MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Full Uniformity Committee
Kansas City Marriott Country Club Plaza
4445 Main Street
Kansas City, MO 64111
July 27, 2009, 1:00 P.M. to 3:00 P.M.
Minutes of the Meeting

I. Welcome and Introductions

The following persons attended the meeting, either in person or by telephone, of the Uniformity Committee meeting.

Name	State or Affiliation	Name	State or Affiliation
Michael Mason	AL	Lennie Collins	NC
Tom Atchley	AR	Mary Loftsgard	ND
Danny Walker		Ryan Rauschenberger	
Ben Miller	CA FTB	Myles Vosberg	
Charles Wilson	DC	Donnita Wald	
Marshall Stranburg	FL	Janielle Lipscomb	OR
Anita de Gumbia	GA	Eric Smith	
Reba Tisdale	ID	Brandon Seibel	SD
Ted Spangler[1]		Gary Johnson	TX
Richard Cram[2]	KS	Frank Hales	UT
Tom Hatten		Chris Kauffman	WA
Michael Fatale	MA	Craig Griffith	WV
Todd Iveson	MO	Diann Smith	Asbill Sutherland
Dianne Luebbering		MTC Staff	
Wood Miller[3]		Ken Beier	Elliott Dubin
Lee Baerlocher		Bruce Fort	Sheldon Laskin
Derek Bell	MT	Shirley Sicilian	
Brenda Gilmer			

1. Chair, Uniformity Committee
2. Chair, Sales/Use Tax Subcommittee
3. Chair, Income/ Franchise Tax Subcommittee

II. Approval of Minutes of March 17-18 Meeting, June 3, 2009 teleconference, and June 17, 2009 Teleconference

MO moved that the minutes of the three meetings be approved. The motion carried unanimously.

III. Public Comment

There was no public comment.

IV. Executive Director's Report

There was no traditional Executive Director's report because Joe Huddleston had a heart attack while returning to Washington, DC from the New York University SALT conference.

V. Sales/Use Tax Segment

Richard Cram (KS), Chair of the Sales/Use Tax Subcommittee gave the report.

A. Telecommunications Transactions Tax Centralized Administration Project

Mr. Cram informed the subcommittee that the Executive Committee directed the subcommittee to take on this project. The subcommittee decided that the project will conform to the Streamline Sales Tax Project (Main Street Fairness Act). The drafting group will use the language contained in the federal bill and bring back a new policy checklist that will conform to the SST.

B. Conformity of MTC Model Statutes and Regulations to Streamlined Sale and Use Tax Agreement

- Sales and Use Tax on Computer Software and Sales and Use Tax on Telecommunications – Vendor and Vendee Versions

Mr. Cram told the group that the subcommittee believed that these model regulations and statutes were outdated.

Mr. Cram (KS) moved that the MTC Model Telecommunication statute be repealed. The motion carried unanimously.

VI. Income Franchise/Tax Segment

Wood Miller (MO), chair of the Income/Franchise Tax subcommittee gave the report. He informed the group that the subcommittee's discussion of the financial institution project provided direction to the working group. In regard to the project to amend MTC regulations for Article IV Section 18 of the Compact, the subcommittee adopted the second proposal. The subcommittee has directed the development of a draft statute for the project on non corporate income taxpayers and will continue work on this project.

Mr. Miller informed the group that he, Joe Garrett (AL) and Frank O'Connell (GA) would be the working group on a project to amend the Model Addback statute to incorporate language for captive REIT's. He also informed them that a working group, consisting of Donnita Wald (ND), Michael Fatale (MA), and Brenda Gilmer (MT) will work on amending the Model Combined Reporting statute to change the language regarding tax havens.

CA moved to amend the MTC regulation on Article IV, Section 18 of the Multistate Tax Compact as it was presented to the full committee. The motion carried unanimously.

VII. Roundtable Discussion

MT reported that the effort to tax insurance companies failed. ND reported that they adopted the MTC Model Captive REIT statute. AL and FL reported that efforts to adopt combined reporting in their states failed; NC reported that combined reporting and franchise tax bills are in the House of Representatives. WV and MA reported that they are in the process of implementing their combined reporting statutes; WV is receiving comments. FL also reported that they are looking at SSTP. TX is expanding sales tax holidays.

