MINUTES
Income and Franchise Tax Uniformity Subcommittee Meeting
Sales and Use Tax Uniformity Subcommittee Meeting
Full Uniformity Meeting

Tuesday, March 2, 2010
Wednesday, March 3, 2010
Westin Tabor Center
Denver, Colorado

The following persons were in attendance for the Uniformity Subcommittee meetings:

<table>
<thead>
<tr>
<th>Name:</th>
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<tbody>
<tr>
<td>Michael Fatale</td>
<td>Mass. DOR</td>
<td>Eric Smith</td>
<td>Oregon DOR</td>
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<td></td>
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<td>Janelle Lipscomb</td>
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<td>Lennie Collins</td>
<td>North CarolinaDOR</td>
<td>Marilyn Harbur</td>
<td>Oregon AG</td>
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<td>Ben Miller</td>
<td>CA-FTB</td>
<td>Karen Boucher</td>
<td>Deloitte Tax</td>
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<td>Diann Smith</td>
<td>Sutherland</td>
<td>Ben Miller</td>
<td>California FTA</td>
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<td>Todd Lard</td>
<td>COST</td>
<td>Wood Miller</td>
<td>Missouri DOR</td>
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<td>Richard Cram</td>
<td>Kansas</td>
<td>Shirley Sicilian</td>
<td>MTC</td>
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<td>Roxanne Bland</td>
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<td>Bruce Fort</td>
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<td>Ken Beier (phone)</td>
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<td>Brandon Siebel</td>
<td>South Dakota</td>
<td>Joe Garrett</td>
<td>Alabama DOR</td>
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<td>Rebecca Abbo</td>
<td>New Mexico</td>
<td>Randy Tilley</td>
<td>Idaho Tax. Comm.</td>
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<td>(on phone)</td>
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<td>Ted Spangler</td>
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<td>Stewart Binke</td>
<td>Michigan DOR</td>
<td>Phil Horwitz</td>
<td>Colorado DOR</td>
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<td>Phil Strickland</td>
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<td>Myles Vosberg</td>
<td>North Dakota DOR</td>
<td>Gene Walborn</td>
<td>Montana DOR</td>
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<td>Mary Loftsgard</td>
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<td>Lee Baerlocher</td>
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<td>Jamie Fenwick</td>
<td>Time-Warner Cable</td>
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<td>Tom Atchley</td>
<td>Arkansas DOR</td>
<td>James Hall</td>
<td>ACLI</td>
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<td>Brian Fliflet</td>
<td>Illinois</td>
<td>Anita Degumbia</td>
<td>Georgia DOR</td>
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<td>George Hoyum</td>
<td>Minnesota DOR</td>
<td>Kevin Lanham</td>
<td>West Virginia DOR</td>
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Income and Franchise Tax Subcommittee
I. Welcome and Introductions:

The Chair, Wood Miller, opened the meeting and welcomed the participants.

II. Public Comment Period:

There were no comments from members of the public at this time.

III. Reports and Updates.

Roxanne Bland, MTC Counsel, reported on the status of various federal legislative issues affecting state taxation.

1. H.R. 1083, Business Activity Tax Simplification Act of 2009
4. H.R. 1956, Crime Victim Restitution and Court Fee Intercept Act

Bruce Fort, MTC Counsel, reported on the status of the project to Amend MTC Model Regulation IV.18. A hearing officer’s report has been prepared and is before the executive committee.

IV. Project to Amend MTC Model Financial Institutions Apportionment Rule

Lennie Collins, North Carolina representative and Chair of the Financial Institutions Apportionment Work Group, reported on the Workgroup’s progress in drafting specific amendments in accordance with the Subcommittee’s earlier policy direction. The Workgroup is focused on completing the receipts factor amendments, first. Two new receipts factor issues have been raised. One is debit cards and the other is loan servicing fees. The Workgroup will draft recommended language for these issues, along with the other issues which have been previously identified and which the Subcommittee has previously given policy direction. The Workgroup will then turn to the property factor amendments.

V. Project on Model Combined Reporting Tax Haven Provision

Bruce Fort, MTC Counsel, summarized the procedural history of this project, the problem with the current model’s tax haven provisions in light of the changes by the OECD, and various substantive approaches that have been recommended by other organizations or utilized in other states to address tax havens. In particular, Mr. Fort mentioned a General Accounting Office report. The Subcommittee asked that the GAO report be circulated prior to the next meeting. The Subcommittee also asked that staff continue to research possible alternative approaches and provide an update at the July meeting.
VI. Project on Model Withholding Statute

Shirley Sicilian, MTC General Counsel, summarized the current draft and changes incorporated since the last meeting. The Subcommittee reviewed and discussed the draft and voted – 10 in favor, 1 opposed, no abstentions – to adopt the draft as is, with the exception of section (2)(e) and (f). The Subcommittee asked that staff schedule a teleconference for the Subcommittee to get additional input on IRC 414(q) and 416(j) so that it can then finalize section (2)(e) and (f).

