



Federalism at Risk Exploring the Ability of States and Localities to Serve the Nation

by Dan R. Bucks, Executive Director, MTC

In our federal system, States and their local subdivisions provide services that benefit not only their residents, but also the entire nation. The nation and its economy depend on the quality of services provided by any State. States provide a free, public education to each child in the nation. Their colleges and universities produce nearly 80% of the nation's college graduates each year. Public universities conduct research that generates new technologies for business and government, improves public policy and supports the quality of life for citizens everywhere. States and localities provide the transportation infrastructure that supports the flow of people and commerce throughout our nation. They regulate and ensure the universal availability of financial, communication and electrical energy systems necessary to support commerce and the quality of life—including commerce conducted electronically. They provide for public safety—services that since September 11 are referred to as “homeland security”—vital to commerce and the life of our nation. They manage the environment to reduce the threats to public health, many of which arise from modern commerce. They care for people—often very young and very old—who cannot care for themselves, and they help others experiencing challenges return to productive roles in society. They provide for a basic system of commercial and civil law and a court system to enforce those laws as a foundation for the effective functioning of our economic system.

The nation entrusts States and localities with these vital functions of national significance because it ensures that these laws and services will

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Compact Members

Alabama
Alaska
Arkansas
California
Colorado
District of Columbia
Hawaii
Idaho
Kansas
Maine
Michigan
Minnesota
Missouri
Montana
New Mexico
North Dakota
Oregon
South Dakota
Texas
Utah
Washington

Sovereignty Members

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New Jersey
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South Carolina
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West Virginia
Wisconsin

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Please contact **Teresa Nelson, Production Editor**, with questions concerning new or existing subscriptions, at (202) 624-8699 or mtc@mtc.gov.

Contributions:

Submissions by readers of articles, article ideas, suggestions, and criticisms are welcome. Please send them to the editor at the address listed on the back. We also welcome information concerning changes in employment status of persons active in state taxation in both the public and private sectors.

The opinions expressed in the Review are those of the authors and do not necessarily represent the official position of the Multistate Tax Commission or any of its Member States.

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Brief Guide to the Multistate Tax Commission

2002-03 Program Year

The Commission—Members and Alternates

The Multistate Tax Commission meets annually to approve uniformity recommendations to the states, elect officers and conduct other business of the Commission. The MTC Chair may convene special Commission meetings at other times. Special meetings have typically been held in conjunction with regular Executive Committee meetings.

Members of the Commission are the heads of the tax agencies for states that have enacted the Multistate Tax Compact. Members have full voting authority on the Commission. The following states have adopted the Compact:

Alabama	Minnesota
Alaska	Missouri
Arkansas	Montana
California	New Mexico
Colorado	North Dakota
District of Columbia	Oregon
Hawaii	South Dakota
Idaho	Texas
Kansas	Utah
Maine	Washington
Michigan	

Alternates are the respective designees of the Members who, in the absence of the Members, are authorized to represent their states at Commission and Executive Committee meetings.

Sovereignty Members of the Commission are the heads of state tax agencies of states that have requested sovereignty membership. Sovereignty Members join in shaping and supporting the Commission's efforts to preserve state taxing authority and improve multistate tax policy and administration,

however, Sovereignty Members do not vote on the Commission. The following States have selected Sovereignty status with the Commission:

Florida	New Jersey
Kentucky	Wyoming
Louisiana	

States that have become Sovereignty States participate in the Commission's uniformity, federal relations, educational and litigation support activities. Benefits are similar to Compact Membership, but do not require enactment of the Compact.

