



MINUTES
Income and Franchise Tax Uniformity Subcommittee
Telephonic Meeting
Tuesday, November 16, 2010
3:30 pm – 5:00 p.m. EDT

I. Welcome and Introductions:

Chairman Robynn Wilson convened the meeting at 3:30 p.m. EDT and took a roll call of the persons in attendance:

| Name: | Organization: | Name: | Organization: |
|-----------------------------------|----------------------|--|----------------------|
| Benjamin Miller Bruce Langston | California FTA | Gary Humphrey Katie Holly | Oregon DOR |
| Michael Fatale | Massachusetts DOR | Andrew Glancy | West Virginia |
| Lennie Collins | North Carolina DOR | Louie Gomez Rebecca Abbo | New Mexico |
| Stewart Binke | Michigan | Mary Loftsgaard Emily Behr Miles | North Dakota |
| Lilly Crane | Wisconsin DOR | | |
| Lee Berlocher | Montana | Joe Garrett Chris Sherlock Mike Mason | Alabama DOR |
| Richard Cram | Kansas | Rosanne ___ | Kentucky |
| Wood Miller | Missouri DOR | Phil Horwitz | Colorado |
| | | Stewart Binke | Michigan DOR |
| Brenda Gilmer | Montana DOR | | |
| Bill Montoya | Idaho Tax. Comm. | Shirley Sicilian Roxanne Bland Bruce Fort Ken Beier (phone) | MTC |

II. Public Comment Period:

There were no comments from members of the public at this time.

III. Mobile Workforce Model Statute Project:

Chairman Wilson asked Shirley Sicilian, MTC General Counsel, to give some background for the Subcommittee. Ms. Sicilian briefly explained that businesses and their employees face certain administrative challenges when the employees earn wage income in multiple jurisdictions. These challenges caused industry groups to propose federal legislation that would limit state jurisdiction to tax the employees' income. The MTC executive committee initiated this project, and asked that it be expedited, in order to create a state level solution. Ms. Sicilian then summarized the project's procedural history, including the executive committee's request that the Subcommittee give the current proposal, as amended by the Executive Committee, further consideration in light of concerns raised by Montana; and Montana's presentation of an alternative proposal. Ms. Sicilian noted that all public testimony, the hearing officers report, additional comments received from Montana after the hearing, and documents regarding Montana's alternative proposal, were provided to the Subcommittee in July. At that time, a drafting group was formed and asked to make a list summarizing the issues and options for the Subcommittee.

The drafting group consists of Phil Horwitz (CO), Brenda Gilmer (MT), and Bruce Langston (CA –FTB). The list produced by the drafting group is provided in Ms. Sicilian's memo of November 5, 2010. The drafting group listed the options in two categories. The first category deals with whether the model should continue to address both individual income and withholding, be amended to address only withholding, or be amended to provide options for the states to choose one or both. The second category contains possible amendments to enhance compliance.

Chairman Wilson then asked for additional comments from the drafting group. Bruce Langston of California began by noting the subcommittee was presented with two broad options: (a) leaving the statute as it is following the May 24, 2010 recommendations of the executive committee, or (b) changing the model to keep the employer withholding requirements but eliminating the substantive tax provision allowing for a 20 working day exemption for individual liability. Mr. Langston reiterated that the project was intended to head off federal intervention in the area and that the first option presented to the subcommittee by the drafting group was better suited to that goal, as the second option did not address all of Congress' concerns.

Phil Horwitz suggested that the issue of aggregating employee days for related employers could be addressed first. Several committee members expressed their agreement with the idea, since a highly-compensated individual might arrange for multiple employers of record to avoid the statute's intent. Mr. Horwitz then made a motion to incorporate the aggregation concept into the draft with instructions to staff to develop appropriate language. The motion carried unanimously, with no abstentions.

The committee then turned its attention to the proposed requirement of an annual exemption application. Brenda Gilmer of Montana spoke in favor of the exemption application procedure, noting that technology improvements have eliminated many of the reporting burdens on taxpayers, and further noting that employers would already be required to maintain such information under any version of the model statute.

Other members of the committee expressed concern that the withholding exemption filing requirement would make the model statute administratively and politically unpalatable, especially where the states have not committed to a “one-stop shopping” database to help individuals determine if they were subject to tax. Members also expressed concern with Montana’s suggestion that the model statute could be drafted to accommodate a state choice of allowing a 20 day *de minimis* withholding exception or also allowing an exemption for individual liability, suggesting that the option would lead to a lack of uniformity.

Mr. Horwitz then introduced a motion to recommend the May 24, 2010 draft model statute imposing a 20-day *de minimis* rule for both withholding and individual liability, and reject the exemption application idea.

A roll call vote was held on the motion. Ten states voted yes (Alaska, Oregon, Colorado, Idaho, California, North Dakota, Michigan, Massachusetts, Alabama, and North Carolina.), one state voted no (Montana), and one state abstained (New Mexico).

A further discussion was held regarding the exemption from the 20-day *de minimis* rule for “key employees” in Section 2(e) of the draft model statute. Concern was raised that the definition of “key employee” in IRC Section 416(1) may only cover employees of corporations, and may not cover certain highly compensated employees of partnerships, LLCs and other business forms. Mr. Horwitz made a motion to direct staff to determine if Section 2(e) would apply to all employees otherwise meeting the requirements of IRC 416(i), regardless of the form of the employees’ business entity, and to draft appropriate provisions if the current draft would not so apply. That motion passed on voice vote with no objections or abstentions.

IV. Project to Amend Article IV, Section 17 of Multistate Tax Compact:

Chairman Wilson determined that the subcommittee did not have time to take up this issue on this call. She urged states to read the materials presented to them and to confer within their agencies to ensure that progress could be made at the Commission’s meeting scheduled for December 7th and 8th in Atlanta, Georgia.

VI. Adjourn:

Upon motion and unanimous vote, the meeting was adjourned at 5:00 p.m. EDT.