



MULTISTATE TAX COMMISSION

MINUTES of
Uniformity Subcommittee on Sales & Use Tax Meeting
Monday, July 22, 2013
1:00 p.m. Pacific Time

I. Welcome and Introductions

Richard Cram, Chair of the Uniformity Subcommittee on Sales & Use Tax, (KS) opened the meeting. The following persons were in attendance:

Name	Affiliation	Name	Affiliation
Curtis Stewart	AL	Gene Walborn	MT
Walter Anger	AR	Lee Baerlocher	
Tom Atchley		Lennie Collins	NC
Aaisha Hashmi	DC	Matt Peyerl	ND
Phyllis Abe	HI	Myles Vosberg	
Leticia Jacobs		Rebecca Abbo	NM
Donald Kuriki		Julie Anderson	OR
Madelaina Lai		Gary Humphrey	
Lynn Lyckman		Private Sector	
Ted Shiraishi	ID	Deborah Bierbaum	AT&T
Michael Chakarun		Greg Turner	COST
Richard Jackson		Eva Rayburn	PwC
Tom Katsilometes		Amy Hamilton	State Tax Notes
Randy Tilley		Saabir Kapoor	Sutherland
William von Tagen		Jamie Fenwick	Time-Warner Cable
Richard Cram	KS	MTC Staff	
Jennifer Hays	KY	Ben Abalos	Bruce Fort
J.A. Cline	LA	Ken Beier	Harold Jennings
Jason DeCuir		Roxanne Bland	Tom Shimkin
Kimberley Doley		Lila Disque	Shirley Sicilian
Wood Miller	MO	Elliott Dubin	

II. Approval of Minutes of In-person Meeting, March 6, 2012

Randy Tilley (ID) that the minutes of the March 6th meeting be accepted as corrected. The motion carried unanimously by voice vote.

III. Public Comment Period

There were no public comments

IV. Reports and Updates

a. Federal Issues Affecting State Taxation

i. 1. S. 31, H.R. 434, Permanent Internet Tax Freedom Act

Roxanne Bland, MTC Counsel, provided the report. S. 31 would make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. It would repeal the grandfather clause currently in place for states to impose their tax on internet sales. The bill was introduced in January, and the prognosis is that they will try to attach it to the Marketplace Fairness Act. Ms. Prosser asked whether any other states in attendance would be affected by the change in grandfathering. North Dakota would also be affected.

ii. S. 743, H.R. 684, Marketplace Fairness Act

This is a bill that passed overwhelmingly in the Senate and is now in the House. It ratifies Streamlined and, for those states not in Streamlined, sets forth a list of criteria they must adhere to before they're allowed to collect on remote sales. Proponents may also try to attach BATSA to the bill.

iii. S.1235, Wireless Tax Fairness Act, H.R. 2309, Cell Phone Tax Fairness Act

This bill has been introduced in both the House and the Senate. Last year there was overwhelming support in the House but it ended up in the Senate Finance Committee, where it did not proceed.

b. Report on Commission Action on Uniformity Projects

i. Model Sales & Use Tax Notice and Reporting Statute

Shirley Sicilian, MTC General Counsel, provided an update. This model statute is currently at the executive committee stage. It went to public hearing but did not pass the Bylaw 7 survey. It went back to the Executive Committee, where it remains pending reconsideration after a decision is issued on the Colorado litigation, DMA v. Brohl.

ii. Communications Sourcing and Definitions Resolution

Ms. Bland reported on the resolution, which would recognize SSUTA's efforts in the area of communications sourcing and definitions. The resolution went to the executive committee, from which it was referred to the resolutions committee and to the Commission for a vote.

V. Sales and Use Tax Nexus Model Statute

a. Presentation of Staff Memorandum and Policy Questions

This model statute has evolved into a project that would encompass click-through and other nexus. At its March meeting, the Uniformity Committee asked for a policy checklist, as well as research on issues with "establishing and maintaining a market" and whether sales and use tax nexus can be established for a unitary business as a whole. They also wanted to know whether ITFA would have any effect on the associate nexus portion. The work group has held a couple of teleconferences since the March meeting, and Ms. Bland prepared a policy checklist and some research, as requested. Ms. Bland reviewed the policy questions and briefly summarized the answers, as laid out in the Staff Memo.

b. Public Comment

There were no comments at this time.

c. Committee Discussion

Richard Cram (KS) then addressed each policy question in order, soliciting input. Phil Horwitz (CO) wanted to make sure Policy Question 2 applied only to circumstances where someone works as both the marketing and distribution channels. Myles Vosberg (ND) noted there is a big difference between drop-shipping and other activities like warehousing. If there is no relationship between the in-state and the out-of-state entity, this would likely go beyond the boundaries of what has been seen so far with drop-shipping. Dee Wald (ND) asked, regarding Policy question 7, what the group thought about the standard. Mr. Horwitz felt the related party issue would be picked up in Item 3, where if there is an ownership relationship, the affiliate's activities create nexus. Mr. Tilley moved to accept the committee's report and move forward with drafting. The motion passed by voice vote.

VI. Model Provisions Concerning Class Actions and False Claims

a. Presentation of Staff Memorandum

i. Class Action and FCA Survey

Sheldon Laskin, MTC Counsel, presented the Staff Memorandum. Industry had previously asked the MTC to take on these two issues, regarding class actions and the False Claims act. The Committee asked staff to summarize the state of the law regarding false claims actions and class actions for refunds. He noted the most recent class action was the AT&T Mobility federal class action. This would not be addressed by the ABA model statute, but does illustrate some of the issues the states encounter when class actions are brought by third parties. The action settled, but now there are refund claims flowing from the class action. This can impact existing state procedures for processing refund claims.

ii. Issue List

Mr. Laskin noted typically the actions involve small amounts of money, so one issue is what the states should do when an action is barred. Possibly there should be a work group to address this.

b. Public Comment

Deborah Bierbaum (AT&T) thanked the Subcommittee for taking on the project and expressed her hope that they move forward with it.

c. Committee Discussion

Mr. Horwitz moved to agree this is an issue that should be worked on and accordingly appoint a work group. He also volunteered to be on the work group. The motion passed by voice vote. Mr. Cram then volunteered for the work group, as did Jamie Fenwick (Time Warner Cable), Greg Turner (COST), and Debra Bierbaum (AT&T). Mr. Horwitz recommended speaking with state Attorney Generals' offices to see if they have an interest as well. Mr. Cram asked whether the Litigation Committee had been involved. Mr. Laskin indicated they may have an interest.

VII. Possible Project On State Requirements Under The Marketplace Fairness Act

a. Presentation of Staff Memorandum

Lila Disque, MTC Counsel, presented the staff memorandum. With the possibility looming that the Marketplace Fairness act may pass, and with the act providing little in the form of guidance, the states may wish to consider uniform notice and simplification language.

b. Public Comment

There were no public comments.

c. Committee Discussion

Tim Jennrich (WA) a member of the SSUTA Governing Board informed the subcommittee that SSUTA wants the MTC to draft model language. Mr. Jackson pointed out that state senators and other legislators already have an interest in drafting language, so the project is timely and necessary. Mr. Tilley moved to recommend to the full Committee, and from there to the executive committee, that the staff look into uniform language for the simplification and notification requirements. The motion passed by voice vote.

VIII. New Business

There was no new business

IX. Adjourn

Mr. Tilley moved to adjourn. The meeting adjourned at 2:40 pm.