



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Uniformity Committee Meeting
Full Uniformity Committee
Amway Grand Plaza
187 Monroe Ave. NW
Grand Rapids, Michigan 49503
Monday, July 30, 2012
1:00 P.M. to 3:00 P.M.
Minutes of the Meeting

I. Welcome and Introductions

The Chair called the meeting to order at 1:00 P.M. and welcomed the attendees. The following persons attended the meeting either in person or by telephone.

Name	State or Affiliation	Name	State or Affiliation
Robynn Wilson	AK	Emily Thompson	ND
Scott Taylor		Dee Wald	
Mike Mason	AL	Demesia Padilla	NM
Christy Vandevender		Rebecca Abbo	
Chris Sherlock		Janielle Lipscomb	
Tom Atchley	AR	Johnny Hay Dean (sp?)	OR
Walter Anger		Gary Humphrey	
Ben Miller	CA FTB	Nancy Prosser	TX
Aaisha Hashmi	DC	Frank Hales	UT
Marshall Stranburg	FL	Russ Brubaker	WA
Heather Ryfa	GA	La Keisha Wright Butler	WI
Howard Beal	HI	Andrew Glancy	WV
Randy Tilley	ID	Private Sector	
Brian Fliflet	IL	Debra Bierbaum	A T & T
Richard Cram	KS	Dan DeJong	TEI
Jennifer Hays	KY	Dara Bernstein	NAREIT
Rob Carter		Diann L Smith	Sutherland
Mike Eschelbach	MI	Fred Nicely	COST
Stewart Binke		Jamie Fenwick	Time Warner Cable
Lynn Boyes		Karen Boucher	Deloitte Tax
Kathy Debien		Nora Macaluso	BNA
Christopher Potts		Jeff Friedman	Sutherland
Lance Wilkinson		Sandra Potter	CCH
Erin Haney		Terry Frederick	Sprint

Name	State or Affiliation	Name	State or Affiliation
Wood Miller	MO	Todd Lard	COST
Eugene Walborn	MT	MTC Staff	
Lee Baerlocher		Elliott Dubin	Joe Huddleston
Lennie Collins	NC	Sheldon Laskin	Ken Beier
Matt Peyerl	ND	Roxanne Bland	Bruce Fort
Myles Vosberg		Tom Shimkin	Shirley Sicilian

II. Approval of Minutes of In-person Meeting, March 7, 2012

Kansas moved that the minutes of the March 7th meeting be accepted. The motion carried unanimously.

III. Public Comment Period

None at this time.

(Income/Franchise Tax Segment)

IV. Reports and Possible Action

Robynn Wilson (AK) Chair of the subcommittee presented the subcommittee report. Ms Wilson informed the members of the committee that the project to amend UDITPA, particularly the sections in Article IV, is being held by the Executive Committee pending additional information. She then told the members of the committee that as a result of the Gillette case, CA has withdrawn from the Multistate Tax Compact. Ms. Wilson informed the members of the committee that the project on the taxation of a pass-through entity owned by anon-income tax paying entity will be discussed subsequently.

Ms. Wilson also told the Committee members that a portion of the subcommittee meeting was devoted to learning about improving the process which includes reaching out to groups outside the MTC. Ms. Wilson also told the members that the subcommittee decided to reach out to outside groups prior to taking up a project to enhance states' ability to monitor transfer pricing arrangements.

Wood Miller (MO), committee chair, told the members that they had to vote on the project of pass-through entities owned by non-income tax paying entities before sending the project to the Executive Committee. Ms. Dara Bernstein of NAREIT asked the members to be careful so as not to impose additional taxes on REITs owned by non-income tax paying entities that are exempt from income taxes such as charitable and religious organizations, etc.

