

Thirteenth Annual Report



Multistate Tax Commission

Fiscal Year 1979-1980
For the fiscal year of July 1, 1979-June 30, 1980

Multistate Tax Commission



EUGENE F. CORRIGAN, Executive Director

November 1, 1980

To the Honorable Governors and State Legislators of Member States of the Multistate Tax Commission.

The purpose of the Multistate Tax Commission is to bring even further uniformity and compatibility to the tax laws of the various states of this nation and their political subdivisions insofar as those laws affect multistate business, to give both business and the states a single place to which to take their tax problems, to study and make recommendations on a continuing basis with respect to all taxes affecting multistate businesses, to promote the adoption of statutes and rules establishing uniformity, and to assist in protecting the fiscal and political integrity of the states from federal confiscation.

I respectfully submit to you the thirteenth annual report of the Multistate Tax Commission. This report covers the Commission activities for the fiscal year beginning July 1, 1979 and ending June 30, 1980. It includes a report on receipts, expenditures and operations for that period from Rhode, Scripser & Associates, Certified Public Accountants in Boulder.

Respectfully submitted,

A handwritten signature in cursive script that reads "Eugene F. Corrigan".

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Executive Director's Report

Introduction

This report will be a short one, written in early November, whereas the previous one was written in June of this year. It will be in the nature of an addendum to the latter.

The major occurrences since June have been 1) a significant and extremely well attended annual meeting of the Commission and 2) some additions to the parade of court decisions which support MTC positions.

Annual Meeting

A major portion of the annual meeting program provided an in-depth examination of state corporate income tax complexities and problems. It served to provoke further

bipartisan discussions throughout the meeting. The catalysts for the program and discussions were the U.S. Supreme Court's *Mobil* and *Exxon* decisions, which were discussed in the Twelfth Annual Report.

Keesling

Frank Keesling led off the program with an analysis of the *Mobil* decision. He concluded that the *Mobil* decision supports the contention that whether or not dividends should be apportioned among the states in which the receiving corporation does business depends upon whether the issuing corporation is engaged in a unitary business with the receiving corporation. Under this interpretation, dividends between such unitary corporations would be subject to



MTC Annual Meeting

apportionment in only two situations:

1) where a state does not allow the use of combined reporting at all; or

2) where the state does allow or require combined reporting, where applicable, but the receiving corporation is precluded from filing a combined report because it owns an insufficient amount of the stock of the issuing corporation ("more than 50%" is usually required). In all other instances, such dividends would be eliminated in the combined report as interaffiliate transactions. Mr. Keesling would assign all other dividends to the commercial domicile.

Dexter Position

Bill Dexter, on the other hand, would look to the reason for the making of a corporate investment in the stock of another corporation. If the investment was made to further the business purposes of the investing corporation, then the dividends would be considered by him to be a part of that corporation's apportionable unitary business income. This is true, in his opinion, regardless of whether a state does or does not allow or require full apportionment and regardless of whether or not it allows or requires combined reporting or recognizes the unitary business concept. The true significance of both *Mobil* and *Exxon*, he believes, lies in their re-stating the Supreme Court's historic support for this position.

Mobil Comments

Forrest Smith, Mobil's tax counsel, reached the following conclusions concerning the *Mobil* case:

1) It laid aside commerce clause primacy vis-a-vis interstate taxation and the unitary concept.

2) It demonstrated that the risk of multiple taxation is a bad basis for argument. The taxpayer must prove actual multiple taxation before he can hope to get a favorable decision.

3) It probably established an almost

non-rebuttable presumption that a multinational corporate business is unitary.

4) It does not stand for the position that worldwide combination is legal.



Wisconsin's Asst. Attorney General Gerald Wilcox discusses his handling of the Exxon case before the U.S. Supreme Court



R.J. Reynold's Jim McGrath and Rhode Island's John Norberg

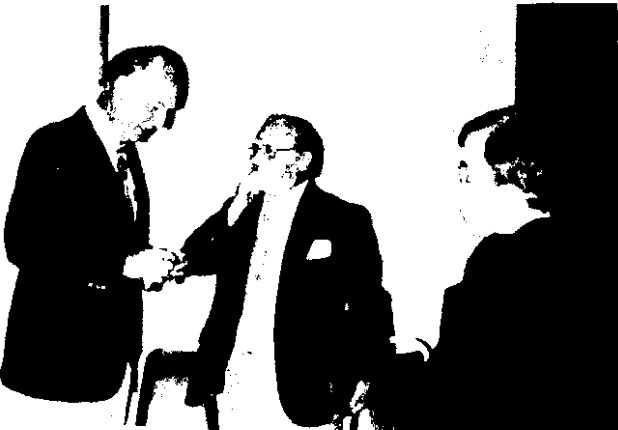
5) It established that most income will probably be considered to be apportionable; that the commercial domicile argument is dead.

6) It established the need for the taxpayer to begin all administrative hearings on the assumption that the case will wind up in the U.S. Supreme Court if interstate taxation is involved.

7) The best place to attack the effect of full apportionment of dividends is in the makeup of the formula.

Panel Discussion

Extensive discussion followed concerning how corporations could best cope with interstate taxes after *Mobil* and *Exxon*. Led by Attorney Pat DiQuinzio, several corpor-



MTC's Gene Corrigan, New Jersey's Sid Glaser, NAM's Tom Persky

ate representatives seemed to agree that unitary apportionment is a fact of life on the domestic basis; but they drew the line at worldwide unitary apportionment. They seemed to think that, if dividends from overseas are to be included in the apportionable base, the formula should be adjusted somehow. The tax administrators generally take the position that the formula of the receiving corporation should not be affected by the source of the income to which the formula is to be applied.

