Projects**

Shirley Sicilian, General Counsel for the Commission, reported that the Proposed Amendment to Model Sales Factor Regulations regarding Subcontractor Services Performed “On Behalf Of” Taxpayer had been approved for a Bylaw 7 Survey. She also reported on Commission activity related to developing proposed amendments to UDITPA sec. 17, including efforts to work with the National Conference of Commissioners on Uniform State Laws.

**B. Federal Issues Affecting State Taxation**

Roxanne Bland, Counsel for the Commission, reported on bills before Congress including the Business Activity Tax bill, the Telecommunications Restructuring bill and the bill for Preemption of State Authority to Tax Employee Income Earned in Other States.

**IV. Telecommunications Apportionment Regulation**

Ms. Sicilian summarized the history and status of the project, explaining that the proposed rule follows the SSUTA rule as closely as possible. Some areas covered by the model apportionment rule are not addressed by streamlined, however. These include: wholesale services, services for input, throwout, outerjurisdictional property and sourcing rules for receipts from bundled products which would otherwise be sourced differently. For wholesale services, the draft uses FCC table 15.6, as a proxy, as a basis for apportionment. Ms. Sicilian reviewed the nature of the data in table 15.6 with the Subcommittee.

The Subcommittee discussed the outerjurisdictional issue at length. Ultimately, the Subcommittee asked staff to research alternative methods for dealing with outerjurisdictional property, including a look at property tax treatment.

Deborah Bierbaum discussed several industry concerns with the draft rule, including a problem with the definition of “wireline service” since it is not included in the SSUTA rules. The Subcommittee asked that the wireline issue be addressed in the next draft and asked Ms. Bierbaum if she could please provide a written statement of industry concerns for the next meeting.

The Subcommittee chair suggested an interim teleconference meeting might be a good idea.

## **V. RICs and REITs**

Tom Shimkin, Counsel for the MTC, summarized the project history and status. After discussion, the Subcommittee suggested two changes to the draft: create an exception for “regularly,” as opposed to “publicly,” traded trusts; state the 50% rule as a threshold for disqualification, rather than qualification, under the rule. Mr. Shimkin suggested there was still work to be done and that the drafting group should continue with its work.

The Subcommittee also addressed RICs and ultimately suggested RICs should similarly be addressed through a dividend received deduction. The Subcommittee also suggested the proposal should limit exception from the rule to entities that are “required to be registered” as opposed to those that “are registered.”

## **VI. Possible New Projects**

### **A. Holding Companies—Regulation to Source Intangibles to State Where Used, and B. UDITPA §18—Clarifying “Rare and Unusual Circumstances”**

Bruce Fort, Counsel for the Commission, gave a presentation on a proposed project for a regulation to source intangibles to the state where they are used. He noted that the problem of intangible holding companies still exists. Many states have responded to the use of IHCs with add-back statutes, or have successfully litigated the issue based on the lack of economic substance. Still other states have litigated the issue under the theory of representative or economic nexus. This requires states to argue that the sales factor under UDITPA §§17 and 18 require taxpayers to source income earned from intangible property to state where the license is employed to generate such income. While it could be said that the regulations already encompass the above, it might be helpful to develop a regulation that specifically addresses the issue.

Mr. Fort gave a presentation on a proposed project to clarify “rare and unusual circumstances” for UDITPA sec. 18. He noted that though UDITPA §18 gives tax administrators broad authority to require taxpayers to use a different allocation and apportionment formula if the use of the formula specified by UDITPA §4 “does not fairly represent the extent of the taxpayers activities in the state,” as long as the alternative method required is “reasonable.” However, MTC Regulation IV.18 limits this discretion to specific cases “where unusual factual situations (which ordinarily will be unique and non-recurring) produce incongruous results.” Though predictability and uniformity is important, a statute based on the economic models and practices that existed fifty years ago may need some flexibility if it is to remain effective in the face of changing practices and economies. Therefore, tax administrators might want to consider amending the §18 regulation so it may be used more explicitly to respond to tax minimization techniques.

The Subcommittee discussed the proposals at length. Mr. Spangler moved that these suggested proposals appear on the summer meeting agenda, not with the thought that the Subcommittee will vote on them, but just as an indication that these potential projects are on hold. In the meantime, state representatives should talk with staff on whether these issues present problems for their states. Marshall Stranburg, FL seconded Mr. Spangler’s motion. Mr. Marelli

offered an amendment (accepted) to note that these proposals were brought up at the March 2007 meetings by MTC Counsel. The motion passed with 15 states voting aye, none opposed, and no abstentions. The motion carried.