Sheldon Laskin, MTC Counsel, gave a brief description of the project. He explained that this project was designed to created tax neutrality between business entities owned by non-income tax paying entities and business entities owned by tax paying entities. For example, the income generated by a REIT owned by an insurance company would not be taxed on its pass-through income, but the income generated by a REIT owned by individuals would be subject to tax. Ms Dara Bernstein, National Association of Real Estate Investment Trusts (NAREIT) presented her

industry's view in that the structure of publicly traded REITs allows for taxability. Furthermore, ownership of a REIT by a non-profit organization should not be treated differently from the income of a REIT owned by a profit-making non-income tax paying entity. The Income/Franchise Tax subcommittee eliminated REIT's from the model statute. MO moved to hold the project until the language can be amended by the subcommittee. The motion passed with 15 affirmative votes; 0 no votes; and, 1 abstention. ND moved that the committee reconsider its action and send this project back the Income/Franchise Tax subcommittee for completion. The vote was: 16 yeas; 0 nays; and, 0 abstentions. After some clarification of the action and expectation of the subcommittee, CO moved to send this project to the Executive Committee as modified (without REITs). The vote was: 15 yeas; 0 opposed; and 3 abstentions.

(Sales/Use Tax Segment)

V. Reports and Possible Action

Richard Cram (KS), chair of the subcommittee gave the subcommittee report. The items discussed by the subcommittee were the Model Associate Nexus Statute; Telecommunication class action lawsuit project; a possible new project on qui tam; and a possible recommendation regarding states consideration of streamlined sourcing and definitions for telecommunications. The subcommittee also discussed taxation of vouchers and "cloud" computing.

A. *Model Associate Nexus Statute*

Mr. Cram told the members that this model statute is based on New York State's click through nexus statute. Advertising by itself would not create nexus for an out-of-state seller. Staff was directed to look for ways to modify CA definition of seller to include non-corporate multistate sellers.

B. *Telecommunication Class Action Lawsuit Project*

There was discussion among the subcommittee members on whether to break this project into two projects. One project would deal strictly with telecom issues and the other project would deal with class action law suits in general. The subcommittee is looking at the ABA model on class action lawsuits.

C. *Streamlined Sales and Use Tax Agreement Projects*

Mr. Cram told the members of the whole committee that Russ Brubaker (WA) and a director of the SSUTA wanted people to join to help work on SSUTA projects such as taxation of vouchers, remote access of software ("cloud" computing), credits for taxes paid to other states.

VI. **Presentation: Cloud Computing** –Harley T. Duncan, Managing Director, KPMG

Mr. Duncan informed the members of the committee that there are no clouds in "cloud computing," only computers, servers and software. Furthermore, the use of "cloud" computing is

growing, because of its flexibility and cost advantages. However, “cloud computing” is growing in both volume and complexity, but it is still a straight forward tax problem. Mr. Duncan said that business is looking to tax administrators for guidance.

From the National Institute of Standards and Technology (NIST) -- Attributes of “Cloud Computing:”

- ✓ On-demand self-service
- ✓ Broad network access
- ✓ Resource pooling and multi-tenancy
- ✓ Rapid elasticity
- ✓ Measured usage

Three Models of “Cloud Computing:”

- ✓ Software as a service only – customer accesses software remotely not on customer’s computer
- ✓ Platform as a service only – customer develops and deploys own software and applications but uses other’s infrastructure
- ✓ Infrastructure as a service – customer uses other’s software, platforms, applications, and storage.

Mr. Duncan explained that some states, New York State, for example, treats “cloud computing” as tangible personal property; some states, OH and TX, for example, view “cloud computing” as data processing services; and SC, for example, treats “cloud computing” as a telecommunications service. Nexus issues exclaimed Mr. Duncan is paramount for sales/use tax purposes. The states that define “cloud computing” as tangible personal property use the location of the customer to source the sale; and, some states require knowledge of the location of the user. Provider issues need to be worked out for income tax purposes.

VII. Roundtable Discussion

The states discussed major items of importance in their states. This year marked a distinct absence of states complaining about budget woes. Alabama stated they had a major 4R case – CSX. Click-through nexus failed in Illinois. Michigan is considering changing the sales factor apportionment weight. CA is no longer a Compact Member as a result of losing the Gillette case. They also have major cases involving leasing of intangible property (Microsoft) and a hedging case (General Mills).

VIII. New Business

No new business was brought up.

IX. Adjournment

KS moved to adjourn. The motion was accepted unanimously.