Program Participation

The extensive program included presentations on Welfare Fraud, Taxing Bank Income, Airline Taxation, Severance Taxation, Protecting the Sales and Use Tax Base, Developing an Audit Program, Secondary School Education in Taxes and the Multistate Tax Compact, its importance and its future. The presentations were made by the State

Tax Administrators of Illinois, Indiana, New Jersey, Rhode Island and Wisconsin, by the Executive Director of the Western Governors' Policy Office, by a Washington State legislator, by representatives of the Air Transport Association of America and the Internal Revenue Service and by representatives of Mobil Oil Co., Shell Oil Co., R.J. Reynolds Co. and Coopers and Lybrand. Transcriptions of several of the presentations are available upon request.

The luncheon speaker was Geoffrey Harley, a Doctoral Candidate at the University of Michigan Law School. His speech was a distillation of the findings and conclusions in his thesis on the subject of The Taxation of Worldwide Income. He concluded that the practice of worldwide combined reporting should be utilized not only in this country but throughout the world.

Toward Consensus

MTC Chief Counsel Bill Dexter closed the program with a plea for greater efforts between the business community and state personnel to achieve workable and satisfactory solutions to interstate tax problems. The key to such an achievement, he said, was acceptance by business of the fact of unitary apportionment as an existing and required concept; and by the states of the fact that the current variety in state income tax laws, rules and procedures cannot truly be justified either to business representatives or to students of good government. He recommended a new effort to produce more equity and uniformity in the field.

Some 200 people attended the meeting, including tax administration personnel from 30 states, tax representatives from innumerable corporations nationwide, and legislators from several states. Many left the meeting with the feeling that a new attitude of constructive conciliation had been created and that from it might well develop in the long run a consensus on how states should tax interstate business. It is important to all that the MTC do its part to preserve that atmosphere and to help to develop and to maintain momentum toward such a consensus.

For the purpose of stimulating dialogue and searching for such a consensus, the Executive Director authored an article which appeared in *Tax Notes* on September 15.

The General Accounting Office report, discussed in the Twelfth Annual Report, is now expected to be issued in about March of 1981. It is hoped that that document will also help to lead in the direction of consensus.

Commission Action

In its business session, the Commission:

1) Elected Gerald Goldberg, Chairman; Ken Cory, Vice-Chairman; Jenkin Palmer, Treasurer; and Bob Bullock, Robyn Godwin, Michael Lennen, and Fred Muniz, Executive Committee members. Mr. Goldberg, who was the Missouri Director of Revenue at the time, became the Executive Officer of the California Franchise Tax Board on September 1 and so resigned as Chairman effective August 31. Vice-Chairman Cory thereupon became Chairman. Because of a change in the law of California, however, the California representative will change from the State Controller, Mr. Cory, to the FTB

Executive Officer, Mr. Goldberg, on January 1, 1981. Mr. Goldberg is expected to resume his chairmanship of the Commission on that date.

2) Adopted a resolution opposing federal bills S.983 (Mathias), S.1688 (Mathias) and H.R.5076 (Conable) as improperly detrimental to effective state tax administration.

3) Adopted a resolution opposing any federal legislation which would restrict or limit the states' right to enact severance or other mineral extraction taxes.

4) Adopted a contractor regulation concerning the attribution of multistate income of construction contractors for state income tax purposes. Adoption constitutes a recommendation to member states that they adopt the regulation in applying their income taxes to construction contractors engaged in multistate business.

5) Adopted a resolution specifying that the MTC's interpretation of paragraph 1 of Article V is that the credit

Indiana's Don Clark



Washington's State Representative, Helen Sommers



referred to therein against use tax liability for legally imposed sales or use taxes previously paid shall be allowed for tax paid to the state wherein the liability, not the payment, first occurs.

6) Adopted a resolution to establish a property tax committee the purpose of which would be to further uniformity and consistency in the valuation and assessment of the property of centrally assessed multistate taxpayers, e.g. public utilities.

Copies of the resolutions and pertinent materials, including the contractor regulation, are available upon request.

Audit Program

The Commission continues to develop its joint audit program. Under it, Commission auditors perform audits on interstate corporations on behalf of several states at the same time.

Difficulties

Given full uniformity, there would be no reason why one income tax audit performed in this way on a corporate taxpayer should not suffice for all states. The fact is, however, that the diversity referred to above still poses great difficulties for such an audit program. Increased uniformity is a must if the program is ever to achieve its tremendous potential.

Toward Internal Uniformity

Many state tax administrators and corporate tax personnel defend such diversity in the workings of state income tax statutes and procedures. They base their contention on the idea that the states should be allowed to utilize varying tax systems to attract and to keep business as well as to fund state needs.

Few people argue with that idea. But there appears to be a growing realization that the idea does not provide a sound base for the great variety in the internal workings of a tax on corporate net income. It is one thing to provide alternative approaches to a tax system from state to state. It is quite another



WESTPO's Phil Burgess discusses the pending federal severance tax legislation

to make the working of the system so difficult that the system itself loses respect and becomes the subject of attack from all sides.

Corporate Response

Such lack of respect seems to be amply demonstrated by the continuing efforts of a handful of corporations to deny to the MTC auditors access to factual information which is necessary to the successful and accurate determination of tax liability to the various states.

In most instances, corporations do provide MTC auditors with full information and then turn to the normal protest and appeal procedures at the state level for resolution of any disputes concerning the auditors' conclusions. This is the correct manner in which to handle such matters, in our opinion.

Litigation

Meanwhile, in litigation which affects directly or indirectly the efforts of the

