



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

**Uniformity Committee Meeting
 Sales and Use Tax Subcommittee
 Charleston, South Carolina
 November 29, 2011
 Minutes of the Meeting**

I. Welcome and Introductions.

The Chair, Richard Cram, called the meeting to order at 8:30 A.M. and welcomed the attendees at the conference and on the phone. The following persons attended in person or via telephone:

Name of Attendee	Affiliation	Name of Attendee	Affiliation
Richard Cram	Kansas	Frank O'Connell	Georgia
Jack Mansun	Minnesota	Cory Fong Miles Vosberg Matt Pereyl Donnita Wald Ryan Rauschenberger	North Dakota
Joe Garrett Michael Mason Julie McGee	Alabama	Stewart Binke	Michigan
Ben Miller	California FTB	Tim Donovan Jim Etter	South Carolina
Craig Griffith	West Virginia	Nancy Prosser	Texas
Jennifer Hays	Kentucky Legis.	Glenn White	Michigan
Gary Humphrey	Oregon	Phil Horwitz	Colorado
Mike Fatale	Massachusetts	John Allan	Jones Day
Lennie Collins	North Carolina	Karen Boucher	Deloitte
Rebecca Abbo	New Mexico	Terry Frederick	Sprint
Eric Scheiner	Idaho	Mitchell Bryk	Starwood Hotels
Joe Huddleston Greg Matson Shirley Sicilian Roxanne Bland Bruce Fort	MTC	Brenda Gilmer Gene Walborn Derek Bell	Montana
Wood Miller	Missouri	Melissa Flood	Marriott International
Mike Fannon	Hilton Hotels		

II. Public Comment Period.

There were no public comments at this time.

III. Reports and Updates.

- A. Legislative Report. MTC Counsel Roxanne Bland passed out a two page report dated November 29, 2011 on pending and anticipated federal legislation. The seven items reported on were:
1. S. 543, H.R. 1002: Wireless Tax Fairness Act of 2011. This bill would prohibit higher taxes on mobile telecommunications services, providers and property than is now generally imposed on unrelated businesses for a five year period, referencing the \$R Act as a guideline for interpretation. The bill passed the House on November 1, 2011 and is awaiting action in the Senate.
 2. H.R. 1860: Digital Goods and Services Tax Fairness Act of 2011. Restricts taxation of digital goods and services to the location of the consumer, as determined by billing address provided by the consumer. Hearings held in House committee but no further action expected at this time.
 3. End Discriminatory State Taxes on Automobile Renters. No bill introduced yet. Hearing on topic cancelled.
 4. S 1452, H.R. 2701, Main Street Fairness Act. This bill would implement enforcement and mandatory compliance provisions of the Streamlined Sales Tax Agreement. Introduced on July 25, 2011 in both chambers, no action has been scheduled.
 5. H.R. 3179, Marketplace Equity Act. An alternative to the Main Street Fairness Act, this bill would authorize states to tax remote sellers if their laws are sufficiently streamlined or software is made available to sellers. Introduced in the House in October, 2011. No hearings scheduled yet.
 6. S. 1832, Marketplace Fairness Act. Another alternative to the Main Street Fairness Act. Requires states wishing to tax remote sellers to implement single state level tax and requires states to certify software. Introduced in the senate on November 11, 2011. Although no action has been taken, this bill appears to have broad support in Congress.
 7. H.R. 1804, State Video Tax Fairness Act. The bill would prohibit different tax rates on content providers, e.g., streaming video or satellite services. No action taken yet.
- B. Model Sales and Use Tax Reporting Statute. MTC General Counsel Shirley Sicilian reports that the model statute did not get sufficient “yes” votes in the By-Law Seven survey until after the July Commission Business Meeting agenda was required to be posted. The model has now received enough positive responses and its fate will be considered by the executive Committee on December 1, 2011.

IV. Telecommunications Transactions Tax Centralized Administration Project.

Ms. Bland and Richard Cram jointly outlined the status of this project with reference to Ms. Blands November 1, 2011 memorandum to the subcommittee. The subcommittee

has considered three different models for the states to implement. The first model addresses administration for states that both impose and administer state telecommunications taxes. The second model addresses administration for states in which both the state and local governments impose the tax but only the state administers. The third model addresses administration for states where local governments both impose and administer the tax. Drafts of the latter two models had been reviewed and approved by the subcommittee. Mr. Cram now presents the draft of the first model to the subcommittee, noting that the definition section has been moved to the introductory language for all three models. He also notes that rates and boundary information must be maintained by the state for all three models.

Wood Miller asks a series of questions about the models, and notes that some paragraphs refer to “telecommunications” while others refer to “communications” taxes. Staff explains that all models should use “communications taxes” instead of “telecommunications taxes.”