Associate Members of the Commission are the heads of state tax agencies of states that have requested associate membership. Associate Members participate in MTC meetings, but do not vote or hold offices. The following state have selected Associate status with the Commission:

Arizona	Maryland
Oklahoma	Wisconsin
Connecticut	Mississippi
Pennsylvania	Georgia
New Hampshire	South Carolina
Illinois	North Carolina
Tennessee	Massachusetts
Ohio	West Virginia

*Sovereignty and Associate Members may also designate **Alternates** to represent them at meetings of the Commission and the Executive Committee.*

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MTC Executive Committee

The Executive Committee is the primary policy and administrative decision-making body of the MTC when the full Commission does not meet. The Executive Committee meets quarterly and is comprised of the Commission Chair, Vice-Chair, and Treasurer; four elected members, and, as *ex officio* members, the past chairs of the Commission who remain as member state tax administrators.

Please Note: Under the Commission's Bylaws, all Members and Alternates, even if they are not regular or *ex officio* members of the Executive Committee, are invited to attend and vote at the Executive Committee if a quorum of its regular members is present.

For 2002-03, the elected and *ex officio* members of the Executive Committee are:

<i>Chair</i>	Elizabeth Harchenko, Oregon
<i>Vice-Chair</i>	R. Bruce Johnson, Utah
<i>Treasurer</i>	Carol Fischer, Missouri
<i>Member</i>	Doug Roberts, Michigan
<i>Member</i>	Rick Clayburgh, North Dakota
<i>Member</i>	Carole Keeton Rylander, Texas
<i>Member</i>	Stephen Richards, Kansas
<i>Ex Officio</i>	Gerald Goldberg, California
<i>Ex Officio</i>	Timothy Leathers, Arkansas

The Executive Committee is scheduled to meet as follows for FY 2002-03:

July 31, 2002	Madison, WI
October 17-18, 2002	Washington, DC
January 15-16, 2003	San Diego, CA
April 24-25, 2003	New Orleans, LA

MTC Program Committees

Each tax administrator of a participating state appoints representatives to the, Audit,

Litigation, Nexus, Technology and Uniformity Committees.

The MTC Chair appoints the chairs of each of these committees, and, in addition, appoints the membership of other special committees from nominees submitted by participating states.

Uniformity Committee

The Uniformity Committee develops recommendations for uniform laws, regulations and administrative practices for corporate income, sales and use, and other major business taxes. This committee does critical work to help the Commission achieve its objective of encouraging uniform taxation of multistate business activity.

Interested states—including all Sovereignty and Associate Member states and non-member states that participate in the Joint Audit and/or National Nexus Programs—are welcome to designate a representative to the MTC Uniformity Committee.

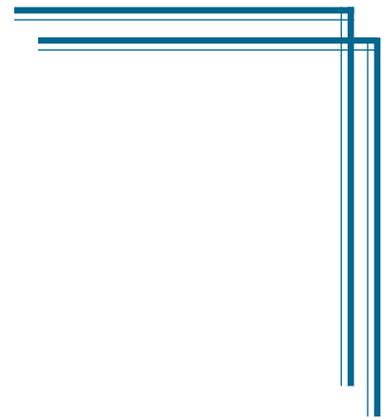
Audit Committee

The Audit Committee guides the Commission's Joint Audit Program. It also serves as a forum for exchanging information on multistate audit issues.

The members of the Audit Committee are designees of only those states participating in the Audit Program. Other states may request observer status at a specific Audit Committee meeting to explore potential participation in the program, provided that those other states have an appropriate exchange of information agreement with a state participating in the program.

Nexus Committee

The Nexus Committee advises on the operation of the MTC National Nexus Program. It also serves as a forum for the exchange of information on nexus-related issues. It is presently scheduled to meet on July 30, 2002, October 15, 2002, and in March 2003.



Designations to the Nexus Committee are limited only to states participating in the National Nexus Program. Other states may request observer status at a specific Nexus Committee meeting to explore participation in the program, provided that those states have appropriate exchange of information agreements with a state participating in the program. Those designated as the state's contact for Nexus Program Voluntary Disclosures (who may be separate from the Committee representative) will be the recipient of National Nexus Program Voluntary disclosure proposed agreements and should be able to advise Nexus Program staff on your state's disclosure policies.

