



MULTISTATE TAX COMMISSION

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

From: Shirley Sicilian, General Counsel

Date: July 19, 2012

Subject: Process Improvements

The Commission's Strategic Planning Committee has identified four strategic goal areas - areas in which MTC must focus in order to achieve its vision.¹ One of these areas relates to the Subcommittee's work through 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 Strategic Planning Committee is focusing first on other goal areas, but in anticipation of working with the Strategic Planning Committee, the Income & Franchise Tax Uniformity Subcommittee has indicated it would like to begin considering the current uniformity process. Consideration may be given to how projects are currently chosen; the current development process and how long it generally takes for each step; how a project's progress is planned, communicated, and tracked; how the finished product is made accessible to states and the public for consideration, etc.

The goal is to get a better understanding of the current process. In the course of this effort, possible improvements may be identified that could feed into the Strategic Planning process when that Committee is ready to turn its attention our way; or, depending on what the scope of the suggested improvement is, it may even be reasonable to go ahead and implement.

The following are attached as background for this Subcommittee discussion:

Current Uniformity Process

Uniformity Charter

ULC Drafting Process: Example of Process from Another Organization that Develops Model Laws

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

4. THE UNIFORMITY PROCESS

One expressed purpose of the Multistate Tax Compact is to promote uniformity or compatibility in significant components of tax systems, and the Commission's Uniformity Committee is the body devoted to this work. The Uniformity Committee is comprised of state revenue agency personnel appointed annually by their tax administrator, and it is responsible for developing recommendations for uniform laws, regulations and administrative practices for corporate income, sales and use, and other major business taxes. This committee does critical work to help the Commission achieve its objective of encouraging uniform taxation of multistate business activity.

Interested states — including all sovereignty and associate member states — are welcome to designate a representative to the Uniformity Committee.

The Commission develops a uniformity proposal (a recommendation to its member states and other states) by the following described process when the proposal has a significant potential impact on the proper treatment of income or transactions involving multistate commerce. While in some instances the development of a particular uniformity proposal may involve some additional steps, an understanding of the description given below will impart an appreciation that a uniformity proposal is not adopted without formal action of the Commission following stages during which public participation is sought. Only after the seventh step does a true Commission proposal exist. Even at the completion of the seventh step, actual adoption of the proposal requires the affirmative action of the states (step eight). Figure 3 summarizes the Commission's uniformity process.

1. Proposal initiated by or assigned to Uniformity Committee
2. Uniformity Committee develops proposal, with input from relevant interest groups
3. Uniformity Committee proposal considered by Executive Committee
4. Public hearing
5. Hearing officer report considered by Executive Committee
6. Bylaw 7 survey of affected Compact states
7. Proposal considered by the Commission at its annual meeting
8. Adopted proposal transmitted to states for consideration

Figure 3, Summary of Uniformity Process

The uniformity process typically proceeds as follows:

Step One: A project is initiated. This may happen in one of two ways. The Executive Committee may direct the Uniformity Committee to undertake a particular project. Or, a Uniformity Committee member or member of the public may propose a project. If a project is proposed by a Committee member or member of the public, then the Committee will consider the proposal and vote on whether or not to initiate a project. When requested by the Committee, the staff develops an exploratory analysis of the issue prior to a vote.

Step Two: The Uniformity Committee directs staff or a drafting group to draft a model in accordance with the Committee's conceptual policy choices. The Committee will make revisions to the initial draft based on further discussion and on public comments received. With regard to uniformity matters drawing broad public interest (as partially determined from the comments received following release of the revised staff draft), or requiring industry-specific technical expertise, the Uniformity Committee may, prior to the completion of its work, establish a broad-based public participation work group to review and make additional recommendations to the Committee on the then current version of the proposal. The Uniformity Committee then votes, based on all state and public input received, on whether or not to recommend a final version of its draft to the Executive Committee for further consideration.

Step Three: The Executive Committee acts on the recommendation of the Uniformity Committee, taking into account any additional public input it receives. The Executive Committee may take whatever action it deems appropriate, including terminating the project or referring the proposal back to the Uniformity Committee. One of the actions the Executive Committee may take is to refer the Uniformity Committee proposal, with or without modifications, to a public hearing.