VIII. New Business

The group was informed that CA is looking into revising the radio and television broadcasting regulation. This might be the basis for a new Uniformity project. FL moved that the Committee send a letter to Mr. Huddleston to wish him well.

IX. Adjourn

The meeting was adjourned at 3:00 P.M. CST

MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Income and Franchise Tax Subcommittee of the Uniformity Committee
Kansas City Marriott Country Club Plaza
4445 Main Street
Kansas City, MO 64111
July 27, 2009, 8:30 A.M. to 12:00 P.M.
Minutes of the Meeting

I. Welcome and Introductions

The following persons attended the meeting, either in person or by telephone, of the Income/ Franchise Tax Subcommittee meeting.

Name	State or Affiliation	Name	State or Affiliation
Michael Mason	AL	Donnita Wald	
Tom Atchley	AR	Mary Loftsgard	ND
Ben Miller	CA FTB	Ryan Rauschenberger	
Phillip Horwitz	CO	Gary Helman	NE
Marshall Stranburg	FL	Rebecca Abbo	NM
Anita de Gumbia	GA	Brian Bedford	NY
Ted Spangler[1]	ID	Janielle Lipscomb	OR
Brian Fliflet	IL	Eric Smith	
Richard Cram[2]		Gary Johnson	TX
Michael Hale		Frank Hales	UT
Shelby Grau	KS	Craig Griffith	WV
Karyn Lopez		Private Sector	
James Bartle		Jim Hall	ACLI
Michael Fatale	MA	Diann Smith	Asbill- Sutherland
Wood Miller[3]		Todd Lard	COST
Dianne Luebbering	MO	Karen Boucher	Deloitte-Touche
Todd Iveson		Ferdinand Hargroian	PwC
Brenda Gilmer		Jamie Fenwick	Time Warner Cable
Lee Baerlocher	MT	MTC Staff	
Derek Bell		Roxanne Bland	Elliott Dubin
Lennie Collins	NC	Sheldon Laskin	Bruce Fort
Myles Vosberg	ND	Shirley Sicilian	

1. Chair, Uniformity Committee
2. Chair, Sales/Use Tax Subcommittee
3. Chair, Income/ Franchise Tax Subcommittee

II. Public Comment Period

There was no public comment at this time.

III. Reports and Updates

A. Reports on Uniformity Projects in Process

1. Model Amendments to Multistate Tax Compact Article IV and ULC UDITPA Effort:

Shirley Sicilian, MTC General Counsel, informed the members that the Uniform Law Commissioners (ULC) disbanded its study group. She informed the members that the MTC is in the process of updating Article IV of the Multistate Compact which currently contains UDITPA.

B. Federal Issues Affecting State Taxation

Roxanne Bland, MTC Counsel gave the members a brief description of current major federal legislation that could affect state tax systems:

1. H.R. 1083; Business Activity Tax Simplification Act of 2009
2. H.R. 2110 and H.R. 2600 Mobile Workforce State Income Tax and Simplification Act

Ms. Bland told the members that the bills are currently in the House Judiciary Committee's Subcommittee of Commercial and Administrative Law. She further informed the members that no action has been scheduled on these bills because Congress is focused on health insurance reform legislation. Once the summer recess is over, however, Congress may take up these bills again.

Ms. Bland told the members that there is one piece of good news from the federal front – H.R. 2303, currently in the House Ways and Means Committee, State Tax Administration Act would expand the current refund offset program to include out-of-state residents.

IV. Project to Amend MTC Model Financial Institutions Apportionment Rule

Lennie Collins gave the members a brief description of the project and its goals:

- To move to a market-based apportionment formula
- No multiple taxation (industry goal)
- All receipts in the numerator (industry goal)
- The regulation should not be over burdensome to the financial sector (industry goal)
- Miscellaneous receipts that cannot be sourced to a specific destination should be sourced by cost-of-performance (industry goal)

A *Presentation of Work Group Policy Recommendations*

These are the policy recommendations thus far:

- ATM fees would be sourced to the location of the ATM
- Merchant discount fees would be sourced to the location of the merchant, if known. If not known, the receipts would be based on the location of the credit card receipts. Whichever approach is taken must be taken in all states. Karen Boucher told the members that either method should be adopted because of the need for uniformity.
- Receipts from trading and investment assets and receipts from trading activity on behalf of others
    - Industry suggests these receipts sourced by cost-of-performance. Other suggestions included location of trust assets, location of trust officer, location of trustees, location of trustor, or location of beneficiaries.

