**Multistate Tax Commission**
**Income & Franchise Tax Uniformity Subcommittee**

# Mobile Workforce Withholding Model Statute

**Policy Checklist**
***August 26, 2009***

I. Application of the Rule:

A. Should the rule address (1) the employee's responsibility to file (i.e., the state's exercise of jurisdiction), and thus obviate the employer's responsibility to withhold, or (2) the employer's responsibility to withhold, and thus leave open the employee's responsibility to file?
B. Should the rule address local, as well as state, income tax withholding?
C. Should the rule include a reciprocity provision to encourage enactment?

II. Specifics of the Rule – the threshold:

A. Should the threshold be stated in terms of:
   1. Time?
      a. The number of days the employee is present in the state – 10, 30, 60?
      b. How should a "day" be calculated?
         i. Preponderance of a day or any part of a day?
         ii. Include travel time to, away from, and/or through, the state?
   2. Income?
      a. Only income subject to withholding or including income from other sources, such as intangibles and real property?
      b. Only such income as is attributable to the state or all such income?
   3. Some combination of both? (e.g., no requirement to withhold if employee is in the state for less than 10 days AND has/had wage income below $100,000/year)

B. Exemptions?
   1. Professional entertainers?
   2. Professional sports teams?
   3. Certain public figures?
   4. Others?

III. Scope of the Rule – beyond the threshold?

A. Should the rule address wage income sourcing? If so,
   1. should the wage income sourcing rule apply only for determining whether the threshold is met, OR

2. for determining both whether the threshold is met and where the income is attributable for withholding and personal income tax purposes? If the latter,
    a. If an employee is present in a state, but the threshold is not met, should the income that would otherwise be attributed to the state of presence be attributed instead to the state of residence or to the state that is the base of employment?
    b. Other issues?

B. Should the rule address issues of evidence?
    1. Should the rule specify which records will (or may) be relied upon (employee, employer, or both)?
    2. Other?

C. Should the rule address (or explicitly state that it does not address) issues of employer nexus for either withholding or any other business tax?