MULTISTATE TAX COMMISSION

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MINUTES
Income & Franchise Tax Uniformity Subcommittee Teleconference
Tuesday, June 22, 2010
3:30 – 5:00 p.m. Eastern Time

I. Welcome and Introductions:

Chairman Wood Miller convened the meeting. The following persons were in attendance via conference call:

Name:	Organization:	Name:	Organization:
Michael Fatale	Mass. DOR	Eric Smith Janelle Lipscomb	Oregon DOR
Lennie Collins	North Carolina DOR	Jim Hall	American Council of Life Insurers
Laurie Johnson	KPMG	Karen Boucher	Deloitte Tax
Dan DeJong	Tax Executives Inst.	Nicola White	State Tax Notes
Diann Smith	Southerland	Helen Hecht	Fed. Tax Admin.
Joe Crosby Todd Lard	COST	Wood Miller	Missouri DOR
Tom McCarthy	Comcast	Shirley Sicilian Sheldon Laskin Bruce Fort Ken Beier	MTC
Jennifer Hays	Ky. Legislature	Randy Tilley Terri Harvey	Idaho Tax. Comm.
Stewart Binke	Michigan DOR	Phil Horwitz	Colorado DOR
Donita Wald Mary Loftsgard	North Dakota DOR	Brenda Gilmer Dan Bucks	Montana DOR
Jamie Fenwick	Time-Warner Cable	Rebecca Abbo Louie Gomez	New Mexico TRD
Tom Atchley	Arkansas DOR	Chris Coffman	Washington DOR
Steve Grotti	PCI	Alan Stein	American Insurance Association
Melissa Potter Bruce Langston	California FTB	Frank Hale	Utah DOR
Joe Garrett	Alabama DOR	Dave Clark	Boerio CPAs
Ferdinand Hogroian	PWC	Mr. Johnson	Key Corp.

II. Public Comment Period:

There were no public comments during the public comment period.

III. Project on Non-Income Taxpayers.

Sheldon Laskin, MTC Counsel, explained that the Subcommittee had asked the work group to develop a list of pros and cons on a proposal raised at the last meeting. The proposal would exclude commercial endeavors that an insurance company can be engaged in directly from the application of the draft statute. After the summary, the Chair asked for public comment. Insurance industry member indicated that they would be listening today and were hoping to have some time on Subcommittee agenda in Portland to present comprehensive set of comments on both the this proposal and the draft model in general. The Chair then asked the Subcommittee for reaction to the work group suggestion that the exclusion would swallow the rule, and expressed his inclination toward not adding the exclusion. Subcommittee members indicated agreement. One member expressed an opinion that the proposal may not only swallow the rule, but would be inconsistent with rest of what the proposal is attempting to accomplish. The Chair asked for other thoughts and none were given. Hearing none, the Chair summarized his understanding that the Subcommittee had decided the draft model provided in July should not include this specific proposal at this time. There were no further comments.

IV. Committee Discussion of Project to Amend Compact Article IV.

The Chair opened the discussion by referencing the materials on the MTC's web site, and in particular, two drafts of language proposed for a new Section 17 on sourcing of income arising from services and intangible property ("versions A & B").

Public Comment: Diann smith of the Southerland Law Firm, representing a coalition of service industry members, commented that she felt the reasonably approximated language in both versions A & B was so vague that it would make the new section 17 even more difficult to administer and will lead to more litigation than the current version. There was no other public comment.

Shirley Sicilian, MTC General Counsel, discussed the differences between the two draft versions and explained how the drafting group implemented the directions received in earlier committee discussions.

Both models adhere to a market-based approach for sourcing income. Version A retained a "cascade" approach to determining where a service was delivered based on the location of the customer, with a series of additional sourcing rules culminating with customer billing address in the event the location of delivery could not be reasonably approximated. Version B provides that service income should be taxed where delivered with a requirement to reasonably approximate such location if it cannot be determined.

Ms. Smith expanded on her earlier comments that the two versions lacked clarity and certainty. Eric Smith encouraged participants to come up with specific examples of where the sourcing rules were ambiguous or inconclusive.

Chairman Miller asked the committee to identify any preferences between versions A & B. California and Missouri expressed a preference for Version A. But all other states - Oregon, Massachusetts, Montana, Alabama, Michigan, Colorado, Utah, and New Mexico - expressed a preference for version B. Chairman Miller announced that the Subcommittee chooses Version B as its preference.

Ms. Sicilian also explained a second point for the committee's consideration. Both drafts currently provide for sourcing receipts from the licensing of intangible property based on where the intangible is used. In the event the location of use cannot be determined, the licensing receipt is thrown out of the sales factor computation. The question before the committee is whether to add a cascade approach for such licensing receipts similar to the cascade approach used for sourcing service receipts in version A. After discussion, the Subcommittee instructed the drafting committee should not include a cascade approach for sourcing such receipts.

V. Discussion of Model Mobile Workforce Income Tax Withholding and Reporting Statute

Ms. Sicilian briefly summarized the history of this project. The Subcommittee approved a draft model in March, 2010. The Executive Committee voted to approve a public hearing on April 7, 2010. The hearing was held May 10, 2010 and the hearing officer's report was delivered to the Executive committee on May 18, 2010. The Montana Department of Revenue raised several concerns, and the Executive Committee voted on May 24 to approve the hearing officer's recommendations but also to return the project to the income tax subcommittee for further review in light of the Montana concerns. The Montana Department of Revenue has now proposed an alternative model.

Montana Revenue Commissioner Dan Bucks offered to explain his agency's proposal for an alternative to the current model. Commissioner Bucks suggested by his agency's model would "preserve the good work" of the subcommittee in furthering uniformity but would also allow state legislatures to make policy choices and head off federal preemption. The proposal was included in the materials posted on the MTC's web site for this meeting.

As Commissioner Bucks explained, the proposal has two key components. First, the states would establish an on-line "calculator" on an appropriate web site which would enable taxpayers to instantly determine if they had a filing obligation in each participating state, by entering income and days-in-state information. Second, an added section would require aggregation of the withholding of related entities to prevent abuse.

Subcommittee Comments: Bruce Langston commented that the proposal would not be well-received in California because of concern that a "bright-line" (20-day) threshold was important for businesses and tax compliance.

Public Comments: Joe Crosby of COST stated disappointment that the proposed model statute had been remanded for further consideration after public hearing and argued that the new proposal would not address compliance concerns. Mr. Crosby suggested the Montana model would cause further administrative difficulty.

Dave Clark of Boerio CPAs suggested that the alternative proposal would not make employees any more interested than they are today in discovering whether they have a liability in other states. He believes that the calculator would not help states in collecting income tax liabilities from out-of-state workers.

The Chair indicated this discussion would continue at the July meetings.

VI. Adjournment.

The subcommittee meeting was adjourned at 5:00 pm. EST.