



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Minutes

**Full Uniformity Committee Meeting
Hood River Resort, Hood River, Oregon
July 26, 2010**

I. Welcome and Introductions

The following persons attended the meeting.

Name	Affiliation	Name	Affiliation
Ben Miller	CA FTB	Marilyn Harbur	
Phil Horwitz	CO DOR	Melisse Cunningham	OR DOR
Anita DeGumbia	GA DOR	Darren Weirnick	
Randy Tilley	ID DOR	Frank Hales	UT DOR
Richard Cram	KS DOR	Chris Coffman	WA DOR
Michael Fatale	MA DOR	Jason Pizatella	WV DOR
George Hoyum	MN DOR	Private Sector	
Keith Getschel	MN DOR	Karen Boucher	Deloitte Tax
Wood Miller (Chair)	MO DOR	Damian Hunt	Expedia
Eugene Walborn		John Allan	Jones Day
Brenda Gilmer	MT DOR	Steve Kranz	
Lee Baerlocher		Diann Smith	Sutherland
Lennie Collins	NC DOR	Jamie Fenwick	Time Warner Cable
Miles Vosberg		MTC Staff and Consultants	
Mary Loftsgard	ND DOR	Shirley Sicilian	
Ryan Rauschenberger		Elliott Dubin	
Dee Wald		Joe Huddleston	
Rebecca Abbo	NM DOR	Bruce Fort	
Gary Humphrey		Sheldon Laskin	
Eric Smith	OR DOR	Ken Beier	
Janielle Lipscomb			

**II. Approval of the Minutes of March 2-3 2010 Meeting; March 23, 2010 Meeting;
Teleconference Meeting: April 22, 2010; Teleconference Meeting: May 13, 2010;
Teleconference Meeting: June 21, 2010; Teleconference Meeting: June 22, 2010**

The minutes of the May 13, 2010 were amended to note that the Full Uniformity Committee voted to send the Captive REIT Project to the Executive Committee. The minutes of the previous meetings were approved as amended.

III. Public Comment Period

There was no comment from the general public at this time. Joe Huddleston, MTC Executive Director informed the Committee members that the Fall meetings will be held in Atlanta, GA December 7th – December 9th.

Sale and Use Tax Segment

IV. Reports and Possible Action

Richard Cram, chair of the Sales/Use Tax Subcommittee, informed the members of the Committee that the subcommittee asked the drafting group for further work on the Telecommunications Transactions Tax Centralized Administration Project. He reported that Montana had some concerns with the draft as presented. Mr. Cram also reported that the Subcommittee had made progress on the Model Sales and Use Tax Notice and Reporting Statute and had asked the drafting group for further changes.

Income/Franchise Tax Segment

V. Reports and Possible Action

Wood Miller, Chair of the Income/Franchise Tax Subcommittee, informed the members of the Committee that the subcommittee heard reports on the project of income earned by non-corporate income taxpayers derived from ownership interest in a partnership or LLC; and on the project to amend Article IV of the Multistate Tax Compact. Also, Mr. Wood informed the members of the Committee that during discussion of the Model Withholding Statute members were shown Montana's EXCEL spreadsheet calculator that would allow employees who work away from their regular state of employment or residence whether they have income tax liability in the states in which they work. Mr. Miller requested that the Committee ask the Executive Committee to direct staff to work to produce a website calculator to enable mobile employees to determine whether they have obligations to file income tax returns in the states in which they worked during the year.

VI. New Business

No new business was proposed.

VII. Adjournment



MULTISTATE TAX COMMISSION

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Minutes

**Income and Franchise Tax Uniformity Subcommittee Meeting
Hood River Resort, Hood River, Oregon
July 25-26, 2010**

I. Welcome and Introductions

The following persons attended the meeting.

