



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

From: Gary Humphrey
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Date: July 17, 2013

**Subject: Process Improvements
Proposed Recommendation to the Strategic Planning Committee**

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 goal 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:

- Goal Area 1: Greater adoption of uniformity recommendations by state and local tax jurisdictions.
- Goal Area 2: Uniformity projects will have the greatest value to the states and stakeholders.
- Goal Area 3: More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers and the federal government.

Over its last meetings, the Income & Franchise Tax Uniformity Subcommittee identified some obstacles to these goals and some possible improvements to address those obstacles. (See Attachment A.)

At its May meeting, the Strategic Planning Committee asked that the Uniformity Committee review obstacles and recommend one or two that it would like to work on as a project, beginning this fall. The chairs of the Uniformity Committee and Subcommittees designated a Workgroup to draft a recommendation. The Workgroup met over three teleconferences and drafted a recommendation to undertake two projects. The Uniformity Committee may now consider proposing one or both of these projects (or some variation of them, or different projects) to the Strategic Planning Committee.

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

Proposed Projects

- **Goal Area 2:** Uniformity projects will have the greatest value to the states and stakeholders.

Obstacle b: Projects take too long to complete.

We propose a project to gather information and identify possible solutions regarding this obstacle. This obstacle is symptomatic of a foundational problem that should be investigated to fully understand why it is occurring, the impact, and the risk of allowing it to continue. A resolution of this obstacle will positively affect all three goal areas and each of the obstacles under them. If the states viewed the uniformity process as a well-oiled machine, that perception would increase the states' and the public's confidence that they could use this process to develop quality model and/or uniform statutes and regulations. This would be our first priority of the two projects.

- **Goal Area 3:** More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers, and the federal government.

Obstacle a: The public is in the habit of opposing our projects, not viewing them as something that could make life easier if states adopt them.

We propose a project to gather information and identify possible solutions regarding this obstacle. This obstacle affects the MTC uniformity process' credibility with the states and the public. Addressing this obstacle will help to encourage the public and states to use the MTC uniformity process to its full potential for solving important tax issues. Until this obstacle is addressed, the value of the MTC uniformity process cannot be fully realized. This common perception inherent in this obstacle is also important because it affects the public input we get during the process, which affects the quality of the models we produce, which affects whether the models will be adopted by the states. We feel that this is a foundational problem that should be investigated to find out why this is occurring, the impact, and the risk of allowing it to continue.

Proposed Project Deliverables (for each project):

- Analysis of information gathered
- List of possible solutions, and
- Recommended next steps for selecting solutions to be implemented

Proposed Project Work Plans

Proposed Project 1 (Goal Area 2, Obstacle b) Projects take too long to complete

Estimated time: 6 months

Recommended project team: a few uniformity committee members and a staff person

- Prepare a detailed project plan, including a timeline for the project

- Gather information on the nature, extent, cause and risks of projects taking too long, e.g.:
 - Outline the current uniformity process (See attachment B)
 - Identify how long it has taken to complete each step of the current process for current projects and recently adopted models (See attachment C)
 - Develop interview questions and then interview stakeholders, (See attachment D)
 - Look at projects completed in the past that we consider successfully adopted by multiple states – identify the distinguishing characteristics (environment? subject matter of proposals? process difference?)
- Analyze the gathered information to identify possible solutions.
- Identify next steps.

Proposed Project 2 (Goal area 3, obstacle a)
The Public is in the habit of opposing our projects,
not viewing them as something that could make life easier if adopted by states

Estimated time: 6 months

Recommended project team: a few uniformity members, a staff person, a member of the public

- Prepare a detailed project plan, including a timeline for the project
- Gather information to understand nature, extent, causes, and risk of public being in the habit of opposing our projects and not viewing them as something that could make life easier if states adopted.
 - Develop interview questions and then interview stakeholders, similar to above (See attachment D).
 - Look at projects completed in the past that we consider successfully adopted by multiple states – identify the distinguishing characteristics (environment? subject matter of proposals? process difference?)
- Analyze the gathered information to identify possible solutions.
- Identify next steps.

Attachment A – Goals, Obstacles, Possible Improvements Discussed by the Income & Franchise Tax Uniformity Subcommittee

Goal: 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:

Goal Area 1: Greater adoption of uniformity recommendations by state and local tax jurisdictions.