Litigation Committee

The Litigation Committee provides a forum for state tax attorneys to exchange information on current multistate tax cases of major importance. It also encourages coordination of litigation efforts among the states, and it has begun to discuss some specific areas of multistate cooperation in legal services and activities.

Interested states—including all Sovereignty and Associate Member states and non-member states that participate in the Joint Audit and/or National Nexus Programs—are welcome to designate a representative to this committee. **Membership on this committee is limited to attorneys.**

Technology Committee

The Committee on Technology advises the Multistate Tax Commission on cost-effective applications of automated systems to assist the Member States of the Commission in further advancing the Multistate Tax Compact's purposes of fairness, taxpayer convenience and compliance, and uniformity. 🙌

(Federalism at Risk continued from page 1)

be efficiently tailored to the diverse circumstances in our vast nation. If these services were provided entirely through a central government, they would be both less efficient and less effective.

The ability of States to serve the nation's needs is dependent on their having adequate authority to raise revenues to finance these services. Indeed, taxing authority is a core element of state sovereignty. Without independent authority to tax, States cannot tailor services to fit local circumstances independent of control by a central government. The U.S. Constitution empowers States to tax both their residents and a fair share of interstate commerce flows through their borders. Yet, in recent years, federal interference with state authority, outmoded state and local laws and aggressive business tax avoidance has eroded the authority of States to tax a fair share of interstate

commerce. This erosion of state authority to tax interstate commerce undermines the ability of States and local subdivisions to perform functions of national significance. Residents of a State are typically not able or willing to finance services that benefit the national economy unless the multistate businesses that earn income or otherwise do business in the State also pay a fair share of the cost of those services.

The Federalism at Risk series is intended to explore the status of the ability of States and their local subdivisions to tax a fair share of interstate commerce. If that ability is undermined, the nation ultimately will suffer the consequences from the impaired ability of States and localities to provide services of national significance. 🙌

The Federalism at Risk Seminar Series

Federalism at Risk is a national inquiry into state and local governments, the services and benefits they provide, the tax revenues they raise, and the limitations the federal government may or may not impose on state and local taxation. The American system of federalism promises a balance between the states and the federal government. The *Federalism at Risk* seminar series investigates whether the balance may be tipping against the states as their ability to provide government services is endangered by federal legislation affecting state tax sovereignty.

Five seminars have been held over the past year, beginning in July 2001 with an overview of the critical issues of legitimacy, fairness and equity in state and local taxation. The other four seminars covered sales and use taxes, business activity taxes, tax administration, a variety of other taxes such as, telecommunications, estate, motor fuel and tobacco taxes, general economic and fiscal conditions and intergovernmental fiscal relationships. Most recently, on August 1, 2002, the Commission conducted a review and assessment of the findings that emerged from the *Federalism at Risk* proceedings and discussed policy options that may help resolve the difficulties of state and local taxation in the modern economy.

To complete the series' coverage of all the major state and local tax areas, the Commission has issued a "Call for Papers on the Property Tax" to all individuals and organizations interested in contributing papers on the role of the property tax in our federalist system. Those interested in submitting abstracts on the property tax should contact the MTC immediately at mtc@mtc.gov or (202) 624-8699.

A final report of the *Federalism at Risk* series is scheduled to be released in the Fall 2002. 🙌

Recently Adopted MTC Policy Statements

The following policy statements were adopted by the Multistate Tax Commission at its Annual Meeting on August 2, 2002, in Madison, WI. In adopting these two policy statements, the Commission also repealed MTC policy resolutions: 01-07, 00-1, 00-3, 00-6, 00-7, 99-5, 99-12, 98-1 and 98-11. Additionally, the Commission amended its policy resolution 01-08 (not printed here) regarding tax fairness in the proposed federal extension of the Internet Tax Freedom Act. Commission policy statements and resolutions are available on the MTC website at www.mtc.gov/policy/resolutions.htm.