Name	Affiliation	Name	Affiliation
Robynn Wilson	AK DOR	Eric Smith	OR DOR
Michael Mason	AL DOR	Debra Buchanan	
Joe Garrett	CA FTB	Janielle Lipscomb	
Ben Miller	CO DOR	Jason Barber	
Roxy Huber	CO DOR	Jeff Henderson	UT DOR
Phil Horwitz	GA DOR	Frank Hales	WA DOR
Anita DeGumbia	ID DOR	Chris Coffman	
Randy Tilley	KS DOR	Private Sector	
Richard Cram	MA DOR	Deborah Bierbaum	AT&T
Michael Fatale	MN DOR	Ferdinand Hargroian	PwC
George Hoyun	MO DOR	Diann L. Smith	Sutherland, Asbill
Keith Getschel	MT DOR	Steve Kranz	
Wood Miller	NC DOR	Nicola White	Tax Analysts Verizon Time Warner Wal -Mart COST Deloitte Tax Expedia Jones Day UCONN ACLI
Eugene Walborn	ND DOR	David Mielke	
Brenda Gilmer		Jamie Fenwick	
Dan Bucks		Greg Potts	
Lee Baerlocher		Todd Lard	
Lennie Collins		Karen Boucher	
Myles Vosberg		Damian Hunt	
Mary Loftsgard		John Allan	
		Rick Pomp	
		Walter Walsh	
		Tracy Williams	
Ryan Rauschenberger		MTC Staff	
Dee Wald		Joe Huddleston	Shirley Sicilian Sheldon Laskin Cathy Felix
Rebecca Abbo	NM DOR	Elliott Dubin	
Marilyn Harbur	OR DOR	Jeff Silver	
Melise Cunningham		Bruce Fort	
Gary Humphrey			

II. Public Comment Period

There was no public comment at this time.

III. Reports and Updates

A. *Federal Issues*: Roxanne Bland, MTC Counsel, Reported that no actions in this session of Congress, with the exception of a Streamlined Sales Tax bill.

B. *Report on Commission Action on Uniformity Projects*

1. Project to Amend MTC Model Regulation IV. 18

Bruce Fort, MTC Counsel, informed the subcommittee members that a majority of affected states had indicated they would consider adoption of this model statute pursuant to MTC Bylaw 7, and the proposed amendment to the regulation would be taken up by the Commission the following day.

2. Model Captive REIT Addback Statute

Mr. Fort informed the subcommittee members that the Executive Committee had approved this model regulation for a public hearing; and, as of now, no further action.

3. Model Withholding Statute

Ms. Sicilian, MTC General Counsel, informed the Subcommittee that this project was sent back to the Uniformity Committee after the public hearing for further consideration. The model statute required withholding if a non-resident employee worked in the state for more than 20 days. If the employee worked in the state for fewer than 20 days and had no other income that could be sourced to the state, there would be no filing requirement and no withholding.

COST wanted to increase the threshold from 20 days to 30 days. MA wanted a clarification of the term: “key employee.” MT was concerned about the complexity – the ruling can cause inconsistency of treatment of residents and non-residents. The Hearing Officer recommended changes based on these comments, which were adopted by the Executive Committee. Dan Bucks, MT Director of Revenue, said that his materials would be distributed later in the day.

IV. Project Regarding Income Earned by a Non-Corporate Income Tax Payer Derived from Ownership Interest

Tracy Williams made a presentation to the members of the subcommittee explaining that the proposed model regulation would increase the tax liabilities of insurance companies. Walter Walsh, a consultant to the insurance industry informed the members of the subcommittee that state insurance commissions regulate insurance company investments; and, that the insurance companies do not hold excessive reserves.

Richard Pomp, Professor of Law UCONN, indicated earlier that tax reform commissions generally do not look at insurance company taxation because these companies are already heavily taxed. Other subcommittee

members asked if reinsurance is subject to the premiums taxes and how retaliatory taxes affected insurance company taxation.

Dan Bucks noted that this is a question of taxation of pass-through entities, not a question of taxation of insurance companies.

The Subcommittee did not choose between the two models offered. One person suggested that option 2 be clarified as to what sorts of entities might be considered in the list. For example, this could be done with a “drafters’ note.”