During discussion regarding the location of trust fees, Phil Horwitz suggested that these receipts could be based on the location of the bank's deposits because that would be a good indicator of the bank's business activity. Ms. Boucher noted that these receipts usually constituted only a small part of a financial institution's receipts and there was little to be gained from going from cost-of-performance sourcing to other means of sourcing these receipts. Ben Miller suggested either "throwing back" or "throwing out" these receipts.

- Non-specified receipts: A number of options were presented – use the current cost-of-performance rule; commercial domicile; source these receipts in the same proportion as other receipts; or use the state's general apportionment rules for non-financial companies. Mary Loftsgard asked: "from an audit standpoint, what costs are included in cost-of-performance?" The drafting committee will continue to work on this.
- Source the loan assets for property factor purposes using SINAA weights.
- Working group will continue to work on definition of "automated system."
- Model statute will continue to apply to financial institution rather than financial activity

The drafting group will begin to draft model legislation.

V. Project to Amend MTC Model Regulation IV.18e

Bruce Fort, MTC Counsel, briefly reviewed the work done on this project. He informed the subcommittee that most states considered the current wording of the article too restrictive. No alternative has been definitely agreed to. There was a teleconference on June 3rd to narrow the range of options for approval. The options are shown below:

1. Article IV.18 permits a departure from the allocation and apportionment provisions of Article IV only where unusual factual situations produce incongruous results under the apportionment and allocation provisions contained in Article IV.

2. Article IV.18 permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases where the apportionment and allocation provisions contained in Article IV produce incongruous results.

Brian Fliflet of the Illinois Department of Revenue said that Ilinois law currently was not constrained by the terminology of unusual circumstances.

Phil Horwitz of the Colorado DOR moved that the committee recommend Option 2 to the full uniformity committee for approval. The committee voted 14 yeas, 0 no and 0 abstentions.

VI. Project Regarding Income Earned by Non Corporate Income Taxpayers Derived from an Ownership Interest in a Partnership or LLC

Phil Horwitz explained to the group how this project began – the observation that the subsidiaries of captive life insurers hold title to the parents' income earning intangible assets so as to avoid income tax on the income.

Brenda Gilmer, MT, told the group that in her study of federal taxation of insurance companies she found that the federal treatment of insurance differs for life insurance and for property/casualty insurance because of the ownership and amount of reserves necessary to pay claims Brian Bedford, NY, explained that NYS used four (4) bases for taxing life insurance companies and for each company, chose the method which yielded the highest tax. Mr. Bedford also noted that NYS is looking at ways to tax the over-capitalized captive insurers – he noted that insurance commissioners do not worry about over capitalization. A question was raised concerning the dividends paid by insurance companies to their parent companies. One possibility was to tax the dividends received by the parent (addback) and the other possibility was disallow the deductions paid for the dividends from the insurance subsidiary.

The consensus was to proceed with this project in accordance with the work group recommendation: draft a model statute for passthroughs owned by entities that do not pay corporate income tax and continue review of possible approaches for overcapitalization.

VII. Project on Addendum to MTC Model Add-back Statute

Mr. Fort informed the members that this project is designed to primarily benefit separate entity states, because the current Model Captive REIT statute disallowing the federal dividends-paid deduction would only be a benefit to separate entity states if the captive REIT had nexus and apportionment factors in those states. It would be possible for a taxpayer to establish a Captive REIT using only property located in combined filing states, yet the separate-entity states would still see an erosion of taxable income on a pre-apportioned basis if the deduction for real estate expense paid to the Captive REIT was allowed. He also noted that Oklahoma, Wisconsin, and Georgia have already passed modified addback statutes including rental payments to REITs.

Mr. Fort explained that denying a deduction for the payments made to a Captive REIT results in a loss of depreciation expenses for the operating company and it may be advisable to allow some sort of an adjustment to the add-back requirement to reflect the taxpayer's loss its depreciation expenses. A drafting group was formed consisting of Frank O'Connell of Georgia, Wood Miller of Missouri and Joe Garrett of Alabama.