There are no public comments at this time.

Mr. Miller moves to approve the project with the word “communications” substituted for telecommunications, and to recommend it favorably to the full committee. The motion passes 12-0, with no abstentions.

V. Model Associate Nexus Statute.

Ms. Bland outlined her memo to the subcommittee dated November 18, 2011, which includes legal and policy background on the topic, including a proposed model statute and a series of policy questions about the model indicated by bolded language and footnotes.

Public Comment: none at this time.

The first question concerns whether the statute should include direct or indirect solicitation efforts made by “aggregators”. Aggregators are middle-men who serve as a link between non-profits/small sellers and national merchants, collecting a portion of the associate’s commission for their aggregation services. The subcommittee agreed that the reference to “indirect” solicitation should be kept in the model, but made no decision on whether aggregators should be specifically mentioned in the model.

The subcommittee agreed that the working group should define a “resident” for purposes of application to non-natural persons that may have connections in more than one state.

The subcommittee agreed that the model should include all kinds of remote retailing, such as catalog sales, as some in-state associates operate without websites.

The subcommittee agreed that completed sales, not merely click-throughs or other activities that do not directly translate to gross receipts, should be the appropriate basis

for determining the appropriate measure of associate activity creating nexus, to avoid any implication that mere in-state advertising would create nexus.

The subcommittee agreed that the model statute should not include a single in-state sales threshold for associate nexus sales (e.g., \$10,000), because state market size varies considerably.

The subcommittee disagreed on whether it was appropriate to have a national sales threshold (e.g., \$500,000) in addition to an in-state sales threshold. After considerable discussion, a show of hands indicated that seven subcommittee members felt a national sales threshold was appropriate.

The subcommittee felt that a safe-harbor might be appropriate for allowing a vendor to demonstrate that its associates did not solicit sales, but determined that the details of any safe harbor should be left to regulation.

The subcommittee agreed that it was necessary to include a proviso that the model statute would not diminish other state nexus requirements.

The subcommittee agreed that the model should explicitly provide for prospective application.

The Chair asked for additional volunteers to work on the drafting of the associate nexus statute.

VI. Model Statute on Options for Collection of Accommodations Taxes on Intermediaries.

Nancy Prosser of Texas, appearing via telephone, explained the single-remittance model (Option 1) developed by the drafting group (Richard Cram, Stewart Binke and Ms. Prosser; and staff, Roxanne Bland) following the subcommittee's meeting in July 2011, and further contrasted that model to the dual remittance model (Model 2) included in Ms. Bland's November 18, 2011 memorandum.

The definitions section was amended to make clear that travel agent commissions would not be included in the statute's coverage. Ms. Prosser explained the new safe-harbor provisions and asked for guidance as to whether the safe harbor should include a 30 day or 60 day safe harbor when an incorrect rate is applied due to a rate change. (The subcommittee eventually recommended a 30 day safe-harbor.) The model statute now also includes a "no inference" section that makes clear the model does not impose a tax obligation apart from other statutes.

Finally, the proposal now includes a number of examples of how the two models would function. Stewart Binke of Michigan asked that the subcommittee take note of the considerable help received from the hotel industry in drafting the model.

Public Comment:

Mitchell Bryk and Mike Fannon of Starwood and Hilton Hotels thanked the committee for its efforts in drafting a workable model given that states and localities were already adopting hotel intermediary legislation. Mellissa Flood of Marriott International, appearing via phone, stated her organization believes the two models are workable and appropriate.

John Allan representing Expedia stated that his clients still have strong concerns over the mandatory disclosure of proprietary information necessitated by the two models, and expressed concern over possible double-taxation because his clients would not be eligible for re-sale certificates. Mr. Allen also expressed concern with the difficulty of determining local tax rates. Ms. Prosser responded that the drafting group did not think it was appropriate to address re-sale certificates in this model legislation since state rules are so different on that subject. Other committee members took issue with the suggestion that the intermediaries' final hotel rates are proprietary since they are advertised to the public.

Subcommittee members noted several typographical problems in the draft and noted that the example on page 8 contained an error: s/b: "Intermediary remits \$5.00 tax (5% tax rate x \$80.00 discount room charge= \$4.00 tax) plus... ." Pages 5 and 9: "sale, use or possession..."; Page 9: missing end quotes on "Accommodations provider."

The subcommittee also discussed other concerns with the model, such as whether the definition of a travel agent's commission was too broad, but appeared satisfied that the concerns were properly addressed.

On a motion from Colorado, the subcommittee voted 12-0 to recommend the two models (with corrections) favorably to the full uniformity committee, with no abstentions.

VII. New Business.

None.

VIII. Adjournment.

The chair adjourned the meeting at 12:00 p.m. local time.