MTC Policy Statement 02-01

Improving State Sales Taxes to Achieve Fairness and Simplicity

1.1 Preamble

The Multistate Tax Commission supports state efforts to pursue through negotiation, state legislation and enforcement, the courts and federal legislation, provisions that would require large out-of-state sellers to collect sales and use taxes from their customers. Such action is necessary to restore fairness to competition between local retail store purchases and remote sales transactions and to provide a means for states to collect taxes that are owed under existing law. The recent rapid growth of electronic commerce has underscored the importance of this equitable treatment. The Commission seeks to reduce the burden of collection on sellers and to ensure that these taxes work efficiently and effectively in contemporary markets. The Commission is working to achieve these goals through its own interstate uniformity efforts and through active support of the Streamlined Sales Tax Project and similar efforts. A simplified sales tax system can contribute to neutrality in taxation: the equal tax treatment of all forms of sales into a state regardless if made through stores, mail order or electronic means.

The U.S. Supreme Court in the *Quill* decision explicitly reaffirmed the authority of Congress to address state tax issues that affect

interstate commerce. Although state action is needed to simplify the sales tax and to ensure effective enforcement of current nexus standards, federal action will be needed to ensure that sales and use taxes are equitably applied. That federal action could occur through Congress or the Supreme Court revisiting the issue in the context of state efforts to simplify sales and use taxes or a combination of congressional and judicial action.

1.2 Simplified Sales Tax System

The Multistate Tax Commission supports the development and implementation by states, with the active participation of the business community, of measures to simplify the sales and use tax system. The Commission contributes to this purpose through its own uniformity activities under the Multistate Tax Compact, the National Nexus Program and the Joint Audit Program, and pledges the continuation of those efforts. The Commission supports the efforts of the Streamlined Sales Tax Project and recommends that the states levying sales and use taxes favorably consider the project's recommendations. The Commission commits itself to developing a continuing, cooperative relationship with

(Policy Statement 02-01 continued on page 8)

the states implementing the project's recommendations in support of greater uniformity and simplicity in sales and use tax administration. Sales tax simplification should strive to achieve the following reforms:

1.2.1 Single Administrative Process within a State

A simplified sales tax system should offer sellers a single administrative process within each state for the collection of sales and use taxes, the filing of reports, the conduct of audits and the adjudication of disputes. Such a process can most easily be accomplished through statewide administration of state and local taxes or through a cooperative state-local process developed jointly by a state and its localities.

1.2.2 Use of Modern Technology

A simplified sales tax system should encourage the use of modern information technology by sellers to collect sales and use taxes in a cost-effective manner and to file returns and remit payments electronically. States should provide a framework and incentives for the use of such technology. The technology that has revolutionized business operations and expanded the scope of remote sales can also contribute to ensuring the collection of taxes due and owing in the context of those same remote sales.

1.2.3 One-Stop Registration

A simplified sales tax system should enable an interstate seller to register to collect and remit sales and use taxes with several states at one time and, if already registered, to update its registration records when business operations, store locations or other applicable factors change. The Commission is developing a central

registration system to assist the states in accomplishing this purpose.

1.2.4 Tax Rate Simplification

A simplified sales tax system should provide sellers with clear and certain means of applying the correct tax rate at the time of sale. This objective can be accomplished by states providing—in a standardized form widely adaptable by sellers—a database of applicable tax rates within the state and holding harmless from assessment sellers who use the database properly. Local tax rates should change no more frequently than quarterly and with adequate, uniform advance notice of such changes. Any variation in tax rates by product should be strictly limited and eliminated where possible.

1.2.5 Tax Base Simplification

A simplified sales tax system should include uniform definitions for categories of goods and services to be taxed, items commonly exempted from taxation and core administrative or accounting terms used to calculate and report the tax. Because of the diversity of the modern marketplace and business operations, the Commission recognizes that states will develop and implement uniform definitions over time, beginning with those that are most feasible and of greatest benefit to easing administration.