VIII. Project on Model Withholding Statute

Ms. Sicilian that COST and industry groups are working on a bill (H.R. 2110) that would preempt States from imposing individual income tax if a non-resident employee is not physically present in the State for more than a certain number of days. She noted the staff memo and the letter from COST included in the meeting materials.

The FTA has been stating that this is a state level issue and should be fixed by the states and that the feds should be cognizant of the fiscal impact on the states. The MTC Executive Committee directed the Uniformity Committee to adopt this as an expedited project. Business groups had asked the NCSL not to oppose any federal legislation. Only highly paid entertainers, certain public figures, and athletes would be exempt from the preemptions contained in this bill.

Todd Lard informed members of the committee that this bill would also protect state and local governments as well as businesses; and that his organization believes that this problem can only be solved by federal action. Mr. Lard said the current system imposes high compliance costs for states, employers, and employees.

IX. Review of Tax Haven Provision in MTC Model Combined Reporting Statute

Ms. Sicilian stated that the Executive Committee requested the Uniformity Committee to consider whether changes to specific sections of the MTC's Model Combined Reporting water's-edge provisions are needed in light of actions by the OECD and a request by OFII:

Brenda Gilmer said that they list tax haven countries individually rather than using the OECD list (the model refers to the OECD's list, as amended).

A working group consisting of representatives of MT, MA and ND will work make a recommendation regarding these requests for review.

X. New Business

A possible new project is to look at the audience factor in the Model Broadcasting Regulation. Ben Miller (CA FTB) said that CA is looking at their regulation.

XI. Adjourn

The meeting was adjourned at 12:25 P.M.

MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Sales and Use Tax Subcommittee of the Uniformity Committee
Kansas City Marriott Country Club Plaza
4445 Main Street
Kansas City, MO 64111
July 26, 2009, 1:00 P.M. to 5:00 P.M.

Minutes of the Meeting

I. Welcome and Introductions

The following persons attended the meeting, either in person or by telephone, of the Sales/Use Tax Subcommittee meeting.

Name	State or Affiliation	Name	State or Affiliation
Michael Mason	AL	Lennie Collins	NC
Tom Atchley	AR	Myles Vosberg	ND
Danny Walker	AR	Gary Helman	NE
Phil Horwitz	CO	Rebecca Abbo	NM
Marshall Stranburg	FL	Bill Riesenberger	OH
Anita de Gumbia	GA	Gary Johnson	TX
Ted Spangler[1]	ID	Frank Hales	UT
Richard Cram[2]	KS	Chris Kauffman	WA
Michael Fatale	MA	Private Sector	
Wood Miller[3]	MO	Jamie Fenwick	Time Warner Cable
Todd Iveson		Todd Lard	COST
Brenda Gilmer	MT	MTC Staff	
Lee Baerlocher		Shirley Sicilian	Elliott Dubin

1. Chair, Uniformity Committee
2. Chair, Sales/Use Tax Subcommittee
3. Chair, Income/Franchise Tax Subcommittee

II. Public Comment Period

There was no public comment at this time.

III. Reports and Updates

- Accommodations Intermediaries

Roxanne Bland, MTC Counsel, informed the subcommittee that she was the Hearing Officer at a public hearing held on July 21, 2009 in the Hall of the States. At the hearing, Martin Morris of the FTA informed the group that Expedia, Jones Day, and Orbitz had previously testified before Congress on this subject. Ms Bland said that the public comment period was held open for 30 days after the public hearing.

Ted Spangler (ID), Chair of the Uniformity Committee, said that the intermediaries want to bill their services to the consumer separately for the consumers' state of residence to tax, but they are now busy lobbying members of Congress to preempt the states from imposing their taxes on fees. However, the states believe that the intermediaries' "mark up" is part of the hotel room price for the customers. Mr. Morris told the members that the FTA believes the MTC Model Statute is the on the "right track." Roxanne Bland, MTC Counsel, said she knew of no current legislation.

Ms Bland updated the members on Federal Issues affecting state taxation.

- Main Street Fairness Act

No legislation on the "Main Street Fairness Act" has yet been introduced. The members of Congress are working on language for the small business exception and vendor compensation.

- Cell Phone Tax Fairness Act of 2009, H.R. 1521

Ms. Bland said a hearing on this bill was held on June 9, 2009. During this hearing, Rep. Watt (D-NC) expressed concern that the term "discriminatory" may be read too broadly. He stated that unless that term is clarified, he will not proceed with the legislation.