VII. Project Regarding Income Earned by Non Corporate Income Taxpayers Derived from an Ownership Interest in a Partnership or LLC

Sheldon Laskin, MTC Counsel, summarized the current draft and changes made since the last meeting. The subcommittee reviewed and discussed the draft. Industry provided a letter from Richard Pomp and comments were provided by James Hall. Michael Fatale, MA DOR thanked the industry for its comments. He noted the concern which gave rise to the project was presented in a letter from the MA DOR approximately 2 years ago. There have been several phone conferences and meeting discussions since. The Subcommittee asked staff to provide two alternative drafts. The first draft should meld the two existing drafts with “including insurance” language or should indicate in brackets that states should list and cite to specific industries that by other state statute would fall under this act. The second draft should follow-up on the suggestions made by Ben Miller of the CA-FTB to limit the model to addressing activities beyond those considered “insurance.” The second draft should be accompanied by a list of pro’s and con’s. The Subcommittee asked that a teleconference be scheduled to review these drafts.

VIII. Project on Model Captive REIT Add-Back Statute

Bruce Fort, MTC Counsel, summarized the current draft and changes made since the last meeting. One significant difference was the amendment of the retroactivity provision in the case of “incubator” REITs that are not taken public within 18 months. The amendment in the model makes clear that where a REIT is never taken public, it will be considered to be a “captive” REIT from the date of its initial formation. The Subcommittee reviewed and discussed the revised draft. Mr. Fort drew the Subcommittee’s attention to a recommendation by Dara Bernstein, NAREIT, that a provision be added to explicitly limit the payment add-back requirement to payments made by related party members. The Subcommittee agreed that such a provision should be added and asked staff to prepare another draft.

IX. Project to Amend Multistate Tax Compact Article IV

Shirley Sicilian, MTC General Counsel, provided background on the project. She also walked the Subcommittee through the first draft of the proposed amendments for section 17. The Chair then asked for public comment. Ms. Diann Smith, Sutherland, commented. She expressed concern that the Subcommittee was moving too quickly and
suggested the Subcommittee must be sure that the necessary work is performed. She noted that the OECD is looking at similar sourcing in value added contexts. The Federal Government is also struggling with possible formulary apportionment for international contexts. There is a need to discuss many terms used in the draft. Ms. Smith provided the Subcommittee a written list of questions regarding the terms and issues raised by the draft. She suggested these should not be left to regulations. Todd Lard, COST, also spoke and provided written comments on throwout and throwback. COST opposes throwout as (1) unsound tax policy, (2) unconstitutional, (3) likely to create distortion.

The Subcommittee then discussed the draft and directed the drafting committee to make changes. The changes included removing the word “customer” from the sourcing rule for service receipts to allow for sourcing to the location of drop shipment. The Subcommittee discussed “look through” to customers and noted the administrative difficulty, theoretically questionable under some circumstances (e.g. wholesalers). Ben Miller noted the EU proposal stops at the first customer. The Subcommittee also called for addition of throwout when the service receipt sourcing is not determinable, even by the cascade rules. The Subcommittee also asked how best to reflect the concept of proportionality –additional explanation is needed either in the statute or a regulation. The Subcommittee also discussed sourcing receipts from sales of business assets, both tangible and intangible, and determined it would come back to that question after determining whether these should be included in the definition of gross receipts.

X. New Business
None.

XI. Adjourn

Sales and Use Tax Uniformity Subcommittee

I. Welcome and Introductions:
Chairman Richard Cram convened the meeting and welcomed the participants.

II. Public Comment Period:
Chairman Richard Cram announced that the SSTA governing board has voted to undertake a review of taxation of hotel intermediaries as a project. There were no comments from members of the public.

III. Reports and Updates.
Roxanne Bland, MTC Counsel, reported on the status of various uniformity proposals.

1. Model Statute on Collection Responsibilities for Accommodations Intermediaries. A Bylaw Seven survey has been sent to the Compact Member States, but the majority of affected States had still not responded.
2. Update on Uniform Principles Governing State Transactional Taxes on Telecommunications—Vendee and Vendor Versions. Ms. Bland reported that a Bylaw 7 survey has been sent to the Compact States.

3. Update of MTC Guidelines of Signatory States on Application of Sales and Use Tax to Computer Software. Ms. Bland reported that the states no longer use the model definitions, which have been superseded by Streamlined Sales and Use Tax definitions and various state definitions. Ms. Bland reported that the forthcoming hearing officer’s report would likely recommend dropping the guidelines entirely.