A simplified sales tax system should reduce the role of sellers as enforcers of exemptions by product and use and place greater administrative responsibility on states and/or those who benefit from these exemptions.

1.2.6 Administrative and Enforcement Process Simplification

A simplified sales tax system should reduce the cost of filing tax reports

and paying the tax through uniform forms and methods for filing tax returns and making payments, including the expanded use of uniform electronic filing and payment systems. A simplified sales tax system should use joint, multistate audits to improve the efficiency of the audit process and uniformity of results for states, localities and taxpayers.

1.2.7 Governance of a Simplified Sales Tax System

The governance of a simplified sales tax system should vest final authority with the states implementing the system. The governing process should guarantee open meetings and public participation in decision-making. The governing process should also encourage the voluntary resolution of disputes among states and between states and businesses.

1.3 Coordination of the Multistate Tax Compact and the Streamlined Sales Tax Agreement

The Multistate Tax Commission, consistent with its responsibilities under the Multistate Tax Compact to promote equitable and uniform taxation and taxpayer convenience and compliance, will offer continuing support to the states in implementing a simplified sales tax system. The purposes of such a system overlap with the responsibilities of the Commission. The Commission will offer its services to these states to aid the efficient administration of the system. Such services may include developing a common registration system, supporting the development of uniform rules and regulations, conducting joint audits, and providing a multistate alternative dispute resolution process.

1.4 Equitable Collection of Sales and Use Taxes

The Multistate Tax Commission calls on Congress or the U.S. Supreme Court to re-establish fairness in state sales and use tax

systems by requiring remote sellers making sales above a reasonable threshold level to collect sales and use taxes for any state that simplifies its tax system in accordance with the foregoing reforms. The threshold level could be established by either federal legislation or by uniform state legislation approved by Congress or by the U.S. Supreme Court. If states seek U.S. Supreme Court approval for an expanded duty to collect for states with a simplified system, the states should incorporate the threshold level in uniform state legislation implementing a simplified sales tax system. Such a provision would become effective when a favorable Supreme Court decision occurs. The Commission supports exempting small remote sellers whose contacts are limited to making sales by mail order or electronic means and whose sales fall below the threshold level from an expanded duty to collect in the interest of reducing burdens on these sellers.

In the absence of action by Congress or the U.S. Supreme Court to establish a sales threshold standard for collecting sales and use taxes, the Multistate Tax Commission is committed to assisting states in developing uniform guidelines clarifying existing constitutional standards of nexus. The Commission is committed as well to assisting the states and taxpayers in equitable and effective compliance with applicable nexus standards through its National Nexus Program and the Joint Audit Program. Coordinated, interstate action by the states to apply nexus standards on a uniform basis improves taxpayer convenience, improves equity in the application of the law, and ensures the integrity of state and local tax systems.

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1.5 Opposition to Surrender of State Sovereignty

The Multistate Tax Commission is opposed to legislation that would link federal restrictions on state authority to levy business activity taxes to the implementation of an expanded duty for remote sellers to collect sales and use taxes. A trade-off between state

business activity tax authority and sales and use tax authority undermines federalism and erodes the equity and effectiveness of business activity taxes. (See also MTC Resolution 99-8 and MTC Policy Statement 02-02.) 🖱

MTC Policy Statement 02-02

Ensuring the Equity, Integrity and Viability of State Income Tax Systems

2.1 Preamble

The right of a state to tax a fair share of interstate commerce that occurs within its borders is an essential element of sovereignty guaranteed under the U.S. Constitution. The exercise of that right by a state is fundamental to the proper allocation of the costs of governmental services to those who benefit from those services, which includes in-state residents and businesses and out-of-state enterprises engaging in business within the state. Otherwise, in-state residents and businesses will be unfairly burdened by the cost of services attributable to economic activity of out-of-state enterprises.

