MINUTES
Income & Franchise Tax Uniformity Subcommittee Meeting
Via Teleconference

Wednesday, February 17, 2010
2:00 – 3:30 Eastern Time

I. Welcome and Introductions

Wood Miller, Chair of the Income & Franchise Tax Uniformity Subcommittee, called the teleconference to order at 2:00 p.m. Eastern Time. The following participated:

Name	Affiliation	Name	Affiliation
Wood Miller, Chair	MO	Mary Loftsgard	ND
Ted Spangler	ID	Eric Smith	OR
Michael Fatale	MA		
Andrew Black	CT	**Private Sector/Other**	
Jan Brinkman	NH	Diann Smith	Sutherland
Chuck Redfern	NH	Richard Call	Sutherland
Frank Hale	UT	Dan DeJong	TEI
Rebecca Abbo	NM	Brian Meister	PWC
Dan Armer	NM	Todd Lard	COST
Brenda Gilmer	MT	Dave Clark	ABA
Ben Miller	CA-FTB		
Melissa Potter	CA-FTB		
Chris Coffman	WA	**MTC Staff**	
Reese Cunningham	OR AG	Sheldon Laskin	Bruce Fort
Joe Ellis	AR	Shirley Sicilian	Elliott Dubin
Danny Walker	AR		
David Alexander	AR		

II. Public Comment Period

No public comment was given at this time.

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

Sheldon Laskin, MTC Counsel, reported on the status of the project. Industry representatives had hoped to be able to make a presentation to the Subcommittee in

Denver. Unfortunately, they are unable to send a representative, but they have indicated they would like to send written comments. The staff will include these comments with the meeting materials as soon as they're received. For various reasons, not the least of which was the record snow storm that blanketed the DC area, the work group has not been able to meet, but a discussion draft with amendments that incorporates the December Subcommittee direction and some suggestions by Michael Fatale will be circulated to the group.

The Chair asked if there was any public comment on the report and there was none.

The Chair asked if the next draft will be ready for the March meetings. Mr. Laskin replied that the next draft will be available to the Subcommittee by Friday and that any Industry comments will be posted on the web site or distributed at the meeting as soon as the MTC receives them.

Chair asked if there was any committee discussion on the report and there was none.

IV. Compact Article IV Amendments.

Shirley Sicilian, MTC General Counsel, reviewed the subcommittee's progress to date in answering the foundational questions addressed in the January 12, 2010 memorandum addressed to the subcommittee. Ms. Sicilian explained that only two policy questions remain for the Subcommittee to answer. These are: (1) how to source receipts from the sale of services, and (2) whether to include a throwback (or throwout) rule. Once these policy questions are answered, the drafting group can begin its work and, optimistically, it has scheduled a meeting for the next day. The Chair asked for public comment and received none at this time.

A lengthy discussion was held as to how services should be sourced, with reference to statutory language that would source services to (1) where the service is used, (2) where the benefits are received, (3) where the service is delivered, or (4) the location to or for which the service is provided. The subcommittee favored using one of the last two options and, because it felt these two were nearly identical, it asked the drafting committee to provide a first draft with whichever it felt was best from a drafting perspective. The subcommittee also directed the drafters to include a cascade of sourcing rules for situations where the location could not be determined using the primary rule. In those instances, the subcommittee agreed that the location of the customer's office from which the order was placed, and then billing address, should be used for the first draft. The subcommittee indicated it may re-order the options after seeing the first draft.

The subcommittee discussed situations where services or intangibles are intended for use by the taxpayer's "customer's customer." Is the taxpayer's market better reflected by the location of the taxpayer's customer or by the location of the taxpayer's customer's customer in those situations? Michael Fatale noted that Massachusetts categorizes intangible property as either "market" intangibles, such as trademarks, or "production" intangibles, such as patents. Income from the licensing of the former is sourced to ultimate consumer, while production intangibles are sourced to the licensee's commercial domicile. Eric Smith asked if taxpayers have difficulty determining the customer's customer's location. Ms. Sicilian asked if nexus problems would be more likely to arise if receipts were sourced to the customer's customer's location.

The subcommittee agreed that a throw-out or throw-back rule would be a necessity for sourcing services and income from intangible property given the uncertainties of sourcing and problems with nexus. Elliott Dubin suggested that from an economic standpoint, a throw-out rule is more neutral than a throw-back rule. Other committee members stated a preference for a throw-out rule since it avoids the necessity of determining the state to which such sales should be thrown-back; which, unlike sales of tangible personal property, may not be a straightforward answer. The subcommittee asked the drafting committee to use a throw-out rule for the first draft.

The subcommittee then considered merging Section 16 (sales of tangible property) with Section 17 (all other sale or lease transactions). The subcommittee discussed the practical considerations for such a merger, and determined this was more of a technical drafting issue for the drafting group, rather than a substantive policy choice.

The Chair asked if there was any further business before the committee and heard none.

V. Adjourn.

The meeting was adjourned at 3:30 p.m. Eastern Time.