Federal Legislative Update:

Ms. Bland reported that Streamlined Sales Tax Legislation would be introduced shortly and cautioned that some may seek to combined that legislation with the perennially-introduced Business Activity Tax Simplification Act (BATSA).

Other proposed legislation which may be introduced in this Congress include preemptive legislation for cell phones, videos and a bill to make the preemption of state charges for internet access (the Internet Tax Freedom Act of 2009) permanent. It was considered unlikely that these bills would pass.

IV. Telecommunications Transactions Tax Centralized Administration Project.

Ms. Bland introduced her memorandum dated 2/19/10 and explained that the subcommittee had earlier voted to eliminate all but four of the categories on the policy checklist. Those four policy goals were (a) centralized state administration of telecommunications taxes; (b) centralized state registration of taxpayers (with an option for dual local registration); (c) uniform audit procedures and (d) uniform procedures for collecting refunds and credits.

Chairman Cram noted that substantial questions remained on the policy checklist, especially as it related to states like Utah and Kentucky which are members of the SSTA. Chairman Cram then led a lengthy discussion of issues in the memorandum “to ensure we are not duplicating the efforts of SSTA.” Chairman Cram urged statewide administration of telecommunications taxes and indicated general approval of the drafting group’s direction so far. Ted Spangler of Idaho led a discussion of uniform audit mechanisms in the International Fuels Tax Agreement (IFTA) with an eye towards how that statute could be used as a model for telecommunications tax audits by localities.

Public Comment:

Jamie Fenwick of Time-Warner/AOL recounted various discussions with MTC staff and expressed a desire to reiterate “industry” preferences. First, the telecommunications industry does not want local audits, but could live with a model like South Carolina’s, where local audits are performed by the municipal league on behalf of all localities. Ms. Fenwick also stated that the failure of local governments to participate more directly was of concern, and
would ultimately led to federal intervention in the area. MTC Director Joe Huddleston responded that the states are moving diligently towards adoption of simplified tax administration, so intervention by Congress would be premature.

Chairman Cram ended the discussion with instructions to the drafting committee to flesh out language on centralized administration and registration and to continue to look to IFTA as a model for centralized auditing.

V. New Business.

MTC Director Joe Huddleston led a discussion of Colorado’s new Use Tax Reporting legislation (Colo. HB 1193) with additional input from Phil Horwitz of Colorado. Under the new legislation, retailers who do not collect sales or use tax from Colorado customers are required to post a notice on their web sites informing customers of their use tax obligation, are required to provide a first-class letter to customers at the end of the year listing the amount of purchases that may be subject to tax, and are required to provide similar information to the Colorado Department of Revenue. The legislation is intended to work within the limits described by the U.S. Supreme Court in the *Quill v. North Dakota* case in 1992.

Michael Fatale introduced a motion to undertake a uniformity project on a model Use Tax Reporting and Notice Statute. The subcommittee then voted 10 to 1 to commence a project to draft a model use tax reporting bill and possibly also a New York style “click through” bill. The Subcommittee directed that it start with the Use Tax Notice and Reporting model. Chair asked for volunteers for a drafting group to put together a policy checklist for a Use Tax Reporting and Notice model.

VI. Adjournment.

Chairman Cram adjourned the meeting.

Full Uniformity Committee

I. Welcome and Introductions

Ted Spangler, Chair of the Uniformity Committee, called the meeting to order and welcomed the participants.

II. Approval of Minutes of December 1-2, 2009 Meeting

Upon a motion duly made, the minutes were approved.

III. Public Comment Period

None were received at this time.

IV. Executive Director’s Report

Joe Huddleston, MTC Executive Director, gave the report.
(Sales/Use Tax Segment)

V. Reports and Possible Action

Richard Cram, Chair of the Sales and Use Tax Uniformity Subcommittee, gave the Subcommittee report. There were no items for full Committee action.

(Income/Franchise Tax Segment)

VI. Reports and Possible Action

Wood Miller, Chair of the Income and Franchise Tax Uniformity Subcommittee, gave the Subcommittee report. There were no items for full Committee action.

VII. Roundtable Discussion

The States then engaged in a roundtable discussion focusing on reports of legislative, judicial, and administrative activity in each of their states.

At the conclusion of the roundtable, the Committee paused to honor Ted Spangler, who is to retire from State service before the next meeting. Ted has chaired the Committee for nearly 2 decades. Several members spoke of Ted’s leadership and camaraderie. The subcommittee presented Ted with a marble desk paperweight inscribed “Question,” which is Ted’s typical, diplomatic way of introducing his own thoughts on a matter. Ted thanked the Committee.