- a. Obstacle: Uniformity recommendations are not widely adopted
- Proposed improvement: Establish liaisons to seek project suggestions from the public and legislative bodies on a regular basis
 - Proposed improvement: Redesign uniformity web pages so adopted models and supporting documentation are available.
 - Proposed improvement: develop short “summary sheet” for each adopted model that describes problem the model addresses and how the model addresses that problem.

Goal Area 2: Uniformity projects will have the greatest value to the states and stakeholders.

- a. Obstacle: We aren’t selecting the best projects for uniformity work
- Proposed improvement: Establish factors to consider for initiating a new project – for example, Desirability (urgency of the problem, need for uniformity on this point, etc.) and Practicability (ability to address the problem in a practical way, likelihood of adoption or benefits of education on the topic, etc.)
 - Proposed improvement: Create the equivalent of a Bylaw 7 survey for potential projects
 - Proposed improvement: prioritize projects
- b. Obstacle: Uniformity projects take too long to complete
- Proposed improvement: Implement a process starting with a “Concept Paper” developed by the requestor and/or staff identifying:
 - Problem to be addressed - is it a current problem or possible future problem?
 - Stakeholders – taxpayer segments, local gov’t, states, federal, other
 - Possible Solutions; the pro’s and con’s of each to the extent known
 - Proposed improvement: establish goals and timelines; develop capability for tracking completion of goals and timelines.
 - Proposed improvement: encourage committee members to attend in-person and teleconference meetings regularly; and to update internal stakeholders regularly
 - Proposed improvement: Redesign uniformity web pages so projects and supporting documentation are available.

- Proposed improvement: reenergizer the “executive committee liaison” concept.
- c. Obstacle: The Executive Committee doesn’t approve things for hearing when we expect them to.
 - Proposed improvement: Create outreach groups composed of subcommittee members to gather thoughts from stakeholder groups on need and possible benefits/costs of potential projects

Goal Area 3: More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers and the federal government.

- a. Obstacle: The public is in the habit of opposing our projects and not viewing them as something that could make life easier if adopted by the states.
 - Proposed improvement: Establish liaisons to seek project suggestions from the public and legislative bodies on a regular basis

Attachment B – Outline of the Current Process

Summary of the Commission’s Typical 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

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

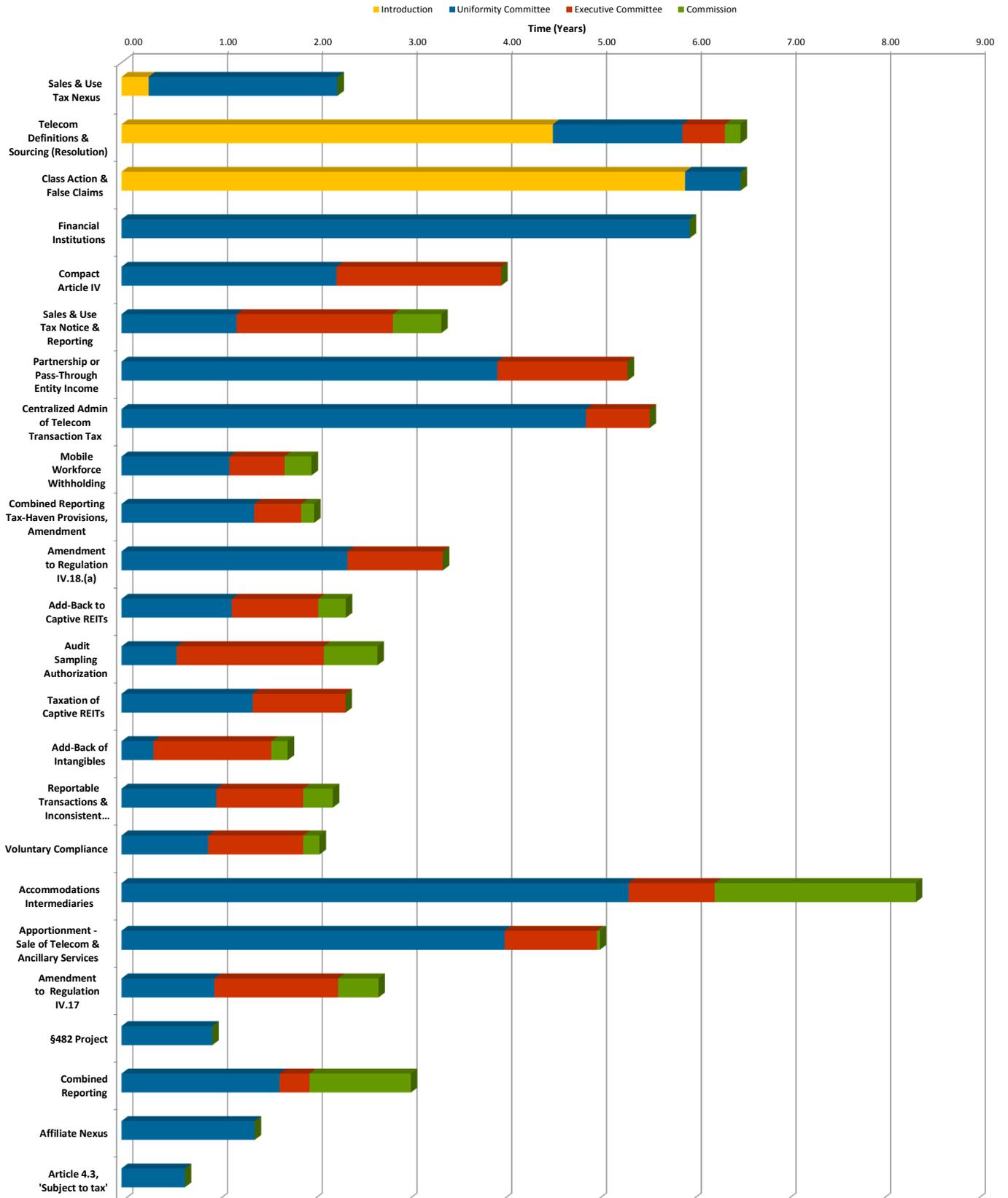
Step Seven:

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.

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.

Attachment C - Project Timelines (Bar Chart)



Red boxes indicate current status	Green boxes indicate conclusion of project	*Some dates have been estimated.
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Years	Project	Introduction	Uniformity Committee				Executive Committee			Commission		
			Education and Outreach	Initiation	Policy Checklist	Drafting	Under Review	Public Hearing	Recommendations under Consideration	Bylaw 7	Before the Commission	Approved by Commission
3.35	Sales and Use Tax Nexus Statute	3/3/2010 1.38		7/20/2011 0.24		10/15/2011 1.14						
					12/4/2012							
					0.59							
6.51	Telecommunications Definitions and Sourcing (Resolution)	1/5/2007 4.55		7/25/2011 1.37			12/5/2012 0.45				5/18/2013	
											0.14	
6.51	Class Action and False Claims	1/5/2007 5.95		12/15/2012 0.19	2/22/2013							
					0.37							
5.97	Financial Institutions Apportionment Rule Amendment		7/20/2007 1.65		3/13/2009 0.45	8/26/2009						
						3.87						
3.98	Compact Article IV Amendment		7/15/2009 0.47		1/1/2010 0.45	6/15/2010 1.12	7/28/2011 0.37					
						12/9/2011 0.23	3/3/2012 1.07	3/28/2013				
								0.28				

Years	Project	Introduction	Uniformity Committee				Executive Committee			Commission		
			Education and Outreach	Initiation	Policy Checklist	Drafting	Under Review	Public Hearing	Recommendations under Consideration	Bylaw 7	Before the Commission	Approved by Commission
3.35	Sales & Use Tax Notice and Reporting			3/3/2010 0.11	4/12/2010 0.19	6/22/2010 0.69	3/2/2011 0.21	5/18/2011 0.04	5/31/2011 0.02	6/7/2011 0.51		
							12/10/2011 0.20					
5.18	Partnership or Pass-Through Entity Income Ultimately Realized by an Entity that is not Subject to Income Tax		3/15/2008 2.99				3/10/2011 0.18	5/16/2011 0.06	6/6/2011 0.14			
						7/28/2011 0.98	7/20/2012 0.83		5/18/2013 0.14			
5.58	Centralized Administration of Telecommunications Transaction Tax		1/5/2007 0.52	7/15/2007 1.32	11/7/2008 3.06		11/30/2011 0.36	4/10/2012 0.05	4/30/2012 0.25			8/1/2012
2.01	Mobile Workforce Withholding and Individual Income Tax		7/25/2009 0.06		8/15/2009 0.60		3/22/2010 0.13	5/10/2010 0.02	5/18/2010 0.02			
						5/24/2010 0.48	11/16/2010 0.06	12/8/2010 0.35		4/14/2011 0.28		7/27/2011
2.03	Combined Reporting Tax-Haven Provisions, Amendment			7/15/2009 1.40			12/8/2010 0.37	4/22/2011 0.13		6/7/2011 0.14		7/27/2011
3.39	Amendment to Regulation IV.18.(a): Equitable Adjustment of Standard Allocation and Apportionment Rules		3/9/2007 1.01		3/13/2008 0.61	10/22/2008 0.76	7/26/2009 0.50	1/25/2010 0.22	4/15/2010 0.29			7/29/2010
2.37	Add-Back of Certain Payments to Captive REITs		3/15/2009 0.33			7/15/2009 0.83	5/13/2010 0.34	9/14/2010 0.19	11/23/2010 0.38	4/12/2011 0.29		7/27/2011