Step Four: A formal public hearing is conducted, pursuant to the requirements of Article VII of the Compact and the Commission bylaws. The hearing is conducted by a hearing officer or hearing panel, following which the officer or panel summarizes the public comment and makes a recommendation to the Executive Committee on the draft. The hearing officer or panel may recommend Commission adoption of the proposal as referred to it, with or without further modifications; reference of the proposal back to the Uniformity Committee for further work; or rejection of the proposal.

Step Five: The Executive Committee reviews the hearing report and recommendation, and determines whether it will recommend approval of the uniformity proposal to the full Commission, with or without further amendment, recommend rejection of the proposal, or direct further study and consideration of the proposal.

Step Six: If the Executive Committee chooses to recommend any version of the proposal to the Commission, it first authorizes (pursuant to bylaw 7) a polling of the affected Commission states to ensure that a majority of the affected states would consider adoption of the draft proposal. (This survey does not determine if the affected states will adopt the proposal, only whether the affected states will *consider* adoption of the

proposal.) If the majority of the affected Commission states so indicate, the matter is referred to the Commission for possible adoption as a uniformity recommendation.

Step Seven: The Commission votes on adoption of the proposal. In order to be adopted, the proposal must receive an affirmative vote of (1) at least 60 percent of the total number of Compact member states, and (2) Compact member states reflecting a majority of the total population of all member states according to the current United States Statistical Abstract.¹¹

Step Eight: Following adoption of the proposal as a Commission uniformity recommendation to the states, the proposal is submitted to the states for their consideration. All recommendations of the Commission are advisory to the states. For a recommendation to become effective in any state, that state must affirmatively adopt the proposal through its own legislative or regulatory process.

¹¹ Bylaw 5(c).

Charter for the MTC Uniformity Committee

I. Statement of Purpose and Desired Results

Central to the mission of the Multistate Tax Commission is the promotion and maintenance of uniformity in the States' taxation of interstate and foreign commerce. This was—and continues to be—the States' response to any call for congressional regulation and preemption of state taxation due to the diversity of state tax systems. Increased uniformity in state taxation eases the administrative burden placed on interstate and foreign commerce, and by forestalling the need for congressional action, preserves state tax sovereignty. In its simplest form, increased uniformity in state taxation of interstate and foreign commerce ensures the survival of our federal form of government. Independent policy fulfilling the States' role in our federal system cannot exist without independent revenues.

The purpose of the Uniformity Committee is the development of uniform approaches to the States' transaction and income/franchise taxation of interstate and foreign commerce.

The Uniformity Committee's goals in developing uniform approaches to transaction and income/franchise taxation of interstate and foreign commerce are three-fold:

1. Simplicity, equity and consistency;
2. Greater voluntary compliance through taxpayer education and increased enforcement; and
3. Fostering greater communication among stakeholders, i.e., states and taxpayers.

Once a uniformity proposal is developed by the Uniformity Committee and refined through the MTC Public Hearing process, the uniformity proposal is subject to review and possible approval by the Executive Committee of the Commission. If a uniformity proposal, however it may be further refined or changed, secures Executive Committee approval, the proposal is subjected to the Commission's By-law 7 survey, in which States are asked whether they would consider adoption of the proposal as a new addition or amendment to their tax statutes or regulations. If a majority of States indicate that they would consider the proposal, it is referred to the full Commission for possible approval as an MTC uniformity recommendation not only to the Party States but to all States. Once approved as an official recommendation, the uniformity proposal is referred to the individual Party States of the Commission and other States for consideration and

possible adoption as a cooperative uniformity measure that will further the goal of harmonizing significant components of state tax systems.

II. General Description of Committee Activities

To facilitate its work, the Uniformity Committee is divided into two working (i.e., initial drafting) subcommittees and one body that organizes the meetings and work of the Uniformity Committee. The respective jurisdiction of the two working subcommittees is defined by the type of taxes a uniformity effort invokes. One subcommittee addresses issues arising under corporate income/franchise taxes. The second subcommittee addresses issues that arise under transaction-type taxes (sales and use taxes) that have a potential impact on all forms of commerce. Some uniformity subjects may defy easy classification as coming within the jurisdictional reach of either subcommittee. In these cases, the work remains within the working structure of the full Uniformity Committee without a referral to either of the two subcommittees.