## **VII. New Business—Including Committee Recommendations for Additional New Projects**

There was no new business to come before the committee

## **VIII. Adjourn**

### **Sales/Use Tax Subcommittee**

#### **I. Welcome and Introductions**

#### **II. Public Comment Period**

There was no public comment at this time.

#### **III. Reports and Updates.**

Ms. Bland reported that a public hearing had been held on the Model Statistical Sampling Statute and Regulation. She also reported on Congressional action affecting state taxation including the streamlined sales tax legislation, telecommunications restructuring bill, the internet tax freedom bill and the cell phone tax moratorium of 2007 bill.

#### **IV. Hotel Intermediaries Project**

Ms. Bland introduced two proposals for addressing the issue of the proper imposition of state and local sales and occupancy taxes on hotel intermediaries. Phil Horowitz of Colorado discussed the pertinent provisions of a “conceptual draft” prepared by the Sales and Use Tax Uniformity Subcommittee’s drafting group that would provide for payment of tax on the discounted rate paid to hotel intermediaries to the hotel for remittance to state and local taxing authorities. The hotel intermediaries would also be required to register, report and pay tax on the “facilitation fee” (the difference between the wholesale price and the price charged to the consumer) to the state taxing authority in the state where the rooms were rented. An optional amnesty provision was also proposed.

John Allen of Jones-Day in Atlanta presented an alternative proposal on behalf of Expedia.com and other intermediaries. The “Model State Statute on Travel Intermediaries Facilitation Fees” counter-proposal would impose a gross receipts tax on “facilitation fee” charged by hotel intermediaries to be reported and paid based on the billing location of the Hotel Intermediary’s customers. The counter-proposal would also allow the hotel intermediary to maintain confidentiality with its customers over rates and fees paid.

A lengthy discussion of the merits of the two proposals followed. Some committee members questioned whether their states would be willing to impose a gross receipts tax on their own residents. The representatives of the intermediaries expressed concern with the fairness of imposing sales and occupancy taxes which did not reflect the value of services performed by the

intermediaries, as well as the significant costs of compliance. Some states expressed concern that the drafting committee's proposal would run into stiff opposition in state legislatures, prolonging the current uncertainty. A motion was made to vote on the industry proposal. A substitute motion was then proposed to vote on both proposals at once. The substitute motion was passed 8-4, with two abstentions. On the substitute proposal, 8 states voted to proceed with development of the drafting committee's proposal. Five states voted to proceed with development of a draft statute based on the intermediary's gross receipt tax proposal.

## **V. Possible New Projects**

### **A. Telecommunication Transaction Taxes**

The committee heard presentations by Jamie Fenwick of TW Cable Corporation and Deborah Bierbaum of AT&T Corporation regarding the multitude of state and local taxes which must be reported to thousands of local taxing jurisdictions. Ms. Bierbaum suggested that AT&T was required to file a tax return in some jurisdiction every 30 seconds. She praised a number of states which had recently enacted legislation to centralize reporting and reduce the number and complexity of forms. The committee expressed support for the reform effort and agree to pursue efforts in their home states. The committee instructed staff to work with industry to identify telecommunications terms and concepts needing uniform definitions for a possible uniformity project.

### **B. Possible Project on Uniform Power of Attorney Form**

The Subcommittee determined it would not undertake this project.

### **C. Possible Project on Uniform Penalties**

The Subcommittee determined it would not undertake this project.

## **VIII . New Business—Including Committee Recommendations for Additional New Projects**

There was no new business to come before the committee

## **IX . Adjourn**

### **Full Uniformity Committee Meeting**

#### **I. Welcome and Introductions**

#### **II. Approval of Minutes of November 2006 Meeting**

#### **III. Public Comment Period**

There were no public comments at this time.

#### **IV. Executive Director's Report**

Joe Huddleston, Executive Director for the Commission, gave the Executive Director's Report.

#### **V. Reports and Possible Action Items**

There were no action items for the Full Uniformity Committee.

#### **VII. Roundtable Discussion**

State representatives then commented on legislative and administrative developments in their states.

#### **VIII. New Business**

There was no new business to come before the committee

#### **IX. Adjourn**