Years	Project	Introduction	Uniformity Committee				Executive Committee			Commission		
			Education and Outreach	Initiation	Policy Checklist	Drafting	Under Review	Public Hearing	Recommendations under Consideration	Bylaw 7	Before the Commission	Approved by Commission
2.70	Audit Sampling Authorization Statute and Accompanying Regulation		11/15/2005 0.31					3/9/2006 1.40				
						8/2/2007 0.27	11/8/2007 0.15			1/3/2008 0.57		7/28/2008
2.36	Taxation of Captive REITs				3/15/2006 1.38		8/2/2007 0.23	10/26/2007 0.75				7/25/2008
1.75	Add-Back of Certain Intangible and Interest Expenses		11/15/2004 0.29	3/1/2005 0.05			3/18/2005 0.33	7/18/2005 0.23	10/10/2005 0.68	6/15/2006 0.17		8/17/2006
2.23	Reportable Transactions and Inconsistent Filing Positions			7/15/2004 0.92			6/14/2005 0.37	10/27/2005 0.02	11/3/2005 0.53			
						5/15/2006 0.08				6/15/2006 0.31		10/7/2006
2.09	Tax Avoidance Transaction Voluntary Compliance Program			7/15/2004 0.92			6/14/2005 0.37	10/27/2005 0.02	11/3/2005 0.61	6/15/2006 0.17		8/17/2006
8.39	Collection and Remittance of Lodging Taxes by Accommodations Intermediaries		3/15/2004 5.35					7/21/2009 0.36	12/1/2009 0.12	1/15/2010 2.13		
							3/1/2012 0.11	4/10/2012 0.06	5/2/2012 0.25			8/1/2012
5.05	Apportionment of Income from the Sale of Telecommunications and Ancillary Services			7/15/2003 4.04			7/30/2007 0.21	10/16/2007 0.50	4/15/2008 0.26	7/20/2008 0.03		7/31/2008
2.71	Amendment to Regulation IV.17 'On behalf of'		11/15/2004 0.33	3/15/2005 0.36			7/25/2005 0.01					
						7/27/2005 0.29	11/10/2005 0.96	10/26/2006 0.03	11/6/2006 0.31	2/27/2007 0.43		8/2/2007

Attachment D – Possible Interviewees

Surveys of Stakeholders Possible Categories of Interviewees

- Uniformity Committee, possibly including
 - Chairs (past, present),
 - Members (active, non-active),
 - Staff

- Executive Committee, possibly including
 - Chairs (past, present),
 - Members (active, non-active),
 - Staff

- Public, possibly including
 - Taxpayer, Practitioner, and Other Groups, e.g.,
Tax Executives Institute (TEI), Council on State Taxation (COST), Institute for Professionals in Taxation (IPT), American Institute of Certified Public Accountants (AICPA), American Bar Assoc. SALT section (ABA), professional lobbying groups in various states, etc.

 - Individual Taxpayers, e.g.,
Tax managers, attorneys in contested cases, other specific industry representatives

 - Tax Press, e.g.,
State Tax Notes, CCH, BNA, etc.

 - Other Government Groups, e.g.,
FTA, SST, National Governors' Assoc. (NGA), National Conference of State Legislatures (NCSL), Uniform Law Commission (ULC), etc.