MINUTES
Income & Franchise Tax Uniformity Subcommittee Meeting
Via Teleconference

Friday, January 22, 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	MO	Richard Cram	KS
Diane Lubring	MO	Andrew Glancy	WV
Eli Krauss	WI		
Jennifer Hays	KY	**Private Sector/Other**	
Eric Smith, Janielle Lipscomb, and Associates	OR	Joe Crosby Todd Lard	COST
Danny Walker, Tom Akers	AR	Diann Smith Steve Kranz	Sutherland
Mary Loftsgard	ND	Jamie Fenwick	Time Warner Cable
Gary Johnson	TX	Scott Mezistrano	Am. Payroll Assoc.
Ted Spangler, Reva Tisdale	ID	Ethan Millar	Alston + Bird
Kim Ferrell	UT	Terry Fredericks	Sprint
Lee Baerlocher, Brian Staley	MT	Dan DeJong	TEI
Dan Armer	NM	Ferdinand Hegroyan	PWC
Melissa Potter Bruce Langston	CA-FTB	Steve Beroti	PCI?
Chris Coffman	WA	Helen Hecht	FTA
Stewart Binke	MI	**MTC Staff**	
Michael Fatale	MA	Sheldon Laskin, Bruce Fort, Shirley Sicilian, Ken Beier, Greg Matson	

II. Public Comment Period

No public comment was provided at this time.

III.A. Model Mobile Workforce Withholding Statute

Shirley Sicilian, MTC General Counsel, updated the committee referencing a staff memorandum of January 12, 2010 and a draft model dated January 5, 2010. Ms. Sicilian explained the amendments to the draft that the Subcommittee asked for at its December meeting, including changes to reflect a threshold of 20 work days in the state rather than 30, add a provision requiring reciprocity among the states, count any (non-travel) part of a day spent in the state as a "day" regardless of whether time is also spent in another state, eliminate "high wage" exceptions based on $100,000 and COBRA, add exceptions for movie actors/actresses and construction workers. Ms. Sicilian also mentioned changes suggested by Subcommittee members since the draft had been circulated, including a reciprocity allowance for states that do not impose an individual income tax and grammar corrections to section 2 of the withholding tax provision. In addition, Ms. Sicilian noted that a concern had arisen regarding the Subcommittee's decision (the first question of the policy checklist) to craft a de minimus provision for both withholding and individual income tax, rather than just withholding.

The floor was then opened for public comment. A representative from the Council on State Taxation expressed three concerns to the subcommittee. First, that the 20 day threshold for withholding is too low. Second, that any exception based on dollars is unworkable, as the employer could often not tell at the beginning of the tax year whether the employee's wages will exceed that threshold. The representative recommended deleting Section 2(e)(IRS definition of a "highly-compensated employee") and retaining only Section 2(f) (person identified in IRS reporting as a "key employee"), as 2(f) deals with a discrete group of high-wage individuals. Third, the representative recommended changing "prior to the current tax year" in 2(f) to "for the year immediately preceding…." In addition, the representative urged the Subcommittee to maintain the model's focus on both withholding and individual income tax. Industry believes that a statute that only addressed only withholding would leave individuals with burdensome filing responsibilities and be unworkable. The representative also questioned whether an exception for construction would exclude low wage individuals and asked whether the issue that prompted that addition could be addressed another way.

A lengthy discussion was held on the question of whether the statute should establish a de minimus standard for individual filing/liability requirements as well as employee withholding. The Subcommittee reiterated its original policy choice. The subcommittee also discussed whether the model statute is written so that it could be implemented as a regulation. After some discussion it was agreed the model is written in a way that would allow for implementation as a statute or regulation.

The subcommittee instructed staff to add a reciprocity allowance for states that do not impose an individual income tax and make the grammar corrections to section 2 of the withholding tax provision.

III.B. Project to Amend Multistate Tax Compact Article IV.

Ms. Sicilian began the discussion with a recap of the project status. She noted the educational session held on December 2, 2009 in Orange Beach, Alabama and the creation of an on-line library for project documents. Ms. Sicilian drew the Subcommittee's attention to a January 12, 2010 staff memorandum setting forth the

project's history and a plan for undertaking review, beginning with Section 17 of Article IV, the sourcing of the sales factor as it relates to the sales of services and intangibles.

The floor was then opened for public comments. Diann Smith, representing a coalition of companies concerned with Article IV amendments, asked what the governing procedures to amend the Compact are. She suggested that this issue must be resolved first before the subcommittee proceeds further with the project. Ms. Sicilian responded that the nature and scale of the substantive recommendations made with respect to Article IV might affect the process used to implement those changes. But at any rate, the format and procedural track for the recommendations would be determined by the executive committee, not the uniformity committee.

Ms. Smith further suggested that any substantive recommendations for amending the Compact should be guided by how the proposed amendments further one or more of the purposes of the Compact and general tax policy principles. Ms. Sicilian noted that the May 2008 survey of MTC member states showed states in agreement (100% of respondents) that policy guidelines should be adopted and that the Subcommittee determined at its December meeting that staff should provide the guidelines that were attached to that survey to the Subcommittee for review in March, with any necessary clean-up recommendations.

The subcommittee then turned its attention to the first two foundational questions laid out in the January 12, 2010 memorandum, specifically, whether the purpose of the sales factor should be to reflect to contributions of the market states in generating income, and second, whether the current standards of "income-producing activity" measured by "cost of performance" reflected the market.

The subcommittee expressed a consensus that the sales factor should reflect the contributions of the market to a taxpayer's income. The subcommittee voted to instruct the drafting committee to use a market-based standard. The subcommittee then took up the question of whether the current Section 17 reflected the marketplace's contributions. The Subcommittee noted that because the current section 17's focuses on "cost of performance" it tends to reflect the location of property and payroll, which tends to duplicate the property and payroll factors and reflect the production states rather than the market states. Many comments were made about specific incidences where Section 17 did not work to reflect the taxpayer's market, including the application of the "all or nothing" rule to interstate services, and the failure to attribute intangibles to the location where the property is used. Following some discussion of other models for sourcing services and intangibles in other states, the subcommittee decided that current Section 17 did not adequately and consistently reflect the contributions of the marketplace in sourcing income.

The Chair thanked the subcommittee for its efforts to date and noted the next teleconference is scheduled for February 3, 2010.

IV. Adjourn.

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