



**MINUTES**  
**Uniformity Committee Meeting**  
**Perdido Beach Resort**  
**27200 Perdido Beach Boulevard**  
**Orange Beach, Alabama 36561**

*Tuesday, December 1, 2009*  
*1:00 PM – 2:00 PM*

*Wednesday, December 2, 2009\**  
*4:30 PM—5:00 PM*

**I. Welcome and Introductions**

<b>Name</b>	<b>Affiliation</b>	<b>Name</b>	<b>Affiliation</b>
Ted Spangler, Chair	ID	Eric Smith	OR
Wood Miller	MO	Debra Buchanan	OR
Richard Cram	KS	Lennie Collins	NC
Michael Fatale	MA	Jennifer Hays	KY
Ben Miller	CA-FTB	Craig Griffith	WV
Reva Tisdale	ID	Andrew Glancy	WV
Rebecca Abbo	NM	<b>Private Sector/Other</b>	
Joe Garrett	AL	Karen Nakamura	PWC
Chris Sherlock	AL	Todd Lard	COST
Mike Mason	AL	Helen Hecht	FTA
Cynthia Underwood	AL	Deborah Bierbaum	AT&T
Curtis Stewart	AL	Jimmy Long	Bradley Arant
Dee Wald	ND		
Frank Hale	UT		
Phillip Horwitz	CO	<b>MTC Staff</b>	
Brenda Gilmer	MT	Joe Huddleston	Ken Beier
Lee Baerlocher	MT	Sheldon Laskin	Roxanne Bland
Derek Bell	MT	Bruce Fort	Shirley Sicilian

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\* This session was canceled by order of the Uniformity Committee Chair.

## **II. Public Comment Period**

No public comment was received at this time.

## **III. Approval of Minutes.**

Richard Cram, KS moved to adopt the minutes from the July 2009 meetings. The motion carried.

## **IV. Executive Director's Report**

Joe Huddleston, MTC Executive Director, said that the Commission was very active in several areas last fiscal year, and will continue to be active in the coming year. The Commission's core functions remain the same. Mr. Huddleston particularly focused his remarks on the Legal Division activities and its participation in litigation on behalf of the states.

The MTC Joint Audit program had a record year in assessments for last fiscal year and is set for another record this year. The National Nexus Program, within the first three months of this fiscal year set a record for remittances from voluntary disclosures. The nature of the nexus program is that sometimes big dollars are involved, but not always. Equally important is the registration of these businesses in the states. What the MTC brings to the table is multistate compliance. Most of the funds were focused entirely on voluntary disclosure, wherein each state negotiates the term of the agreement.

## **V. Report of the Sales and Use Tax Subcommittee**

Richard Cram, KS said that the sales and use tax subcommittee continued its work on the centralized telecommunications transaction tax project, and gave the drafting group feedback on which items in the policy checklist on which to focus.

Regarding the 1988 guideline for the taxation of computer software uniformity recommendation, those state representatives present at the meeting voted to repeal the guideline.

Ted Spangler, ID, said that the process is for the subcommittee to make a recommendation to the full committee concerning a uniformity proposal. The subcommittee has recommended to the full committee that the existing 1988 guideline on the transactional taxation of computer software be repealed. Ben Miller, CA moved to repeal the uniformity recommendation. The motion carried with 11 members in favor, none opposed, and none abstaining.

## **VI. Report of the Income and Franchise Tax Subcommittee**

Wood Miller, MO said there was no report because the subcommittee meeting had not yet been held. If there is no final action on any topic to report after the subcommittee meeting is held, he will forego giving a report.

## **VII. Roundtable Discussion**

Committee members reported on legislative and other activities in their respective states.

## **VIII. Adjourn**



**MINUTES**  
**Income & Franchise Tax Uniformity Subcommittee Meeting**  
**Perdido Beach Resort**  
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**Orange Beach, Alabama 36561**

*Tuesday, December 1, 2009*  
*2:00 PM—5:00 PM*

*Wednesday, December 2, 2009*  
*8:30 AM—4:30 PM*

**I. Welcome and Introductions**

The following participated either in person or by phone:

<b>Name</b>	<b>Affiliation</b>	<b>Name</b>	<b>Affiliation</b>
Wood Miller, Chair	MO	Eric Smith	OR
Ted Spangler	ID	Debra Buchanan	OR
Richard Cram	KS	Lennie Collins	NC
Michael Fatale	MA	Jennifer Hays	KY
Ben Miller	CA-FTB	Craig Griffith	WV
Reva Tisdale	ID	Andrew Glancy	WV
Rebecca Abbo	NM		
Joe Garrett	AL	<b>Private Sector/Other</b>	
Chris Sherlock	AL	Todd Lard	COST
Mike Mason	AL	Helen Hecht	FTA
Cynthia Underwood	AL	Karen Boucher	Deloitte Tax
Curtis Stewart	AL	Jimmy Long	Bradley Arant
Dee Wald	ND	Diann Smith	Sutherland
Frank Hale	UT	Ferdinand Hogroian	PWC
Phillip Horwitz	CO	<b>MTC Staff</b>	
Brenda Gilmer	MT	Joe Huddleston	
Lee Baerlocher	MT	Sheldon Laskin	Roxanne Bland
Derek Bell	MT	Bruce Fort	Shirley Sicilian

**II. Public Comment Period**

There was no public comment at this time.

