MULTISTATE TAX COMMISSION

MINUTES
Income & Franchise Tax Uniformity Subcommittee Teleconference

Monday, March 22, 2010
3:30 Eastern Time

I. Welcome and Introductions

The following were in attendance.

Name:	Organization:	Name:	Organization:
Wood Miller	Missouri DOR	Lili Crane	Wisconsin DOR
Stewart Binke	Michigan DOR	Mary Loftsgard Dee Wald and Associates	North Dakota DOR
Danny Walker	Arkansas DOR	Frank Hale	Utah DOR
Brenda Gilmer	Montana DOR	Dan Armstrong	New Mexico
Ted Spangler	Idaho AG	Eric Smith Debra Buchanan	Oregon
Richard Cram	Kansas DOR	Mike Mason	Alabama DOR
Phil Horwitz And Associates	Colorado DOR		
Helen Hecht	FTA	Dave Clark	Boerio & CO
Dan Shibley	CCH	Roger Porter	Westfield
Birgit Anne Waidmann and Associates	PWC		Grant Thornton
Dara Bernstein	NAREIT	Joe Crosby	COST

II. Public Comment Period

No comments were received at this time.

III. Mobile Workforce Withholding Statute

The Committee first considered the latest draft of the Model Mobile Workforce Statute. Shirley Sicilian, MTC General Counsel, went over a memorandum dated March 11, 2010 that identified the two areas still under discussion. The subcommittee considered new language to identify highly compensated employees referencing (IRC Section 414(q)), and language referencing "key employees" of a publicly traded corporation (416(j)), as two exceptions to the general rule relieving individuals and employers from income and withholding tax obligations. The subcommittee heard remarks by Birgit Anne Waidmann, a federal employment tax expert with PricewaterhouseCoopers, on the scope of those sections. The two exceptions to the 20-

day safe-harbor rule are listed as Section 2(d) and (e) of the proposed model statute. After discussion, during which Ms. Ms. Waidmann gave very helpful comments, the Subcommittee determined it would strike (2)(f) and change (2)(e) to: a person who is identified as a key employee without regard to ownership for the year immediately preceding the current tax year pursuant to Section 416(i) of the Internal Revenue Code.

The subcommittee then voted to recommend the proposed model statute to the Executive Committee for a public hearing. The State roll call vote was as follows:
Michigan – Abstain, abstain
Wisconsin – abstain,
North Dakota – yes, yes
Arkansas- yes, yes
Alabama- yes, yes
Missouri- yes, yes
Colorado- yes, yes
Montana - abstain, abstain
New Mexico – yes, yes
Idaho – yes, yes
Oregon – yes, yes
Kansas – yes, yes

IV. Captive REIT Add-Back Statute

Bruce Fort, MTC Counsel, summarized the project and walked the Subcommittee through the draft model statute. At its March 2, 2010 meeting, the Subcommittee asked that the draft be amended to explicitly state that only payments to the captive REIT from a related members will trigger an add-back requirement. That amendment was added. Mr. Fort explained that other changes were also made in order to make this draft model more consistent with the current MTC model REIT statute which denies the dividend paid deduction for captive REITs. The main change in this regard was the addition of "incubator" REIT allowances. Mr. Fort also mentioned a proposal which had been made earlier in the day by Dara Bernstein, NAREIT, who pointed out that the current draft definition of a "valid" REIT does not include the situation where a captive owns 100% of a publicly traded REIT. Mr. Fort suggested that it would be reasonable to extend the exception to cover that situation. And, again, this type of exemption is in the MTC's current model REIT dividend-paid-deduction statute.

The Chair asked for public comment. Roger Porter, suggested that the definition of related member should include qualified REIT subsidiaries to provide a carve-out for transactions between a REIT and a qualified REIT subsidiary or taxable REIT subsidiary. He suggested it would be appropriate to provide carve-out because there is no state income-shifting through taxable REIT subsidiaries since taxable REIT subsidiaries are paying tax where have taxable activity.

The Chair suggested that the Subcommittee consider the public input received today from Mr. Porter, and the three additional changes recommended today from staff and from Ms. Bernstein; and that another draft be produced to incorporate these for Subcommittee consideration at another teleconference. The uniformity committee chair, Ted Spangler, agreed. Two Subcommittee members spoke up in agreement.

V. New Business

No new business was raised at this time.

VI. Adjourn