V. Project Amend Multistate Tax Compact Article IV

Shirley Sicilian reminded the subcommittee members that the executive committee has directed the subcommittee to work on five UDITPA provisions:

- apportionment weights – states increasing weight of sales factor
- sales factor treatment for receipts from transactions other than sales of tangible personal property.
- definitions of gross receipts.
- definition of business income
- section 18 clarification for special rules

Following the Subcommittee’s direction, the drafting group has produced 3 versions of a revised subsection 17. The first version is section 17 on a stand alone basis. The second merges section 17 with section 16. The third version shows section 17 on a stand alone basis with “cascading” sourcing rules. The drafting group has also put together additional policy questions for the Subcommittee.

Before the draft is finalized, the Subcommittee could send it to selected industry taxpayers and academics for further input.

Ben Miller (CAFTB) suggested that there should be a “cascade” of methods of sourcing sales of intangible property otherwise there would be a substantial amount of sales that would be disregarded. Michael Fatale (MA DOR) noted that billing addresses were not always helpful when dealing with interrelated businesses. The billing address should be used only if it is fairly reflective of the market.

Following a wide-ranging discussion, the Subcommittee:

1. chose version 1 (section 17 stand-alone, without cascade), though the Subcommittee may reconsider version 2 (section 17 merged with 16) again if it ever makes sense to do so.
2. determined that regulations should include billing address as example of “reasonable approximation.”
3. directed the drafting group to work on options for defining the terms used in the statute. The options do not need to be fully formed regulations. They can be conceptual.
4. directed drafting group to continue work on policy checklist for amendments to definition of gross receipts (sales).

VI. Project to Amend MTC Model Financial Institutions Apportionment Rule

Lennie Collins (NC DOR) reviewed the work of the drafting group for the members of the subcommittee. Mr. Collins informed the members that the drafting group needs the guidance of the subcommittee on Section L – servicing of bank loans and section p – “throwback” vs. “throwout.” Karen Boucher of Deloitte Tax informed the group that loan servicing is frequently provided by non-financial institutions. She then stated that financial institution should be taxed like non-financial institutions that provide loan servicing.

The subcommittee discussed the options for section 3(l). Mr. Horwitz moved to leave the provision as is (and to address any problems as much as possible through section 17 revisions). The subcommittee voted 8 yes and one no.

Regarding options presented for Section 3(m), it was reported that members preferred state alternative (2) by a margin of 7 to 4.

Regarding options on 3(p), the subcommittee determined the section should be left “as is” (consistency with UDITPA).

VII. Project on Model Withholding Statute

A. Presentation of Staff Memorandum and Other Materials

Shirley Sicilian informed the subcommittee members that the Executive Committee adopted the hearing officer’s recommendations and, at the behest of Montana, sent the project back to the Uniformity Committee for further review. Ms. Sicilian went over the draft of the model statute which sets a 20 work-day threshold for individual income tax and withholding requirements.

- The Montana Gambit

Mr. Bucks explained that, under the Montana alternative proposal, like the current proposal, employee withholding would be tied to the number of days that a worker is in the state on behalf of his or her employer, but that there is no reciprocity between his state and states with no income taxes and there is no individual income tax threshold other than the state’s own standard filing threshold. He noted further that such a model plan was necessary because companies could set up temporary employment services in NV to rotate employees in and out of a state every 19 days to avoid the filing requirement threshold. Mr. Bucks suggested the proposal should take into account the aggregate employment levels among related LLC’s. He further noted that tracking the number of days and aggregate wages and reporting by employers is implicit in this model. Mr. Bucks conceded that the greatest part of the burden for complying with this alternative model statute rests on the employees – they need to know the threshold number of days for each state as well as that states income limits on income tax filing.

