

DRAFT

WHEREAS, state law in states imposing a sales and use tax or similar transaction tax on purchasers of taxable goods and services may require retailers to collect and remit such tax on taxable purchases, and

WHEREAS, retailers that collect such taxes remit the taxes to the appropriate taxing jurisdiction, and

WHEREAS, many state tax statutes require purchasers to recover any sales and use tax allegedly overpaid by filing a refund claim, either with the retailer or directly with the state revenue department, and

WHEREAS, such statutes generally provide the exclusive remedy for a purchaser to seek a refund of taxes allegedly overpaid, and

WHEREAS, notwithstanding such statutes in recent years there has been a proliferation of class actions filed by purchasers against sellers that seek to recover tax that has allegedly been overpaid, and

WHEREAS, sellers are subject to audit by state taxing authorities which could result in an assessment of tax for undercollection or a refund to purchasers for overcollection of sales and use tax, and

WHEREAS, the American Bar Association has adopted a Model Transactional Tax Overpayment Act that would set forth uniform transaction tax refund procedures in states that impose a sales and use tax or similar transaction tax on purchasers and would make explicit that sellers are not to be named in any action to recover tax allegedly overpaid to such states, and

WHEREAS, a taxpayer coalition has approached the Multistate Tax Commission for its endorsement of the Model Transactional Tax Overpayment Act, and

WHEREAS, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee formed a joint state/industry workgroup in December 2012 to study the issues pertaining to class action refund claims, as well as similar issues pertaining to the application of state False Claims Acts to tax undercollection, and report back to the Executive Committee with its recommendations, and

WHEREAS, the workgroup has been meeting via teleconference since July 2013, and

WHEREAS, the workgroup met on March 26, 2014 and voted to recommend that the Commission endorse the ABA Model Transactional Tax Overpayment Act, and

WHEREAS, *[reserve for Uniformity Committee vote]*.

NOW THEREFORE, be it resolved by the Multistate Tax Commission that the Commission hereby endorses the ABA Model Transactional Tax Overpayment Act and encourages its consideration for adoption by the states.