- State Video Tax Fairness Act of 2009, H.R. 1019

Ms. Bland said this bill is unlikely to move in Congress this year.

- S. 43, H.R. 1560, Permanent Internet Tax Freedom Act of 2009

Ms. Bland said no new legislation has been introduced, and noted that the current moratorium does not expire until 2014.

IV. Telecommunications Transaction Tax Centralized Administration Project

Richard Cram (KS) subcommittee chair, reviewed the events of the March meeting for the subcommittee. Scott Peterson, Executive Director of the Streamlined Sales Tax Governing Board, told the subcommittee that the Board would like to work with the MTC on this project. Ms. Bland added that the Executive Committee is aware this subcommittee is not equipped to undertake the kind of telecommunications tax reform mandated by the Main Street Fairness Act, and does not expect the subcommittee to do so.

Policy Checklist for Model Statute

The subcommittee reviewed the policy checklist for this project. The checklist, coupled with the Main Street Fairness Act provisions for telecommunications tax reform raised several questions:

- Tax covered – which telecommunications taxes would be covered by this model statute? For example, should the model statute exclude (or include) net income taxes and property taxes and right-of-way fees?
- Tax Collection and Administration – what new administrative procedures would be devised?

Mr. Spangler questioned how this subcommittee would work within SSUTA provisions (SSUTA § 310). He suggested that the MTC model provide for:

1. One return per state for general sales taxes and separate returns for other taxes that may be imposed
2. "One stop" registration per state rather than one stop registration for all Streamlined states.
3. Separate administration of telecommunication taxes from the general sales/use taxes as long as the taxes are administered uniformly within a state.

Jamie Fenwick, Time Warner Cable, said that inclusion of these elements in the MTC model would meet their requirements.

Other issues raised included:

- Can a drafting group use the provisions of SSUTA to provide parameters?
- Can the subcommittee limit the scope, of possible taxes and fees to consider?
- Can states change their collection and administration responsibilities for taxes and fees?

Mr. Spangler said he did not believe that the MTC can actually devise a model statute to administer these taxes because of nonuniformity of audit procedures and other state to state differences.

The drafting group for this project, Mr. Cram, Robert Babin (FL), Jamie Fenwick and Deborah Bierbaum (ATT) was directed to develop a policy checklist conforming to the simplification requirements of the Main Street Fairness Act for the November meeting.

V. Conformity of MTC Model Statutes and Regulations to Streamlined Sales and Use Tax Agreement

A. Guidelines of Signatory States on Applicability of Sales and/or Use Tax to Sales of Computer Software

1. <u>Review Update and Recommendations</u>:

Phil Horwitz (C) noted that the redline version included in the materials MTC Guide was adopted in 1988 and he compared it to the Streamlined versions of canned and custom software.

2. Public Comment: None

3. Committee Discussion:

The subcommittee discussed whether there was any value to the MTC of adopting SSUTA definitions? Mr. Horwitz said there was some value to the MTC adopting SSUTA definitions, but Marshall Stranburg (FL) said that the Uniformity Committee should go through their normal processes to decide this question. A sense of the committee emerged that MTC's 'value added" is ***not*** to "rubber stamp" another organizations' work. Gary Johnson (TX) noted that his state ha adopted the SSUTA version and added that the MTC model statute is outdated.

Mr. Cram asked for volunteers to study the adoption of the SSUTA version of computer software.

B. Uniform Principles Governing State Transactional Taxation of Telecommunications – Vendor and Vendee Versions.

The drafting group for the Telecommunications Transactions Tax Centralized Administration Project has suggested that this recommendation be jettisoned as too outdated to warrant the substantial changes that would have to be made. The subcommittee agreed with that assessment, but after discussion decided that repeal would be subject to the same process as adopting a new model statute.

Mr. Spangler moved that the Uniformity Committee recommend to the Executive Committee to withdraw the Uniform Principles Governing State Transactional Taxation of Telecommunications, Vendor and Vendee versions as an MTC recommendation.

Yes 10
No 0
Abstain 2 (GA FL)

VI. New Business

There was no new business.

VII. Adjournment

The meeting was adjourned at 4:18 CST.