The additional working body of the Uniformity Committee is the Steering Committee. The Steering Committee consists of the Chair and Vice-Chair of the Uniformity Committee and the Chairs of the two subcommittees. The Steering Committee meets at the call of the Chair to set meeting agendas and to discuss other administrative issues relating to the activities of the Uniformity Committee. Although formal membership of the Steering Committee is limited, any member of the Uniformity Committee is invited to participate in the meetings of the Steering Committee.

Subcommittee on Income/Franchise Taxes

The Income and Franchise Tax Subcommittee develops and recommends for possible adoption by States uniform regulatory interpretations and statutory clarifications of the Uniform Division of Income for Tax Purposes Act (UDITPA) that is an integrated part of the Multistate Tax Compact. The Subcommittee also investigates, reviews and recommends for adoption by all States other uniformity proposals that may have been developed or at least initially conceptualized by entities outside the MTC, including the American Bar Association, the American Institute of Certified Public Accountants and other industry groups.

The Subcommittee's work in developing uniformity proposals focuses on:

1. Income apportionment methods reflecting the reasonable attribution of income where earned, resulting in full accountability.
2. Rules to minimize or eliminate double or multiple taxation on interstate transactions

3. Methods to ease the compliance burden.
4. Uniform forms and reporting requirements.
5. Proposals that are consistent with the modern evolving global economy.

Subcommittee on Sales and Use Taxes

The Subcommittee on Sales and Use taxes works in a manner quite similar to the Subcommittee on Income/Franchise Taxes. The difference is this Subcommittee develops and recommends uniform measures for addressing difficulties encountered in state taxation of transactions occurring in interstate and foreign commerce.

The Subcommittee's work in developing uniformity proposals focuses on:

1. Uniform sourcing rules for taxation of interstate transactions.
2. Rules to minimize or eliminate double or multiple taxation on interstate transactions.
3. Methods to ease the compliance burden through the use of modern technology.
4. Harmonization of reporting requirements, forms and definitions.
5. Proposals that are consistent with the modern evolving global economy.

III. Reporting and Consulting Relationships

The Income/Franchise and Sales/Use Tax Subcommittees report to the Uniformity Committee on a tertian-annual basis. The Uniformity Committee reports quarterly to the Executive Committee and annually to the Commission at its Annual Meeting. The Executive Committee or the Commission may establish work objectives, priorities and deadlines for the Uniformity Committee. The Uniformity Committee may also recommend to the Executive Committee for consideration uniformity projects and ideas initiated from within and without the Uniformity Committee. The Uniformity Committee maintains a statement of objectives, work plans and target deadlines for each of its projects.



Uniform Law Commission

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ULC Drafting Process

Each uniform act is years in the making. The process starts with the Scope and Program Committee, which initiates the agenda of the ULC. It investigates each proposed act, and then reports to the Executive Committee whether a subject is one in which it is desirable and feasible to draft a uniform law. If the Executive Committee approves a recommendation, a drafting committee of commissioners is appointed. Drafting committees meet throughout the year. Tentative drafts are not submitted to the entire ULC until they have received extensive committee consideration.

Draft acts are then submitted for initial debate of the entire ULC at an annual meeting. Each act must be considered section by section, at no less than two annual meetings by all commissioners sitting as a Committee of the Whole. With hundreds of trained eyes probing every concept and word, it is a rare draft that leaves an annual meeting in the same form it was initially presented.

Once the Committee of the Whole approves an act, its final test is a vote by states—one vote per state. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act.

At that point, a Uniform or Model Act is officially promulgated for consideration by the states. Legislatures are urged to adopt Uniform Acts exactly as written, to "promote uniformity in the law among the states." Model Acts are designed to serve as guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions.

When drafting is completed on an act, a commissioner's work has only begun. They advocate the adoption of uniform and model acts in their home jurisdictions. Normal resistance to anything "new" makes this the hardest part of a commissioner's job. But the result can be workable modern state law that helps keep the federal system alive.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, it has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions, and has done so with significant success.

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