MULTISTATE TAX COMMISSION

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MINUTES

Income & Franchise Tax Uniformity Subcommittee Meeting
Sales & Use Tax Uniformity Subcommittee Meeting

Thursday, April 22, 2010
2:30 Eastern Time

I. Welcome and Introductions

The following were in attendance:

Wood Miller	Missouri DOR	Michael Fatale	Massachusettes DOR
Richard Cram	Kansas DOR	Lennie Collins	NC DOR
Diann Smith	Sutherland	Frank Brown	Florida DOR
Frank O'Connell	Georgia DOR	Mike Mason	Alabama DOR
Delores Gregory	BNA	Michael Mazerov	Center for Budget and Policy Analysis
Ron Barnes	Direct Marketers Association	Karen Bouche	Deloitte
Steve Garret	Kentucky DOR	Lili Crane	Wisconsin DOR
Phil Horwitz	Colorado DOR	Rebecca Abbo	New Mexico TRD
Myles Vosberg	North Dakota DOR	Frank Hales	Utah DOR
Janielle Lipscomb Eric Smith	Oregon DOR	Chris Coffman	Washington state DOR
Representative	Amazon	Rebecca Madigan	Performance Marketing
Shirley Sicilian Bruce Fort Roxanne Bland	MTC Staff		

II. Public Comment Period

No public comment was received at this time.

III. Captive REIT Add-Back Statute

Bruce Fort, MTC Counsel, summarized the draft model and changes made since the last meeting. Mr. Fort explained that there is not a need to add a provision excepting taxable REITs and that doing so would potentially create a loop-hole. The draft already contains an appropriate exception for a RET owned by a qualified subsidiary. However, a provision was added, similar to a provision in the existing MTC model captive REIT statute, in paragraph A.(3)(a). Dara Bernstein, NAREIT, expressed support for the addition.

Colorado moved that subcommittee recommend the draft to full committee. The Chair asked for discussion. The representative from Massachusetts asked for clarification of the motion up for a vote. The Chair explained the vote was to adopt the proposed model statute attached to agenda, and that the model is primarily aimed at situations in separate entity reporting states. Mr. Fort explained that the MTC has already adopted a model statute that would apply better in combined reporting states. He explained that this model is designed for separate entity states, though it could also be used for combined states and may even be preferable in combined states because disallowing the deduction leaves an apportionment factor issue. This model, in contrast, is patterned after the MTC model on add-back of interest and royalties. The representative indicated his vote is "yes." The Chair took a roll call vote of the states:

MA – yes.
NC – yes.
FL – yes.
GA – yes.
AL – yes.
KY – yes.
WI – yes.
CO – yes
NM – yes.
UT – yes.
ND – yes.
OR – yes.
WA – abstain.
MO – yes.

The Chair announced that the motion passed with 13 ayes and 1 abstention and the model is recommended to the full committee.

III. Use Tax Notice and Reporting Statute

Wood Miller began the meeting as Chairman Richard Cram was delayed. MTC General Counsel Shirley Sicilian directed the conferees' attention to an April 12, 2010 Policy Checklist. The first item on the policy checklist was who would be required to report sales upon which use tax might be owed. Phil Horwitz suggested that the statute should apply only to those who were not collecting sales or use tax. There was a general agreement within the subcommittee that the reporting requirement should be limited to those not collecting. Some committee members suggested that if the seller generally wouldn't be required to pay sales tax in similar transactions occurring within the state--e.g., wholesalers and non-profits—no reporting requirement should be applied to similar out-of-state sellers. Others suggested that such seller make occasional taxable sales and shouldn't be exempted as a category. The subcommittee determined the requirements of the statute should apply to sellers who make sales in the state but do not collect sales or use tax. There was general agreement that an exception should be allowed for those who would not be required to collect the tax had they been "doing business in the state," but that there should be no blanket exception for those who simply tend to make exempt sales, such as those who sell mostly at wholesale.

The discussion then turned to the scope and size of a *de minimis* threshold. Michael Mazerov of the Center for Budget Policy and Priorities stated that it was very

important to have a clear *de minimis* standard to protect small businesses, but the standard should not extend to individual sales to consumers, as many sellers will have hundreds of small sales to may consumers. Phil Horwitz suggested that the MTC model follow Colorado's decision to apply the *de minimis* rule to national business volume and not in-state sales. There was general agreement with this suggestion. The discussion then turned to ways to ensure there is no discrimination. Some committee members suggested that keeping the exceptions to reporting narrow and applicable to in-state vendors would be the most appropriate means to limit such claims.

The subcommittee decided to continue deliberations over the policy checklist at the next teleconference meeting.

V. New Business

There was no new business.

VI. Adjourn