



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

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| To: | Executive Committee |
| From: | Roxanne Bland, MTC Counsel |
| Date: | November 23, 2010 |
| Subject: | Model Statute on Tax Collection Procedures for Accommodations Intermediaries |

Background

Last spring, the MTC sent a Bylaw 7 survey to affected states concerning the proposed Model Statute on Tax Collection Procedures for Accommodations Intermediaries. The affected member states were identified based on the Compact, and Compact members were identified as affected member states because they may have localities that impose lodging tax even though the state does not. Of the 13 states responding to the survey, 8 said they would consider adopting the recommendation, while 5 indicated they would not. Seven states did not respond.

At its July 2010 meeting, the Executive Committee directed staff to consult with member states regarding the responses (including the non-responses) to the Bylaw 7 survey. It further directed staff to consult with the Streamlined Sales and Use Tax Agreement, as they had taken up the issue last year.

Streamlined Sales Tax Effort

Last year, a small number of streamlined member states formed a working group to look into this issue. The group disbanded without coming to any conclusions. According to Scott Peterson, Executive Director of the Streamlined Sales and Use Tax Agreement, Streamlined has no plans to take this issue up again in the future.

Member States' Responses

To get additional input from MTC member states, staff conducted a survey. The survey questions can be broken down into two types. One set of questions were administrative in nature. The second set of questions was aimed at discerning the concerns states might have with the proposal and its moving forward in the uniformity process. A copy of the survey questions are attached. Eleven states responded to the survey. All indicated that they are affected by the proposed model within the meaning of Bylaw 7.

Administrative. All of the states responding reported that sales and or lodging taxes are imposed at a) the state level, administered by the state, or b) the local level, administered by the local jurisdiction, or c) imposed by the state and/or local level and administered by the state. Six states reported that tax is imposed at the retail rate (total room charge). Two of these six states reported that this position is being challenged in court. The remaining six states reported that they impose tax on the wholesale rate (discount room charge).

Concerns Over the Model as Drafted. Three states highlighted enforcement issues due to the lack of nexus over the accommodations provider. Two states cited the lack of a requirement to disclose the amount of tax to the customer, the amount of the intermediaries' markup, or the discount room charge. One state noted that in states where the local jurisdictions have differing views on taxing the margin, it could be difficult to amend the state laws authorizing the local taxes in a way to produce consistency across the state. One state indicated that the proposal was contrary to current state law. One state indicated that it does not believe the proposal appropriate "because each state has its own definition of a retail sale of lodging and who must collect the retail sales tax." The remaining states indicated they had no concerns.

Concerns Over Moving the Proposal Forward. Three states had reservations about moving the proposal forward. One of those three would like to see the disclosure issue resolved first. The second believes that moving forward would send a message that the MTC supports the claim that the intermediaries are selling lodging subject to retail sales tax, which could lead to litigation in that state. The third state asked whether the Uniformity Committee had explored all possible avenues to recommend administrative processes and procedures, noting that the dual system of responsibility is a new concept. It further asked whether the Committee had received sufficient input from local government officials that collect and administer the lodging taxes.

The remaining states indicated no concern with moving the proposal forward. One state indicated that the importance of this issue justifies moving forward in the interests of uniformity, and that the MTC proposal could be offered as an alternative to federal legislation.



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To: Compact Member States and Alternates
From: Roxanne Bland, Counsel
Date: November 1, 2010
Subject: Accommodations Intermediaries: Affected Member States Survey

The purpose of this survey by the Uniformity Committee is to get a better understanding for state concerns related to the MTC's draft model for administration of transient accommodations taxes that are collected by Accommodations Intermediaries. The results of this survey will be presented to the MTC Executive Committee at its meeting on December 9, 2010. **We ask that you complete and return the survey to Roxanne Bland at rbland@mtc.gov by November 15, 2010.**

Description of the Model

In 2004, the Uniformity Committee began a project in response to the then-emerging issue regarding lodging tax¹ collection responsibilities of Internet Accommodations Intermediaries, sometimes called online travel companies, who sell accommodations to the general public for accommodations providers.

The proposed model statute employs a “dual track” method of collecting and remitting tax. The intermediary collects tax on 100% of the retail price it charges to its customer, including any amounts it considers fees for its services, sometimes referred to as a markup on the lower discount price the intermediary pays the accommodations provider for the room (e.g., a hotel). It then remits the tax due on the discount rate portion of the price to the provider, which in turn remits it to the appropriate taxing agency, and remits the tax due on the markup between the discount rate and the retail price to the appropriate taxing agency. The intermediary is not required to state the amount of the markup, the discount room rate, or the total amount of tax either collected from the customer or paid to the provider.

The model also contains safe harbors for intermediaries and providers. Intermediaries are protected from liability on the basis of collecting tax on the total room charge at an

¹ Taxes imposed on or measured by the price of the various types of accommodations go by many different names in the states and localities. Therefore this survey will refer to such taxes as “lodging” taxes.

incorrect rate if the rate is identical to the rate paid to the provider on the discount room charge. Providers are protected from liability on the basis of an incorrect amount remitted by the intermediary on the markup.

The model addresses only lodging taxes and not sales taxes. Some states and localities impose lodging tax on the wholesale rate (discount room charge), while others impose tax on the retail rate (total room charge). This model provides a mechanism for the collection and remittance of lodging tax by Accommodations Intermediaries for those states and localities within those states that impose the tax on the retail price of accommodations. The model is not an imposition statute.

Streamlined Sales Tax Effort

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Bylaw 7 Survey

Last spring, the MTC sent a Bylaw 7 survey to affected states concerning the proposed Accommodations Intermediaries uniformity recommendation. The affected member states were identified based on the Compact. An affected member state within the meaning of Bylaw 7 is a state whose existing laws or regulations would be impacted if the model statute or regulation is adopted in that state. For example, with regard to a model general sales tax statute, Alaska, Montana and Oregon would not be affected member states because none of them impose a sales tax. Staff identified all Compact members as affected member states because they may have localities that impose lodging taxes, even if the state does not.

The Bylaw 7 survey asked whether affected member states could consider adoption of the proposed model statute, and whether member states consider themselves potentially affected by the proposed model. Of the 13 states that responded to the survey, 8 said they would consider the adopting the recommendation, 5 indicated they would not. Seven states did not respond. At its July 2010 meeting, the Executive Committee directed staff to consult with member states regarding the responses (including the non-responses) to the Bylaw 7 survey.

We would appreciate your responses to the following survey. **Please return the survey with your responses to Roxanne Bland at rbland@mtc.gov by November 15, 2010.**

1. How are lodging taxes imposed and administered in your state? For example, are such taxes only imposed and administered at the state level? Are they only imposed and administered at the local level? If other, please explain.

2. For each type of state or local lodging tax identified in Question 1, please indicate whether the tax is imposed on the retail price (total room charge) or on the wholesale price (discount room charge) of transient accommodations.

3. Is this issue currently subject to challenge in your state? In your localities? If so, what is the position that your state or localities are taking? If there are any challenges pending, at what stage are the proceedings?

4. Do you believe your state is an affected member state for purposes of this model statute within the meaning of Bylaw 7 as defined above? If not, please explain.

5. What concerns, if any, do you have about the proposed model statute as drafted? Please explain.

6. What concerns, if any, do you have in moving the proposed model statute forward through the MTC's uniformity process at this time? Please explain.

7. What other concerns, if any, do you have?