A primary means by which states tax a share of interstate commerce is by taxing income earned within its borders. To be fair to all taxpayers income should be properly measured and divided among states in reasonable relationship to where the income was earned. Businesses earn income by engaging in activities of supply that meet customer demand. Engaging in either supply or demand activities beyond *de minimis* levels is evidence that the enterprise is doing business within a state, earning income within its borders and benefiting from the services provided by that state.

Unfortunately, in recent years the increasing use of business tax sheltering methods has significantly undermined the proper accountability of income reporting by many multistate enterprises that are both willing and able to engage in aggressive tax avoidance. The extensive use of business tax shelters undermines the equity, integrity and viability of state income tax systems. Federal proposals to restrict state authority to impose business activity taxes will serve to legalize and expand tax shelter opportunities for a large segment of multistate businesses and further shift the tax burden unfairly to local citizens and businesses.

The recent rise in business tax sheltering compounds long-standing problems of ensuring proper accountability of income reporting from multinational corporations. In 1990, a congressional subcommittee estimated that the federal government lost \$30 billion annually due to widespread international transfer pricing practices that shift income earned in the United States to tax haven locations. That \$30 billion in lost federal revenue translates into approximately \$6 billion of additional revenue lost at the state level. Federal efforts to solve the transfer pricing and other international income shifting problems have been ineffective.

Widespread international and domestic tax sheltering adversely affects the economy. Earning statements that are inflated by unproven tax shelters mislead investors as to the true value of a corporation's actual business activity. Capital is misallocated away from prudent enterprises that are diligent in their tax reporting obligations and toward corporations that engage in risky tax planning methods. Recent spectacular corporate bankruptcies underscore the fact that some companies that engage in aggressive tax planning methods only postpone the inevitable day of economic reckoning and, in the process, harm both investors and employees. Beyond the problems of tax equity, improper reporting of income for tax purposes creates significant economic harm.

The Multistate Tax Compact charges the Commission with facilitating "the proper determination of the state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases . . ." The Compact was developed to preserve the sovereign authority of states to tax a fair share of interstate commerce occurring within their borders. Accordingly, the Commission by law and history is committed to advancing the full accountability of income reporting in reasonable relationship to where income is earned. A major portion of the activities of the Commission and its member states is devoted to this purpose. The Commission urges Congress and the Administration to support the states in achieving that purpose and, at a minimum, refrain from any actions that further undermine the equity, integrity and viability of state income tax systems.

2.2 Federal Support for Ensuring Full Accountability of Income Reporting

The Multistate Tax Commission strongly supports efforts by federal and state governments to enact legislation and regulations to insure full accountability in income reporting by individuals and business entities. The federal government asked the

states to refrain from the use of worldwide combined reporting on the basis that the states should allow the federal government to handle international division of income issues. In exchange, the states were promised improved federal efforts to solve international income reporting problems and federal assistance in administering their corporate tax systems, including a federally-administered "domestic disclosure spreadsheet" to document the state income tax reporting practices of corporations. While the states honored the federal government's request to refrain from using worldwide combined reporting, the federal support for the states has not been forthcoming. Moreover, the federal efforts to resolve the international income reporting problems remain inadequate because they are based on an "arms length" method of accounting that simply does not work in either theory or practice in the context of the modern global economy. The federal government should honor its earlier promises to the states of support for corporate income tax administration. The federal government should recognize as well the superiority of formula apportionment over arms length accounting and adopt methods of dividing international income pioneered and effectively applied by the states. Finally, the federal government should continue to upgrade its general efforts to counteract abusive tax shelter activity that undermines both federal and state income tax systems.

Specifically, Congress should undertake the following steps to ensure the proper reporting of income:

- Enact legislation to undertake an orderly process of converting to formula apportionment on a worldwide basis employing the unitary business principle as the correct approach to properly dividing the income of multinational enterprises.

