MULTISTATE TAX COMMISSION

Maximizing the synergies of multi-state tax cooperation

MEMORANDUM

TO: Robynn Wilson, Chair
Members of the Income & Franchise Tax Uniformity Subcommittee

FROM: Lila Disque

RE: Status of Uniformity Strategic Planning Project

DATE: 11/27/2013

Please note that a project team report will be posted soon.

History of the Project

The Commission's Strategic Planning Committee has identified four strategic goal areas on which the MTC must focus in order to achieve its vision.[1] One of these goal areas relates to the uniformity process:

> Uniformity – Our goal is to increase uniformity in tax policy and administrative practices among the states. Achievement of the MTC's uniformity goal will be reflected by:
>
> - Greater adoption of uniformity recommendations by state and local tax jurisdictions.
> - Uniformity projects will have the greatest value to the states and stakeholders.
> - More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers and the federal government.

The Income and Franchise Tax Subcommittee identified obstacles to achieving this goal. At its May meeting, the Strategic Planning Committee asked the Income & Franchise Tax Uniformity Subcommittee to create a work group to review those obstacles and recommend one or two that it would like to work on, beginning in the fall. The work group presented its findings at the Subcommittee meeting on July 22, 2013, and the Subcommittee resolved to recommend to the Strategic Planning Committee that it proceed on obstacle 1(a): "Uniformity recommendations are not widely adopted." The Strategic Planning Committee approved. A Uniformity Strategic Planning Project Team was assigned to identify

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[1] The Commission's mission, vision, values, and goals, are available at: http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Committees/Executive_Committee/Scheduled_Events/Mission,%20Vision,%20Values,%20Goals%20of%20MTC%20as%20of%204-24-12.pdf

the questions surrounding this issue, find answers, and translate those to usable data for further steps in the project. (*See* Project Plan, Attachment A)

Progress since July Meeting

Since July, the Project Team has met four times. At its first meeting, it reviewed a timeline put together by MTC Staff measuring the length of time it took for various uniformity proposals to end in MTC approval.

In subsequent meetings, the project team assessed state adoption of MTC model statutes and regulations. Since there are a number of MTC models, the team narrowed its review to the previous decade. Together, the team selected a subset of eleven MTC models that were adopted between 2002 and 2012. It created and distributed to the Uniformity Committee a survey regarding state adoption of those models. The survey is available in PDF form on the MTC website.

For each model, the survey asked:

1) whether the state had a relevant provision, and if so:
2) whether the provision was similar to MTC language or policy and
3) the citation and year of adoption of the provision

The team received 14 complete, usable surveys, and MTC staff compiled the results into the attached document (Attachment B).

Future Plans

At its most recent meeting, the team reviewed the survey results and selected a few model statutes to pursue further. The team decided to look at the most- and least-adopted model language.

To that end, the team has drafted further questions for the states (Attachment C). The team plans to ask these questions in one-on-one interviews, in order to see what factors are at play when a state chooses to adopt MTC language, and why states might have chosen not to adopt similar language. Armed with answers to these questions, and the research and timelines assembled by MTC staff, the team then plans to identify the root problems to this issue.

Attachment A

PROJECT PLAN v 1.5
November 26, 2013
Barriers to Adoption of Uniformity Measures

Project Team: Richard Cram, KS; Gary Humphrey, OR; Stewart Binke, MI; Rebecca Abbo, NM; Dee Wald, ND; Shirley Sicilian, MTC

Staff: Lila Disque, MTC
Facilitator: Elizabeth Harchenko, Consultant

Project Description: The purpose of MTC uniformity recommendations is to provide the states with model or uniform statutes or regulations that address issues of multistate tax compliance or consistency of policy and administrative practice among the states. It appears that some uniformity recommendations have not been as widely adopted by the states as is desirable. This project will review data on adoption of uniformity recommendations, to identify both the barriers to adoption of recommendations by the states and to look for indicators of success for recommendations that have been widely adopted. The project will identify possible solutions that will address barriers to adoption, in order to encourage greater adoption of past and future uniformity recommendations. The project may develop recommendations for immediate implementation, or may lead to other projects that will focus on specific changes to implement the solutions that are identified by this project.