**III. Reports and Updates**

Roxanne Bland, MTC Counsel, reported on federal issues affecting state taxation, including H.R. 1083, Business Activity Tax Simplification Act of 2009; H.R. 2110, Mobile Workforce State Income Tax and Simplification Act; H.R. 2600, Telecommuter Tax Fairness Act of 2009; H.R. 2303, State Tax Administration Act of 2009; H.R. 1956, Crime Victim Restitution and Court Fee Intercept Act

Bruce Fort, MTC Counsel, reported that the Executive Committee would consider whether to authorize a public hearing on the Uniformity Committee's draft of a proposed amendment to MTC Model Regulation IV.18.

#### **IV. Possible Project for Review of Water's Edge Provision in MTC Model Combined Reporting Statute**

Shirley Sicilian, MTC General Counsel, explained that, in response to requests, the Executive Committee asked the Uniformity Committee to consider whether projects should be initiated to amend any one of the following 3 water's-edge inclusions:

- Entities Doing Business in Tax Havens: The jurisdictions of Isle of Man, Isle of Jersey, and Guernsey requested review of this provision.
- 20% Deductible Income –The Organization for International Investment (OFII) requested review of this provision.
- US Source Income –OFII requested review of this provision.

In July, the Uniformity Committee formed a study group to make a recommendation. Members of the group include Michael Fatale (MA), Brenda Gilmer (MT), and Dee Wald (ND). The study group held three teleconferences in August and September of 2009. The teleconferences included participation from OFII. The study group recommended a project be initiated to review the tax haven provision, but that a project is not necessary on either of the other two provisions. Ms. Sicilian summarized a staff memo dated November 23, 2009 that explained the reasoning behind these recommendations. The Subcommittee then received public comment from Nancy McLernon, President & CEO of the Organization for International Investment and Janice Lucchesi, Vice President of Tax at Akzo Nobel. Both Ms. McLernon and Ms. Lucchesi expressed their support and rationale for an MTC project to reconsider its water's-edge inclusions of "20% deductible income" and "US source income." After further discussion, the Subcommittee voted - 10 in favor with no abstentions or opposition - to initiate a project for review of the Tax Haven provision and not to initiate a project for review of the "20% deductible income" or "US source income" provisions.

#### **V. Project to Amend MTC Model Financial Institutions Apportionment Rule**

Lennie Collins, Chair of the Financial Institutions Work Group, reported the Work Group's progress to the Subcommittee. Mr. Collins explained the Work Group is drafting specific language for amending those provisions where the Subcommittee has given conceptual policy direction. Those provisions are: Merchant Discount, ATM fees, and receipts from the taxpayer's own investment assets and activities and trading assets and activities. The Group is still discussing the proper conceptual approach to recommend for receipts from services (that are not otherwise explicitly sourced under the rule), and receipts from investment and trading assets and activities on behalf of 3<sup>rd</sup>

parties. The Group is also working on recommendations that would clarify sourcing for loan origination fees and debit card fees.

## **VI. Project on Model Withholding Statute**

Ms. Sicilian drew the Subcommittee's attention to a staff memo dated November 20, 2009. She summarized the draft model statute attached to the memo, which is intended to reflect the policy decisions the Subcommittee made using the policy checklist. The Subcommittee proceeded to discuss the model and directed the following changes:

- Reduce the *de minimus* threshold to 20 in-state work days.
- Add a provision stating that the statute applies to other state's residents on a reciprocal basis.
- Change the definition of "day" so that any portion of a day spent in state counts as one day toward the threshold, regardless of whether other states were visited for longer time during the same day.
- Exceptions section:
  - Broaden the exception for professional entertainers to include motion picture actors and actresses.
  - Add an exception for construction workers.
  - Match statute language to FTA model regulation on withholding for professional athletes.
  - Eliminate the exception based on COBRA.
  - Eliminate the exception for individuals making more than \$100,000.

The Subcommittee asked to meet by teleconference before the March meetings in order to continue work on the next draft.

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

Sheldon Laskin, MTC Counsel, said that at the July 2009 meeting, the Subcommittee directed the workgroup to revisit the statute it had drafted. Mr. Laskin said that of the current draft, the only objection was raised by insurance company representatives that imposing tax at pass-through level, may subject them to retaliatory premiums tax. However, Mr. Laskin said that the legal incidence of the tax does not fall on insurance companies; the tax is imposed on the pass-through, not the recipient of the income. The Subcommittee questioned whether the model was an anti-abuse model or a more general rule to ensure that even pass-through income is taxed once rather than not at all. To the extent it's the latter, the "50% ownership" provision should be deleted. The Subcommittee suggested the "trade or business" language could be deleted. And the Subcommittee indicated the rule should not cover non-profits. Ms. Sicilian said that members from the insurance industry have indicated that they may wish to address the Subcommittee either in March 2010 or by teleconference.