(Policy Statement 02-02 continued on page 12)

- Enact legislation that eliminates the tax benefits from “corporate inversions” under which U.S. corporations incorporate in off-shore tax havens to escape federal and state corporate income taxes while continuing to operate in the United States. Such legislation would be a transition measure until the federal government fully converts to a formula apportionment system applied on a worldwide basis.
- Enact legislation requiring multijurisdictional taxpayers to file with the IRS a domestic disclosure spreadsheet. Each spreadsheet would list the taxpayer’s liability in each state in which it operates and disclose the method of calculation used to reach the result. The IRS would review the spreadsheets for accuracy and would share information contained on the spreadsheets with the states. The information should be shared under exchange of information agreements that support cooperative work by the states through the Commission or other joint instrumentalities to ensure the proper reporting of income. This measure would strengthen the ability of states to ensure proper corporate income reporting. It would provide a basis for a stronger partnership between the federal government and the states in working to curb abusive tax shelter activity.
- Enact federal legislation to impose effective penalties on taxpayers for failure to properly report income and on investors in and promoters of transactions the primary purpose of which is tax avoidance. Such legislation will encourage the proper reporting of net income for both

federal and state income tax purposes.

- Enact federal legislation that prohibits taxpayers from relying on opinions written by tax advisors who benefit from contingency fee arrangement in which the tax advisor receives a portion of the tax savings from the tax planning methods on which they offer advice. This legislation is necessary and important to help restore integrity to the tax system.
- Study methods of bringing into closer alignment statements of book income and taxable income and then take action to implement the most promising methods. Sophisticated accounting methods are increasingly used to inflate book income and deflate taxable income. Strengthening links between book income and taxable income will help restore integrity to accounting for both.

To improve coordination with the federal government on curtailing international and domestic tax shelter activities, the Commission commits itself to assisting the federal government in developing a system of formula apportionment at the international level. Further, the states should consider the development of a process that parallels the federal process of requiring those who engage in abusive tax shelters to disclose those tax shelters for review in advance of the normal audit process. Such a process would build on the federal process and would focus on domestic tax shelter activities that shift income away from where it was earned to tax haven locations or to being reported nowhere.

2.3 Opposing Federal Efforts to Restrict State Business Tax Authority

The Multistate Tax Commission strongly opposes federal legislation that infringes upon state authority to tax a fair share of

interstate commerce. Currently, legislation is pending in Congress that would impose a federal nexus standard of physical presence for imposition of business activity taxes. The U.S. Supreme Court has upheld on numerous occasions that the nexus standard for business activity taxes is not based upon a concept of physical presence, but instead is based on the privilege of engaging in business in the state. Further, the Court has never ruled that a business must have “substantial physical presence” in a state before it can be subjected to state taxing jurisdiction. In addition, the proposed federal legislation not only would impose a general physical presence standard, it would also create a list of “tax haven activities” that would allow a company to avoid the jurisdiction of a state despite engaging in income-producing activity there.

Nexus standards for the imposition of business activity taxes based on physical presence will legalize and expand the use of abusive tax shelter activities that are already undermining the equity, integrity and viability of state business activity taxes. The list of “tax haven activities” offers a specific blueprint for shifting income away from where it is earned to tax-favored locations. The physical presence standard and the list of “tax haven activities” will allow many out-of-state enterprises that earn income from within a state and benefit from the services the state provides to escape paying a fair share of the cost of those services. Imposition of new limits on state business activity taxing authority by requiring an untested level of physical contacts by a taxpayer will inevitably lead to lengthy and expensive litigation to determine the full meaning of such laws. Finally, physical presence nexus standards discourage the flow of investment across state boundaries, and subvert national economic growth and balanced economic development among all geographic regions of the nation.

Instead of undermining the proper operation of state business activity taxes, the Congress should undertake the measures outlined

above that would establish a cooperative federal-state framework for ensuring the proper accountability of income.