Target Completion Date: July, 2014

<u>High-Level Project Time Line</u>:

- August, 2013 – Project team formed and first teleconference held. Project plan review; identify specific data to be gathered; discuss methods for gathering data. Identify baseline data concerning adoption of uniformity recommendations. [Meeting held 8-28]
- September, 2013 – Teleconference. Report on baseline data – inventory of uniformity recommendations; rate of adoption by the states. Identify specific uniformity recommendations to research – how many models, which ones? [Meeting held 9-25]
- October, 2013 – Teleconference. Review preliminary adoption data for 200-2010 models. Discuss research tools to use – e-mail survey; telephone survey; in-depth interviews; who to contact; questions to be answered. Assign tasks: in depth survey question development; additional background research needs. [Meeting held 10-30]
- November, 2013 – Teleconference. Report back on research results from state adoption survey. Any problems? Any follow up needed? Decide which models to use for in-depth research on supports for adoption and barriers to adoption. Develop rough draft survey questions for in-depth research. Decide how to use time at December Uniformity Committee to best advantage. Prepare interim report for Steering Committee and Uniformity Committee. [Meeting held 11-25]
- December 10-11, 2013 – Uniformity Committee meetings, New Orleans. Report on project progress; discuss with UC importance of responding to inquiries; seek feedback on rough draft survey questions; brainstorm on supports and barriers.
- December, 2013 – Teleconference. Finalize survey questions; Make assignments for team members; establish reporting process for survey results.
- January, 2014 – Teleconference. Update on survey progress from team members. Any follow up needed? Assign tasks: analysis of data. Complete survey calls.

- February, 2014 – Teleconference. Decide whether sufficient data has been collected to identify trends, patterns and possible solutions. Any additional field research needed? Discuss report to Uniformity Committee, whether discussion will be desirable at March UC meeting.
- March 2014 – Uniformity Committee meeting – gather feedback and input from committee members. Meeting by teleconference or in person – decide whether any process changes are needed as a result of conversation with UC. Discuss potential for solution development.
- April 2014 – Teleconference. Continue analysis of data; integrate input from UC committee meeting.
- May 2014 – Teleconference. Discuss and agree on key obstacles identified from research and data analysis. Discuss possible solutions. Begin drafting project report.
- June 2014 – Teleconference. Review and provide input on draft project report. Report version 2 out for work team review and comment.
- July 2014 – Approve final report to Steering Committee and Uniformity Committee.

Attachment B

Condensed Summary of Survey Responses				
Year Adopted by MTC			**Yes**	**No**
2001	Total Yes: 5 Total No: 8 Inapplicable: 0 No Answer: 1	**Does your state define "gross receipts?"**	OR NM SD UT WA	TX AL DC MO ND FL MT KS
	Of previous yes answers: Yes: 3 No: 1	Is the language or policy of your provision similar to the MTC language or policy?	OR (2003) UT (2004) WA (1930s)	NM
2002	Total Yes: 1 Total No: 11 Inapplicable: 0 No Answer: 2	**Does your state have a factor presence nexus standard for business activity taxes?**	WA	OR NM TX AL DC MO ND UT FL MT KS
	Of previous yes answers: Yes: 1 No: 0	Is the language or policy of your provision similar to the MTC language or policy?	WA (2010)	
2003	Total Yes: 9 Total No: 3 Inapplicable: 2 No answer: 0	**Does your state have reporting options for non-resident members of pass-through entities with withholding requirement?**	OR NM MI AL MO ND UT MT KS	SD DC FL
	Of previous yes answers: Yes: 6 No: 3 No answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	OR (2005, 2010) AL (2009) MO (1993, amended 1997) ND (2005, amended effective for 2014) UT (1980s) KS (2003)	NM MI MT
2003	Total Yes: 12 Total No: 1 Inapplicable: 1 No Answer: 0	**Does your state have laws regarding federal tax adjustments reporting?**	OR NM TX MI AL DC MO ND UT FL MT KS	SD

Year Adopted by MTC			Yes	No
	Of previous yes answers: Yes: 5 No: 6 No answer: 1	Is the language or policy of your provision similar to the MTC language or policy?	OR (ORS 314.380: 1957; 1963; 1985; 1989; 1997; 1999; 2001; ORS 314.410: 1957; 1959; 1963; 1969; 1971; 1977; 1983; 1985; 1993; 1997; 1999; 2001; 2005; 2007) AL (2000) MO (1972) MT (not given) KS (1989	NM TX DC ND UT FL
2003	Total Yes: 9 Total No: 2 Inapplicable: 1 No Answer: 2	**Does your state define "Business Income?"**	OR NM AL DC MO ND UT MT KS	FL WA
	Of previous yes answers: Yes: 6 No: 3 No answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	OR (2003) AL (2003) DC (2011) MO (1967) UT (2008) MT (not given) KS (2007)	ND
2004	Total Yes: 9 Total No: 3 Inapplicable: 1 No Answer: 1	**Does your state define "Unitary Business?"**	OR NM TX DC MO ND UT MT KS	AL SD FL WA
	Of previous yes answers: Yes: 4 No: 3 *(KS and MO have definitions that are based on case law)* No answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	OR (2007) DC (2011) UT (2008) MT (not given)	NM TX ND
2006; revised 2011	Total Yes: 6 Total No: 6 Inapplicable: 1 No Answer: 1	**Does your state require combined reporting?**	TX DC ND UT MT KS	NM AL SD MO FL WA
	Of previous Yes answers: Yes: 2 No: 4 No Answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	DC (not given) MT (not given)	TX ND UT KS
2006	Total Yes: 3 Total No: 9 Inapplicable: 1 No Answer: 1	**Does your state require disclosure of reportable transactions?**	OR AL UT	NM SD DC MO ND FL MT KS WA

