



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Uniformity Committee Meeting
Sales/Use Tax Subcommittee
Amway Grand Plaza
187 Monroe Ave. NW
Grand Rapids, Michigan 49503
Monday, July 30, 2012
8:30 A.M. to 12:00 P.M.
Minutes of the Meeting

I. Welcome and Introductions

The Chair called the meeting to order at 8:30 A.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
Michael Mason	AL	Gene Walborn	MT
Christy Edwards		Lee Baerlocher	
Craig Banks		Lennie Collins	NC
Christy Vandevender		Myles Vosberg	ND
Tom Atchley	AR	Matt Peyerl	
Walter Anger		Emily Thompson	
Phillip Horwitz	CO	Rebecca Abbo	NM
Aaisha Hashmi	DC	Demesia Padilla	
Marshall Stranburg	FL	Gary Humphrey	OR
Heather Ryfa	GA	Nancy Prosser	TX
Kevin Wakayama	HI	Frank Hales	UT
Edward Beal		Russ Brubaker	WA
Randy Tilley	ID	Private Sector	
Richard Cram	KS	Deborah Bierbaum	A T & T
Jennifer Hays	KY	Nora Macaluso	BNA
Rob Carter		Eric Cook	Chainbridge Consulting
Stewart Binke	MI	Nancy Cook	
Lance Wilkinson		Fred Nicely	COST
Chris Potts		Terry Frederick	Sprint
Kathy Debien		Amy Hamilton	State Tax Notes
Lynn Boyes		Jamie Fenwick	Time Warner Cable
Mike Eschelbach		MTC Staff	
Erin Haney		Harold Jennings	Sheldon Laskin
Leta Pomeranski		Elliott Dubin	Bruce Fort

Name	State or Affiliation	Name	State or Affiliation
Kim Knoll	MI	Shirley Sicilian	Greg Matson
Keith Getschel	MN	Ken Beier	Roxanne Bland
Wood Miller	MO		

II. Public Comment Period

There was no public comment at this time.

III. Approval of Minutes of In-person Meeting March 6, 2012 and Teleconference May 15, 2012

Idaho moved that both sets of minutes be approved as submitted. The motion carried unanimously.

IV. Reports and Updates

A. *Federal Issues Affecting State Taxation*

Roxanne Bland, MTC Counsel, told the members of the subcommittee that Congress would go into recess on August 8th therefore little or no action on bills dealing with state taxation, with the exception of H.R. 3179, Marketplace Equity Act. There was a hearing on H.R. 3179 on July 24th. Ms. Bland noted that there may be some movement on a BATSA bill and on H.R. 4847 a 4R Act type bill for pipelines.

B. *Report on Commission Action on Uniformity Projects*

1. Model Sales and Use Tax Notice and Reporting Statute

Ms. Sicilian informed the subcommittee that The Direct Marketing Association (DMA) filed suit, based on the dormant Commerce Clause of the U.S. Constitution, against CO regarding its reporting requirement statute. Currently there is a permanent injunction against CO enforcement of the statute and the case is before the United States Tenth Circuit Court of Appeals. The MTC Executive Committee is holding this project until the 10th Circuit Court issues its opinion.

2. Communications Transactions Tax Centralized Administration Model Statute

Ms. Bland told the members that this project will be taken up at the Commission Business Meeting on Wednesday, August 1. The three model statutes: (1) complete state administration and imposition; (2) state administration of locally imposed taxes; and (3) local administration of locally imposed taxes will be considered together.

3. Model Statutes on State Options for Collection and Remittance Lodgings Taxes by Accommodations Intermediaries

Ms. Bland told the members of the subcommittee that the Executive Committee authorized a Bylaw 7 survey at its May 10th meeting. Both versions, the dual remittance model (the intermediary remits tax based on the value of its service and the accommodation remits the actual lodgings tax); ns, the single remittance model are now before the Commission {Editors' Note: Both of these Model Statutes were approved by the Commission.}

V. Model Associate Nexus Statute

A. Presentation of Draft Memorandum and Draft Model Statute

Ms. Bland informed the members of the subcommittee that the policy concerns regarding this project were first brought to the attention of the subcommittee at the November 2010 meeting, along with the policy concerns regarding the notice and reporting project. The subcommittee voted to work first on the notice and reporting project. Once that was completed, the subcommittee took up this project. The subcommittee considered list of policy questions on this issue at its March 2012 meeting. Two questions remained at the end of the March meeting:

- Should advertising alone create nexus for the seller?
- What is the definition of a seller?

Ms. Bland told the members that New York State had a good definition of resident and CA has a good definition of retailer.

B. Discussion

The consensus of the committee was that if the only activity by an in-state affiliate of the large retailer was advertising that advertising alone would not create nexus for the out-of-state retailers.

CO moved that the third from last sentence of the first paragraph of the draft model statute read: An agreement under which a seller purchases advertisements from a resident of this state is not an agreement described in this section unless the advertisement revenue paid to the resident in this state consists of commissions or other consideration that is based on sales of tangible property.

The motion passed with 10 affirmative votes; 0 negative votes; and 2 abstentions.

The discussion then turned to the definition of seller. Some suggested using Section 1504 of the IRC but there was concern regarding “loopholes” if there were multilevel sellers and “pass through” entities.