Ms. Gilmer presented a spreadsheet which, would be on a website that employees could access which informs the employees when they need to file a return in states in which they have worked. The spreadsheet would contain filing income thresholds, and other information that the employees would need. CO moved that the subcommittee recommend to executive committee that it enable the members of the subcommittee to work on the spreadsheet calculator. The vote was 9 yes votes 0 opposed and 2 abstentions. One abstention was later changed to oppose the motion. Mr. Bucks noted

that the Executive Committee must deal with the question of liability if the spreadsheet provides incorrect answers. Mr. Horwitz then suggested that a drafting group assist the subcommittee in further considering the current proposal by listing the issues and options. Mr. Horwitz and Ms. Gilmer volunteered for the drafting group. Ms. Sicilian said she would also invite the members of the prior group, which would include a representative from California.

VIII. Project to Amend Tax Haven Provision in MTC Model Combined Reporting Statute

A. Presentation of Staff Memorandum and GAO Report

Bruce Fort told the subcommittee that the purpose of the project is to amend the MTC model combined reporting statute because it includes a “water’s edge” election that includes entities operating in “tax havens.” The model statute defines “tax havens” with reference to two lists maintained by the Organization for Economic Development and Cooperation (OECD), but that organization no longer maintains such lists. Instead, the OECD has developed new criteria based on compliance with reporting, information exchange, and transparency rules in their banking regulations or tax regulations. The “tax haven” list was compiled in 2000 and the OECD has not updated the list.

Mr. Fort then proceeded to enumerate the problems with the corporate income tax in the international sphere:

- ▶ Income shifting resulting from transfer pricing of intangible property
- ▶ Inconsistent use of “check the box” rules to avoid Subpart F income rules
- ▶ Interest misallocation with foreign tax credits
- ▶ Income shifting from transfer pricing of goods and services

Ben Miller (CA FTB) and Joe Huddleston, Executive Director of MTC, agreed the MTC should not use the original OECD list to define “tax havens” nor should the MTC take it upon itself to define “tax haven.”

IX. New Business

There was no new business

X. Adjourn



MULTISTATE TAX COMMISSION

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Minutes

**Sales & Use Tax Uniformity Subcommittee Meeting
Hood River Resort, Hood River, Oregon
July 26, 2010**

I. Welcome and Introductions

The following persons attended the meeting.

Name	Affiliation	Name	Affiliation
Robynn Wilson	AK DOR	Ryan Rauschenberger	ND DOR
Michael Mason	AL DOR	Dee Wald	
Joe Garrett		Darren Weirnick	OR DOR
Ben Miller	CA FTB	Chris Coffman	WA DOR
Roxy Huber		Private Sector	
Phil Horwitz	CO DOR	Damian Hunt	Expedia
Anita DeGumbia	GA DOR	John Allan	Jones Day
Randy Tilley	ID DOR	Diann L. Smith	Sutherland, Asbill
Richard Cram	KS DOR	Steve Kranz	
Michael Fatale	MA DOR	Jamie Fenwick	Time Warner
George Hoyun		Deborah Bierbaum	AT&T
Keith Getschel	MN DOR	David Mielke	Verizon
Wood Miller	MO DOR	Greg Potts	Wal- Mart
Eugene Walborn		MTC Staff	
Brenda Gilmer	MT DOR	Shirley Sicilian	Roxanne Bland
Lee Baerlocher		Elliott Dubin	Sheldon Laskin
Myles Vosberg	ND DOR	Ken Beier	

II. Public Comment Period

There was no public comment at this time.

III. Reports and Updates

A. Report on Commission Action on Uniformity Projects

1. Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries. Roxanne Bland, MTC Counsel, informed the group that this model

statute had been sent out for a Bylaw 7 survey but did not pass the requirements to move forward in the uniformity process.

2. Uniform Principles Governing State Transactional Taxation of Telecommunication – Vendor and Vendee Versions and Guidelines of Signatory States on Applicability of Sales and/or Use Tax to Sales of Computer Software. Ms. Bland also informed the subcommittee that the proposals to repeal both the Uniform Principles Governing State Transactional Taxation of Telecommunication – Vendor and Vendee Versions and Guidelines of Signatory States on Applicability of Sales and/or Use Tax to Sales of Computer Software passed the requirements of the Bylaw 7 survey and will be put before the full Commission for a vote on adoption.