Year Adopted by MTC			Yes	No
	Of previous Yes answers: Yes: 0 No: 3 No Answer: 0	Is the language or policy of your provision similar to the MTC language or policy?		OR AL UT
2007	Total Yes: 5 Total No: 7 Inapplicable: 1 No Answer: 1	**Does your state take into account income producing activity performed "on behalf of" the taxpayer in determining sales factor numerator sourcing for receipts from transactions other than sales of tangible personal property?**	OR NM AL DC WA	SD MO ND UT FL MT KS
	Of previous Yes answers: Yes: 1 No: 3 No Answer: 1	Is the language or policy of your provision similar to the MTC language or policy?	DC (not given)	OR NM AL WA
2008	Total Yes: 3 Total No: 9 Inapplicable: 1 No Answer: 1	**Does your state have a special rule for telecommunications and ancillary service providers' apportionment?**	UT MT KS	OR NM AL SD DC MO ND FL WA
	Of previous Yes answers: Yes: 1 No: 2 No Answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	MT (not given)	UT KS
2008	Total Yes: 3 Total No: 7 Inapplicable: 1 No Answer: 1 *OR and UT have unrelated provisions that have the same effect*	**Does your state disallow the dividend paid deduction for captive REITs?**	AL DC ND	NM SD MO FL MT KS WA
	Of previous Yes answers: Yes: 2 *DC has no applicable language but follows the MTC guidelines.* No Answer: 0	Is the language or policy of your provision similar to the MTC language or policy?	AL (2005) ND (2008)	

Attachment C

DRAFT questions for in-depth state survey about adoption of specific MTC model statutes or regulations.

These questions should be asked of each state, for each of the models being used for the in-depth research. The answers to some questions will likely lead to more conversation and information. At a minimum, we want the answers to each of the following questions.

Preliminary inquiry of each state:

Ask to speak to the person in the state who is most knowledgeable about the process for adoption of tax regulations or statutes. Ask whether a different person would have first-hand knowledge about consideration of regulations or statutes adopted or considered for adoption during 2000-2012. Try to speak to everyone who has first-hand knowledge about consideration of MTC models for adoption during that time period.

Ask for a general description of the process the state goes through when considering whether to adopt a statute or regulation on a particular tax topic.

Ask whether the state has a formal process for review of MTC proposed model regulations and laws. If so, ask about that process and who the key participants are. If there is no formal review process within the state, ask who decides whether an MTC model will be proposed or considered for adoption.

Ask whether the state has recommended to MTC that issues be addressed by developing uniformity proposals. If so, what issues? If not, why not?

What do we want to know about MTC models that have been adopted by a substantial number of states? [Non-resident pass-through entity reporting; business income definition; unitary business definition]

- How did your state decide to adopt Model "X"?
- Who decided whether to recommend adoption?
- Did your state participate in developing the MTC model?
- What were the primary drivers leading to adoption of model "X" in your state?
- Was the taxpayer community involved during the adoption of Model "X"? If so, what was the nature of that involvement?

What do we want to know about MTC Models that have NOT been adopted by a substantial number of states? [Disclosure of reportable transactions; telecommunications apportionment; sales factor definition for "on behalf of" language.]

- Was your state aware of MTC model "X"?
- Did your state participate in developing the MTC model?
- Was the model actively considered and rejected for adoption in your state? If so, at what level was the model rejected (e.g., within the agency, Governor's Office, Legislature)?
- Did your state already have a statute or regulation on this topic before the MTC model was developed?
- Were there any specific issues that prevented your state from adopting Model "X" or considering it for adoption?
- Was the taxpayer community involved during consideration of Model "X" for adoption? If so, what was the nature of that involvement?
- Are there any requirements or steps in your rulemaking process that make it difficult to adopt model regulations?