CO moved that staff should do additional research to see if the definition of seller found in Section 1504 of the Internal revenue code could meet CA definition of seller and how the definition could apply to pass-through entities. The motion passed with 9 yes votes, 0 no votes; and 2 abstentions.

Another concern involved the definition of resident. It was pointed out that the associate of the out-of-state retailer could also be a multistate seller, thus it is not clear, under these conditions, that selling activity actually occurs in this state. Staff was directed to look into the question of handling multistate affiliates.

VI. Model Communications Definitions and Sourcing Rules

A. Industry Presentation

Deborah Bierbaum, AT &T, using a powerpoint demonstration showed the recent reforms in administration of telecommunications taxes. However, Ms. Bierbaum noted that telecommunications companies filed more returns, were subject to a greater number of types of taxes, and were taxed by greater number of taxing jurisdictions than general businesses. Ms. Bierbaum and Jamie Fenwick, Time-Warner Cable, suggested that the MTC should encourage non-Streamlined (SSUTA) states to adopt the sourcing rules and definitions being adopted by the SSUTA.

Other points:

- ✓ “Bundling” SSUTA now has rules for the bundling of services. Books and records will be used to estimate what portion of each bundled group of services is composed of each component. The entire bundle will be subject to tax if the company cannot unbundle the charges
- ✓ SSUTA has added new definitions for non-recurring charges that may be “unbundled” such as value-added non-voice enhanced switching.
- ✓ Prepaid calling services are taxed at point-of-sale
- ✓ Internet access and ancillary services will be sources according to the Mobile Telecommunication Sourcing Act (MTSA).
- ✓ The industry representatives said they would provide a copy of their presentation so that it could be put on the MTC website.

B. Discussion

Ms. Sicilian went over the options for the subcommittee in regards to this project since SSUTA is already undertaking this project. Industry will provide a White Paper outlining their version of “best practices.” Russ Brubaker (WA), speaking for SSUTA, said that all should work to encourage other states to adopt the definitions as they are developed.

Marshall Stranburg (FL) noted that a number of telecommunication service providers are changing their marketing plans to deemphasize voice and text and to emphasize data use plans but frequently do not provide a definition of data. Ms. Bierbaum suggested that SSUTA is flexible enough to handle changes in the mix of customer demand. The telecommunications industry volunteered to produce a white paper referencing SSUTA.

VII. Model Administrative Procedures Protecting Communications Providers from Class Action Lawsuits

A. *Industry Presentation*

Deborah Bierbaum presented another set of issues with which telecommunications providers are faced, i.e., under- and over-collection of tax. If they under-collect, they are subject to additional taxes and penalties on audit. If they over-collect, they are subject to consumer class-action lawsuits. Ms. Bierbaum further noted that states are sometimes liable for class-action lawsuits if the tax collections are based on faulty data regarding boundaries, etc.

Ms. Fenwick, of Time-Warner Cable, went over some of the principles of over-charging of taxes and called for uniform procedures to deal with this issue.

B. *Discussion*

There was a sense of the subcommittee that this project is broader than just telecommunications – i.e., class-action lawsuits were prevalent in other areas. Joe Huddleston, MTC Executive Director, read a communiqué from COST suggesting that MTC undertake a *qui tam* project. Mr. Todd Lard of COST agreed. Marshall Stranburg (FL) posited that if MTC takes on this project, the Uniformity Committee should work with the Litigation Committee. Phil Horwitz (CO) asked if the subcommittee was required to break this potential project into two separate projects – one just for telecommunications service providers and one to broaden the scope to all class action lawsuits.

VIII. Streamlined Wrestles with Several Issues – for Discussion

A. *SST Governing Board Presentation*

Russ Brubaker (WA) and President of the SST Governing Board and Ms. Deborah Bierbaum of A T & T discussed some of the issues SST is currently wrestling with. Mr. Brubaker told the members of the subcommittee that the SST Governing Board wants to get the perspectives of non-SSUTA states; but, the Governing Board would like the non-SSUTA states to adopt SSUTA practices that can benefit those states. Among the practices that the non-SSUTA states should adopt are:

- ✓ Uniform sourcing rules
- ✓ Definitions of many products
- ✓ Certified Service Providers

Other obstacles for SSUTA include:

- ✓ Growth of local option sales taxes where the multiplicity of rates, bases, boundaries, et. al., make administration of the sales tax more difficult
- ✓ Growth of “cloud computing.”
- ✓ Discount vouchers – the definition of sales price is of paramount concern here because SSUTA does not include discounts in its definition of sales price.
- ✓ Credit for taxes paid to other states
- ✓ Movement of tangible property – what types of taxes can apply to goods in transit

B. Discussion

Ms. Bland informed the group that MTC has model regulations on leasing and construction inventory that may be useful for SSUTA. Phil Horwitz (CO) inquired as to whether the voucher seller could collect the tax. Mr. Brubaker answered that currently SSUTA rules state that the location of the redemption of the voucher determines where the tax is collected; and, that the tax is based on cost of the item or service to the consumer. The sale of the voucher itself is considered the sale of an intangible and thus outside the scope of the SSUTA.

ND encouraged all to keep up with SSUTA,

IX. New Business

There was no new business.

X. Adjournment

CO moved to adjourn the meeting. The meeting was adjourned at 11:17 A.M.