2.4 Commission Support for Simple and Equitable Nexus Standard for Business Activity Taxes

The Multistate Tax Commission and its member states devote extensive efforts to improving the accountability of income earned by multijurisdictional enterprises. The federal proposals for limiting state business taxes through a restrictive nexus standard run counter to those efforts. At the same time, the Commission recognizes the need to provide taxpayers with clear guidelines regarding the jurisdictional standards for business activity taxes. The Commission commits itself to developing a nexus standard for imposition of income and franchise taxes that is certain and clear and fairly represents where an entity is doing business and earning income. Such a standard will provide an effective foundation for uniform action by the states to help restore greater equity and integrity to the reporting of business income for state tax purposes.

2.5 Commitment to Educating Constituencies

One of the most important roles that the Multistate Tax Commission fulfills is that of educating constituencies on issues of taxation. Understanding the underlying principles of state corporate income taxes is a difficult task. The Commission commits itself to providing education and guidance to taxpayers, federal and state government officials and all other interested parties concerning:

- current issues in corporate income tax law,
- suggestions by which these laws can be improved, and
- how current law and other proposals affect state and local tax systems. 🤝

Status of Uniformity Proposals

Uniformity Proposals Recently Adopted by MTC

PROPOSAL	STATUS
Uniform Statute/Regulation to Establish Sales/Use Tax Priority—Construction Inventory	Adopted August 2, 2002
Wireless Database Format Matching Street Addresses with Proper Taxing Jurisdiction(s)	Adopted August 2, 2002

Uniformity Proposals in the MTC Public Hearing Process

PROPOSAL	STATUS
Business Activity Factor Presence Nexus Proposal	Hearings held July & August 2002
Definition of Business/Nonbusiness Income	Hearings held April 2002
Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation	Hearing to be scheduled

Uniformity Proposals under Development by MTC Uniformity Committee

Income/Franchise Tax

PROPOSAL	STATUS
Definition of a Unitary Business	Under Subcommittee Development
Uniform Provision Concerning Reporting Options for Non-Resident Members of Pass-Through Entities (Composite Return)	Public hearing held February 2002; Executive Committee referred back to Uniformity Committee for consideration in light of hearing comments

Sales/Use Tax

PROPOSAL	STATUS
Sales/Use Tax Priority—Leasing	Full Uniformity Committee recommended public hearing; Executive Committee to consider recommendation before or during October 2002 meeting
Sales/Use Tax Priority—Sales of Services	Under Subcommittee Development

Bibliography of MTC Review Articles

1981-2002

March 1981

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Multistate Tax Commission

Seminars and Training Courses 2002-03

Nexus Schools

September 18-19, 2002 Columbus, OH

December 3-4, 2002 Austin, TX

April 8-9, 2003 Trenton, NJ

May 28-29, 2003 St. Paul, MN

For more details or if your state would like to host a training session, contact:
Antonio Soto 202-508-3846 asoto@mtc.gov

Deregulation Seminars

None scheduled at this time.

If your state would like to host a training session, contact: *Ken Beier* 202-508-3873 kbeier@mtc.gov

Sampling and Audit Training

September 23-27, 2002 New Orleans, LA (Non-Statistical Sampling)

November 2002 AL (location TBA) (Non-Statistical Sampling)

November 13-15, 2002 SD (location TBA) (Computer Assisted Auditing)

Please note: the November 2002 dates are tentative only.

For more details or if your state would like to host a training session, contact:
Harold Jennings 256-852-8216 hjennings@mtc.gov

Additional information and schedule updates are available on the MTC website at www.mtc.gov.

MTC Calendar of Events

October 13-18, 2002

Fall Program and Executive Committee Meetings

Featuring: The Business Government Dialogue
on State Tax Uniformity
Washington, DC

January 15-16, 2003

Winter Executive Committee Meeting

San Diego, CA

March 17-20, 2003

Winter Program Committee Meetings

Austin, TX

April 23-24, 2003

Spring Executive Committee Meeting

New Orleans, LA

Please contact Teresa Nelson, Production Editor, at 202-624-8699 to request a more detailed Calendar of Events or please refer to the on-line calendar of events at www.mtc.gov/MEETINGS/calendar.htm.



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