B. Federal Issues

Ms. Bland informed the subcommittee that no Federal legislation pertaining to state tax issues would pass in the session. H.R. 5660, Main Street Fairness Tax Act (the Streamlined Sales/Use Tax Act bill) was introduced on June 20th. She further added that probably no federal action on state taxes will take place this year.

IV. Telecommunications Transactions Tax Centralized Administration Project

A. Presentation by Industry Representatives

Deborah Bierbaum, AT&T, and Steve Kranz, Sutherland, gave a presentation regarding issues prompting telecommunications tax reform. Telecommunications providers must file an aggregate of 48,000 tax returns in all taxing jurisdictions, three times the number that general business firms must file. They also stated that the H.R. 5660, the Main Street Fairness Act, would apply to telecommunications taxes as well as to the general sales tax.

B. Review of the Draft Model Statute

The members of the subcommittee were informed that the drafting group focused on Proposal II—local imposition of the taxes but state administration. Under this Proposal, the local governments would set their own rates and determine what types of tax they would impose. Local governments would also uniformly define terms and definitions of services. The proposed model authorizes state tax administrators to adopt rules, as needed to assure an efficient reporting and collection system.

Centralized administration avoids class action lawsuits and addresses the problem of how the taxes collected by a centralized administration would be allocated among the local jurisdictions.

C. Committee Discussion:

Dan Bucks, MT, asked whether this Proposal could be adopted by regulation; or does it require legislative approval because the Proposal represents substantive tax policy. He also noted that current federal law defines “internet access” to include telecommunication services and that the definitions contained in the Proposal may be contrary to federal law. Mr. Bucks raised additional questions about the draft’s definitions, whether some of them, like telecommunications, belong in a draft pertaining to centralized administration. Other subcommittee members expressed a desire to study the additional draft that was handed out at the meeting. The subcommittee decided to hold the draft over to its December meeting.

V. Model Sales and Use Tax Notice and Reporting Statute

A. Review of Staff Memorandum, Draft Model Statute, and Other Materials:

Shirley Sicilian, MTC General Counsel, gave a quick review of the model statute and explained that the model statute is a reporting Act, not a tax Act, and therefore administrative provisions must be included.

B. Public Comment.

Steve Kranz asked whether local governments are included in this model: and, if so, would businesses be required to track local sales? He asked whether Home Rule States could require separated local reports which, in his estimation, would place an undue burden on interstate commerce. Ms. Sicilian responded that the model treats information obtained as confidential taxpayer information, so under most state public information statutes the local jurisdictions would be able to obtain information gathered by the state and would not need to request this information on their own, but that this could be clarified or made more explicit. Dianne Smith, Sutherland, asked how remote sellers who only use TV advertisements would be able to make the required notices to purchasers. Ms. Sicilian responded that the model says notice must be given at the time of transaction and, specifically, on order forms and sales receipts. Even TV advertisers may be able to put appropriate notice on order forms and sales receipts.

C. Committee Discussion

- *Penalty Amounts.* Ms. Sicilian noted that the drafting group included the CO amounts – \$100,000 de minimis in in-state sales and approximately \$6,000,000 in total annual sales – as one option for the Subcommittee’s consideration. These amounts would exempt truly small businesses from the reporting requirements. The amounts could also be left blank in the model for each state’s own determination. The subcommittee determined it would leave the amounts blank for now.
- The Subcommittee directed the drafting group to include explicit language in the model whereby the state would accept other states’ language if the language is reasonably close to the home state’s requirements, in order to avoid problems in situations where the vendor was subject to a reporting rule in more than one state.

- The Subcommittee also directed the drafting group to ensure that the model allows for sharing of the information with local jurisdictions imposing a sales and use tax to be sure that the local jurisdictions don't have to require their own reporting in order to enforce the notice and reporting requirements for local sales and use tax.

VI. New Business

No new business was proposed.

VII. Adjournment

The meeting was adjourned.