



MINUTES

**Income and Franchise Tax Uniformity Subcommittee Meeting
 The Westin – Downtown Denver
 1672 Lawrence Street
 Denver, Colorado 80202**

***Wednesday, December 5, 2012
 8:30 PM–12:00 PM***

I. Welcome and Introductions

Subcommittee Chairperson Robynn Wilson welcomed the subcommittee and the public. The following persons were in attendance:

NAME	AFFILIATION	NAME	AFFILIATION
Robynn Wilson	AK	TELECONFERENCE	
Wood Miller	MO	Stewart Binke	MI
Richard Cram	KS	Andrew Glancy	WV
Kevin Wakayama	HI	Amy Hamilton	State Tax Notes
Rebecca Abbo	NM		
Myles Vosberg	ND	PRIVATE SECTOR	
Matt Peyerl	ND	Todd Lard	COST
Michael Fatale	MA	Jaime Fenwick	Time-Warner Cable
Dick Pond	CO	Terry Frederick	Sprint
Derek Bell	MT	Karen Boucher	Deloitte Tax
Lennie Collins	NC		
Gary Humphrey	OR	MTC STAFF	
Richard Jackson	ID	Bruce Fort	
Aaisha Hashmi	DC	Sheldon Laskin	
Michael Mason	AL	Roxanne Bland	
Phillip Horwitz	CO	Shirley Sicilian	

II. Public Comment Period

No public comment was given at this time.

III. Approval of Minutes of In-Person Meeting July 29, 2012

Upon motion duly made, the minutes were approved unanimously.

IV. Reports and Updates

- A. Federal Issues Affecting State Taxation

Ms. Roxanne Bland, MTC Counsel, reported on proposed federal legislation that would impact state taxation, including H.R. 1439, Business Activity Tax Simplification Act of 2011; H.R. 1864, Mobile Workforce State Income Tax Simplification Act of 2011; and S. 1811, Telecommuter Tax Fairness Act of 2011.

B. Report on Commission Action on Uniformity Projects

1. Recommended Amendments to Compact Art. IV [UDITPA]

- § 17, Sales factor sourcing for services and intangibles
- § 1(g), Definition of “sales”
- § 1(a), Definition of “business income”
- § 9, Factor weighting
- § 18, Distortion relief

Ms. Shirley Sicilian, MTC general counsel, reported that these items remain under executive committee consideration for approval for public hearing and are on the agenda for continued discussion at the December 6, 2012 meeting.

2. Model Statute for Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax

Mr. Sheldon Laskin, MTC Counsel, reported that this proposal is before the executive committee for its consideration of changes made after public hearing. The proposal is on the agenda for the executive committee’s December 6, 2012 meeting.

V. Project to Amend MTC Model Financial Institutions Apportionment Rule

Mr. Lennie Collins, Chairperson of the Financial Institutions Work Group, reported the progress of the work group to the subcommittee. The work group has previously submitted recommended amendments for the receipts factor and definitions sections of the current model rule. Its attention is now focused on the third category of changes – those associated with the property factor. Within the property factor category, the work group has agreed to recommendations on “change of material fact.” These describe circumstances under which the original sourcing of loans in the property factor may be revised. The work group then discussed how (and possibly whether) the loans should be sourced in the first place. Specifically, the work group has considered industry recommended revisions to SINAA sourcing (sourcing based on location of solicitation, investigation, negotiation, approval, and administration) for one type of loan group – computerized loans.

VI. Process Improvements Discussion

Ms. Sicilian summarized a staff memorandum dated November 21, 2012 that listed possible uniformity process improvements for a proposed model’s (1) initiation, (2) development at uniformity committee, (3) consideration at executive committee (including public hearing), (4) bylaw 7 survey, (5) consideration at the commission level, and (6) consideration for adoption by states. The membership discussed how to achieve the right balance in several areas. They discussed balance between encouraging states to suggest projects on the one hand, and on the other hand the need to be mindful that state DORs are often more focused on administering rather than proposing legislative policy choices. They discussed balance between a desire to move quickly and a need to allow for full consideration by the states and the public. They discussed balance between a desire to see widespread adoption and the reality that it may take

a while, possibly years, before the need for a particular model is evident in a specific state. In the meantime it's good to have a library of models available for states to draw on as they become ready to make the changes. They discussed balance between the need to set goals and timelines and the need for flexibility – prioritizing projects may be a middle ground approach. They also discussed the balance between determining desirability of a particular approach upfront (e.g., through a type of early bylaw 7 survey) versus the need for flexibility in approach as the project develops and more is learned about the issue.

Members discussed tools that would help them through the development process. One would be a “concept paper” for proposals that are being considered for development. The concept paper would analyze the proposal in light of a handful of established “factors for consideration.” Other helpful tools would be spreadsheets for tracking the progress of projects. This type of spreadsheet would give subcommittee members a “big picture” of the inventory of projects, and help in their keeping agency administrators informed.

The subcommittee asked staff to develop draft documents that would show: (1) inventory of all projects with current status, action items, priority, and procedural history, and (2) a document library or “docket sheet” for each project which expands from subject areas. The subcommittee also expressed that it would like to re-energize the executive committee liaison concept.

VII. Possible New Project Regarding State Use of “Section 482” Authority

Mr. Bruce Fort, MTC Counsel, summarized his staff memorandum dated November 21, 2012 that explained state and federal “§482” authority for re-allocating taxpayer’s income, expenses, or deductions in order to prevent evasion of taxes or to clearly reflect income. The memorandum explained that model regulations could be developed to provide guidance on when a state will invoke its §482 authority and what remedies it will apply.

Mr. Fort noted that at its July 2012 meeting, the subcommittee had designated 3 members to engage in outreach with taxpayer groups to get their thoughts on the desirability of this project. Mr. Fort developed a questionnaire to serve as the basis for this outreach. Meetings were set up with the state representatives and AICPA and COST. The state representatives included Joe Garrett (AL), Mike Mason (AL), Steve Krenkel (MN) and staff. Mr. Todd Lard reported that COST members were still considering the question.

Ms. Sicilian reported on AICPA’s comments. AICPA believes there is inconsistency among the states on this issue and uncertainty among taxpayers on how intercompany transactions will be treated; more certainty and some level of uniformity would be helpful. AICPA also responded that states would need to have the legislative statutory authority before adopting a regulation. If the regulation addressed combined reporting (i.e. required changes in filing methods) that might be a problem; but, if the project had a limited scope to just 482 adjustments and not filing method changes, that would be more workable and amendable to AICPA. AICPA stressed that the regulation should not involve combined reporting and should not involve filing method changes. On the other hand, providing guidance on situations that fall within a safe harbor would be helpful. In addition, AICPA thought that advanced pricing agreements (APAs) and relief on APAs would be another area to consider discussing to reach a common ground. AICPA suggested another consideration might be whether the states can make 482 adjustments different from the IRS Federal 482 adjustments or are bound by the Federal 482 adjustments.

AICPA noted its belief that the states are bound by the federal adjustment. AICPA suggested that if we start a project we should begin by listing current state statutes and other sources of 482 authority, analyzing and understanding those sources and state inconsistency/consistency in the statutory language and its interpretation.

The subcommittee discussed whether or not to start a project and determined it would carry over the issue until its March meeting. In the meantime, it suggested that we complete the outreach with COST and any others that express an interest.

VIII. New Business

No new business.

IX. Adjourn