MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Uniformity Committee Meeting
Income/Franchise Tax Subcommittee
Via Teleconference
November 15, 2011
3:30 P.M. – 5:00 P.M. EDT
Minutes of the Meeting

I. Welcome and Introductions

The Chair, Robynn Wilson of Alaska, called the meeting to order at 3:30 P.M. EDT and welcomed the attendees. The following persons attended the meeting by telephone:

Name of Attendee	Affiliation	Name of Attendee	Affiliation
Robynn Wilson	State of Alaska	Wood Miller	State of Missouri
Melissa Potter	St. of California FTB	Michael Fatale	St. of Massachusetts
Gar Humphrey Janielle Lipscomb	State of Oregon	Randy Tilley, Terry Harvey, Ted Spangler	State of Idaho
Richard Cram	State of Kansas	Stewart Binke	State of Michigan
Andrew Glancy	State of West Virginia	Richard Cram	State of Kansas
Phil Horwitz	State of Colorado	Louie Gomez	State of New Mexico
Mary Loftsgard, Dee Wald, Myles Vosberg, and associates	State of North Dakota	Shirley Sicilian, Bruce Fort, Elliott Dubin	Multistate Tax Commission
Brenda Gilmer	State of Montana	Morgan Brickley	COST
Amy Hamilton	State Tax Notes	Dan Schibely	CCH
Jamie Fenwick	Time-Warner Cable	Terry Fredericks	Sprint
Diann Smith	Southerland	Mike Palerimo	Southerland

II. Public Comment Period

There were no public comments at this time.

III. Discussion of Proposed Model Amendments to Multistate tax compact Article IV, Section 9—Weighting of Apportionment Factors

MTC General Counsel Shirley Sicilian summarized her memorandum dated November 4, 2011, covering current factor weightings used by the states, legal and policy considerations for

new factor weighting, and options drafted by the drafting group for factor weighting amendment. She reminded the subcommittee that during its July 2011 meeting in Whitefish, Montana it directed the drafting group to produce 5 options, one of which should allow taxpayers a choice of formulas so long as they file consistently in some percentage. Attachment C to Ms. Sicilian's November 4 memorandum gives those 5 options as drafted by the drafting group:

(a) Recommit to an equal weight three factor formula;
(b) Double-weight the sales factor;
(c) Use a single sales factor formula to reflect the current legislative trend;
(d) Explicitly allow states to choose their own formulas;
(e) Allow taxpayers a choice of formulas so long as they file consistently in some percentage of jurisdictions.

The Chair asked for public comment on the memorandum and the options before the committee. None was received at this time. Ms. Sicilian noted input received by the drafting group from Diann Smith, Sutherland, regarding option (e).

The subcommittee discussed whether it should give weight to the nature of political decisions in addition to, or perhaps at the expense of, choosing what might be the best tax system. Some committee members stressed that too many state options under option (d) would result in under-taxation or over-taxation of income, and may even discriminate against intra-state businesses that would not have the ability to choose favorable apportionment formulas.

A representative from Idaho suggested that double-weighting sales would be a good compromise reflecting the current trend that would also be theoretically sound. MTC economist Elliott Dubin suggested that some economists would favor a 60% weighting of the sales factor because intangibles are not included in the property factor. He also noted states' concern that the formula not discourage job creation by increasing taxes when taxpayers increase property or payroll in the state. The representatives from Colorado and Missouri spoke in favor of option (e), perhaps with some limitations on choice of weighting, commenting that it would allow taxpayers to choose a weighting which best reflects their activities in the various states, while preventing no-where income and thus putting multistate taxpayers on par with in-state only taxpayers.

After a lengthy discussion focusing on both the best theoretical approach and the approach which might find the widest acceptance in state legislatures, the Chair asked for a motion to adopt any of the five potential choices. No motions were made. A subcommittee member expressed a preference for more subcommittee discussion on this subject before voting, since the states still have different opinions and it would be good to try to reach some agreement. The Chair determined to continue the discussion at the next subcommittee meeting in Charleston.

IV. Update on Proposed Model Statue Regarding Pass-Through Income Realized by an Entity That Is Not Subject to Corporate Income Tax.

Ms. Sicilian gave a brief status report on this project following action taken by the Executive Committee at its July 2011 meeting in Whitefish, Montana. After considerable deliberation and comments from various interested parties, the Executive Committee elected to request the Uniformity Committee report on other options and alternatives to address the concerns of states

that income from pass-through entities might escape taxation if the owners of those entities were also exempt form income taxation. It is expected the subcommittee will again solicit the guidance of the National Association of Insurance Commissioners on whether the application of the model statute might affect existing state insurance tax policies and considerations. The Executive Committee suggested that it would be useful for the Uniformity Committee to do a practical analysis of each of the problems associated with entities that are not subject to income tax and where the situation [income earned by a taxpayer that is not subject to income tax] is addressed or not addressed under existing and proposed MTC models.

V. New Business

There was no new business.

VI. Adjournment

The meeting was adjourned at 5:00 p.m. EDT.