To: Uniformity Sales and Use Tax Subcommittee  
From: Roxanne Bland, Counsel  
Date: November 7, 2008  
Subject: Accommodations Intermediaries Project

At its July 2008 meeting, the Subcommittee voted to move the above proposal to the full Uniformity Committee for its consideration. After discussion, instead of voting on whether to recommend the proposal to the Executive Committee for a public hearing, the Uniformity Committee directed staff to forward the proposal to representatives of local government organizations and inquire whether they had any comments. Staff forwarded the proposal, and at least one local government organization indicated it would submit written comments.

The Uniformity Committee then met by teleconference on October 22, 2008, and by unanimous consent referred the project back to the Subcommittee pending receipt of comments from local organizations.

Attached for the subcommittee’s review and discussion are comments received from the National Association of Counties (NACo) and the Government Finance Officers Association (GFOA).
Re: Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries

Gentlemen:

Thank you for the opportunity to comment on the most current draft of the "Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries." We appreciate the hard work the Uniformity Sales and Use Tax Subcommittee has put forth on this matter. Without taking a position on whether such a model statute should even be adopted by the Multistate Tax Commission, we offer the following observations.

The collection of hotel or transient occupancy taxes (TOT) is of great concern to local governments. In these trying financial times, such taxes provide badly needed revenues to cash-strapped municipalities. The funds generated are used for a myriad of purposes, including low income housing construction and rental assistance, business and tourism promotion, convention centers and museums, and so on.

But the proper collection and remittance of these taxes, especially by online "accommodations intermediaries," has become of great concern to local governments across the country. As a general practice, intermediaries purchase rooms at a steep discount from accommodations providers and then impose significant mark-ups. When customers book these rooms, they are charged the local TOT based on the marked-up, retail price. However, the intermediary only remits the TOT calculated on the discounted
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wholesale cost, pocketing the difference. As a result, a number of jurisdictions have filed lawsuits against online booking services seeking to recover these lost revenues. 

As currently drafted, the model statute is confusing, especially its definition of "accommodations fee". The only clarification of the tax collection process that needs to be made is that it ensures the collection and remittance of the TOT due and owing on the full, retail price of the room charged to the customer. This is no different from the local retailer who must collect and remit sales tax based on the full retail – versus wholesale - price of goods sold. There is simply no reason to provide accommodations intermediaries with any preferential tax treatment. 

Again, thank you for the opportunity to comment on this important matter. As the MTC discusses issues such as this that have direct and indirect impacts on local governments, we hope that you will continue to reach out to us as a resource and include local government representatives in future policy discussions.

Sincerely,

Larry E. Naake                      Jeffrey L. Esser  
Executive Director                  Executive Director  
NACo                                GFOA  

Cc: Shirley Sicilian, MTC General Counsel  
Roxanne Bland, MTC Counsel