## **VIII. Project on Model Captive REIT Add-Back Statute**

Bruce Fort, MTC Counsel, presented the memorandum and draft statute to the Subcommittee. Regarding the simple language, he said that because the pool of taxpayers is so small, the workgroup thought it better to leave the more complex language to the rules for ease of passage in a state legislature. After discussion, the Subcommittee asked

that members review the draft in their home states and bring comments and concerns to the next meeting.

## **IX. Project to Amend Multistate Tax Compact Article IV**

Ms. Sicilian introduced this topic to the Subcommittee, explaining that in July the Executive Committee had directed the Uniformity Committee to develop revisions to Article IV of the Compact, specifically, to the five areas the MTC states had identified as most in need of review. Those five are:

1. Sales factor numerator sourcing for services and intangibles – Art.IV.17
2. Definition of Business Income – Art.IV.1(a)
3. Definition of Sales – Art.IV.1(g)
4. Factor Weighting – Art. IV.9
5. Distortion Relief Provision - Art.IV.18

Further, the Executive Committee directed the Uniformity Committee to come back to the Executive Committee if the Uniformity Committee recommends the scope of issues be changed.

The Subcommittee began the project at this meeting with an educational phase that included presentations from Professor Richard Pomp, Alva P. Loisel Professor of Law, University of Connecticut School of Law; Mr. Prentiss Wilson, former Ernst & Young National Director of State and Local Tax Practice and Procedure; Professor Michael McIntyre, Professor of Law, Wayne State University Law School; and Professor Charles McClure, Herbert Hoover Business School, Stanford University. The Subcommittee members had several questions for the presenters. After further discussion, Ms. Sicilian noted that an on-line document library for the project will be created and these presentations will be posted there.

The Subcommittee decided it would address each of these provisions in turn, starting with Article IV.17., sales factor numerator sourcing for services and intangibles. The Subcommittee requested Ms. Sicilian prepare a memorandum for its next discussion and include the exact wording of the Executive Committee's charge. Ms. Sicilian said she would put together a section 17 policy checklist and gather a group of volunteers to draft amendments in accordance with the answers the Subcommittee eventually gives to the policy checklist. Ms. Sicilian noted that the MTC member states survey conducted for our participation in the ULC effort indicated 100% agreement that a list of policy guidelines should be developed. Ms. Sicilian will include the list of policy guidelines that MTC proposed to ULC, with some suggested changes, for the Subcommittee to consider at its next meeting.

## **X. New Business**

There was no new business.

## **XI. Adjourn**



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**Sales & Use Tax Uniformity Subcommittee Meeting**  
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*Tuesday, December 1, 2009*  
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**I. Welcome and Introductions**

The following participated either in person or by phone:

<b>Name</b>	<b>Affiliation</b>	<b>Name</b>	<b>Affiliation</b>
Richard Cram, Chair	KS	Jennifer Hays	KY
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Michael Fatale	MA		
Lennie Collins	NC	<b>Private Sector/Other</b>	
Reva Tisdale	ID	Karen Nakamura	PWC
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Dee Wald	ND	Joe Huddleston	
Frank Hale	UT	Sheldon Laskin	Roxanne Bland
Phillip Horwitz	CO	Bruce Fort	Shirley Sicilian

**II. Public Comment Period**

No public comment was received at this time.

**III. Reports and Updates**

Roxanne Bland, MTC Counsel, reported on Executive Committee action regarding the Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries. Ms. Bland then reported on federal issues affecting state taxation, including Streamlined Sales Tax Legislation; H.R. 1521, Cell Phone Tax Fairness Act of 2009; H.R. 1019, State

Video Tax Fairness Act of 2009; S. 43, H.R. 1560, Permanent Internet Tax Freedom Act of 2009.

#### **IV. Telecommunications Transactions Tax Centralized Administration Project**

Ms. Bland briefly described the status of the project and summarized the policy checklist provided to the Subcommittee. The Subcommittee determined that it should continue work on draft model language for state level registration, state level administration and leaving audit procedures and uniform rules and remittances as placeholders pending further research. Other practical considerations, such as segregation of funds and distribution of taxes, should be included in an appendix containing specific state examples.

#### **V. Update of MTC Model Sales & Use Tax Statutes and Regulations**

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

Ms. Bland drew the Subcommittee's attention to a staff memorandum dated November 20, 2009. She described the existing model and compared it to the provisions of the Streamline Sales and Use Tax Agreement that address the same transactions. Ms. Bland explained that the MTC model is outdated, and that only Texas had adopted the MTC model but that it has since repealed it. Ms. Bland laid out some of the choices for the Subcommittee:

1. Leave the model as is.
2. Initiate a project to amend the model by updating it and offering it as an additional model for non-SST states to consider.
3. Repeal the MTC model as outdated and inconsistent with the SST version of the definitions. Do not initiate a project to draft alternative language. Do not substitute SST language.
4. Recommend repeal the MTC recommendation and adopt the SSUTA version of the definitions.

After discussion, the Subcommittee voted to repeal the model and not replace it at this time, with 9 in favor and none opposed or abstaining.

#### **VI. New Business**

There was no new business.

#### **VII. Adjourn**