



MULTISTATE TAX COMMISSION

**MINUTES of
Income and Franchise Tax Subcommittee Meeting
Tuesday, March 11, 2014
1:00 p.m. Mountain Time**

I. Welcome and Introductions

Robynn Wilson, Chair of the Uniformity Subcommittee on Income & Franchise Tax, (AK) opened the meeting. The following persons were in attendance:

Lennie Collins	North Carolina Department of Revenue	Robynn Wilson	Alaska Department of Revenue
Jeff Henderson	Oregon Department of Revenue	Chris Sherlock	Alabama Department of Revenue
Gary Humphrey		Holly Coon	
Derek Bell	Montana Department of Revenue	Kelly Gillikin	
Lee Baerlocher		Stewart Binke	Michigan Department of Treasury
Gene Walborn		Chris Coffman	Washington State Department of Revenue
Dee Wald	Scott Garrison		
Matt Peyrl	North Dakota Office of State Tax Commissioner	Karolyn Bishop	
Myles Vosberg		Michael Fatale	Massachusetts Department Of Revenue
R. Jay Frost	Louisiana Department of Revenue	Greg Matson	Multistate Tax Commission
Richard Cram	Kansas Department of Revenue	Ben Abalos	
Aaishah Hashmii	DC Office of Tax and Revenue	Cathy Felix	
Phillip Horwitz	Colorado Department of	Jeff Silver	

Ken Schade	Revenue	Ken Beier	
Erica Hoxeny		Roxanne Bland	
Wood Miller	Missouri Department of Revenue	Sheldon Laskin	
Kathy Sher	New Hampshire Department of Revenue Administration	Bruce Fort	
David M. Fergeson	New Mexico Taxation & Revenue	Lila Disque	
Frank Hales	Utah State Tax Commission	Elizabeth Harchenko	MTC Consultant
Brian Fliflet	Illinois Department of Revenue	Helen Hecht	Federation of Tax Administrators
Phil Skinner	Idaho Office of the Attorney General	Jim Eads	Ryan
Bill von Tagen		Greg Turner	Council on State Taxation
Richard W. Jackson	Idaho State Tax Commission	Todd Lard	Sutherland Asbill & Brennan
Steve Wynn		Tripp Baltz	Bloomberg BNA
Randy Tilley			

II. Approval of Minutes of In-person Meeting, December 10, 2013

The minutes of the December 10 meeting will be reviewed for approval at the next meeting, in July.

III. Public Comment Period

There were no comments.

IV. Reports and Updates

a. Federal Issues Affecting State Taxation

i. H.R. 1129, Mobile Workforce Income Tax Simplification Act

Roxanne Bland, MTC Counsel, provided the report. H.R. 1129 would prohibit the wages or other remuneration earned by an employee who performs employment duties in more than one state from being subject to income tax in any state other than: (1) the state of the employee's residence, and (2) the state within which the employee is present and performing employment duties for more than 30 days during the calendar year. This bill passed the House last Congress but has stiff opposition from Sen. Schumer.

ii. H.R. 2992, Business Activity Simplification Act of 2013

This is a bill that would expand the federal prohibition against state taxation of interstate commerce to: (1) include taxation of out-of-state transactions involving all forms of property, including intangible personal property and services

(currently, only sales of tangible personal property are protected); and (2) prohibit state taxation of an out-of-state entity unless such entity has a physical presence in the taxing state. It also sets forth criteria for: (1) determining that a person has a physical presence in a state, and (2) the computation of the tax liability of affiliated businesses operating in a state. There was a hearing on this measure on February 26, 2014, and several witnesses attended. Rep. Bachus expressed concern for small-medium businesses, saying jobs may be lost.

b. Process Improvements Discussion

i. Status Report on Uniformity Website Improvements

Greg Matson, Deputy Executive Director of the MTC, provided the update. Moving to a new website has been unusually challenging, but the work proceeds. The main complicating factor is that the webmaster must ensure updated information is available on the current website, while trying to create a new website for all the content. This has been a significant challenge for the MTC webmaster.

i. Uniformity Process Strategic Planning Workgroup Recommendations

Gary Humphrey (OR) provided background on the project. The workgroup was assigned to work on strategic planning goal area 1: adoption of MTC models. Specifically, adoption rates of MTC models seem to be on the decline. In order to assess this perception and the underlying reasons, the group performed a series of surveys of states, and narrowed in on the 2000-2010 time frame and the models that came out during that period. The group chose to focus on 11 models. It sent out a survey asking which states had adopted these models, and fourteen states responded with a complete summary. The workgroup then followed up with one-on-one interviews. Richard Cram (KS) presented the results of the survey and the request to the Subcommittee. Some common themes were presented as to why the models were/were not adopted; Dee Wald (ND) then asked for the Subcommittee's input as to the completeness of the research performed thus far and suggestions for next steps.

ii. Public Comment

There were no comments.

iii. Committee Discussion

Ms. Wald asked the committee specifically for proposed remedies of the situation. There were a number of questions regarding the legislature's concern as to what was the Commission's role. Dee believes legislators sometimes think the Commission is trying to preempt their authority as policymakers, and this stems from a misperception of the nature of the Commission.

Mr. Humphrey proposed a more structured process for bringing forward Commission proposals, considering the rather detailed process some states have to go through for new statutes or regulations. Ms. Wald pointed out that in previous years, when models were widely adopted, there were far fewer "hoops" to jump through. Randy Tilley (ID) pointed out, however, that *all* current measures need to jump through those hoops. What happens with the Commission models is not inconsistent with what the Idaho tax department is seeing with all its leg-

islative efforts. Ms. Wilson pointed out that all Commission members bear responsibility within their individual states to bring up new measures and assist them through the process. Most of the factors listed are out of the Commission's control. The issue of "legislative confusion" could possibly be addressed, and might be related to lack of awareness of the model. If legislators were made aware of the Commission's role, they might be more receptive to hearing about a particular model. Ms. Wilson questioned whether that was more in the purview of the Executive Committee. In that light, she asked for a proposal that could go to the Uniformity Committee and from there to the Executive Committee. The Subcommittee made no recommendations on this point.

V. Possible Project on The Use of Trusts for State Tax Avoidance

a. Presentation of Memorandum

Lila Disque, MTC Counsel, gave a presentation on emerging uses of trusts as tax shelters analogous to foreign subsidiaries used by large domestic corporations.

b. Public Comment

There were no comments.

c. Committee Discussion

Phil Horwitz (CO) moved that the staff prepare a memo regarding the possible scope of a project to explore trust residency and other issues that might benefit from uniform law and express the sense of the committee that this is an appropriate project to pursue. Holly Coon (AL) requested an estimate as to the fiscal impact of such a model. Ms. Disque explained that the Commission would obtain this estimate by surveying the states. There was no further discussion. The motion passed by a show of hands with 12 in favor, none against, and 4 abstaining.

VI. Possible Project on Sourcing of Electricity for Tax Purposes

a. Presentation of Memorandum

Bruce Fort, MTC Counsel, and Ken Beier, MTC Director of Training, discussed a potential project on sourcing of electricity. A main point of their presentation concerned the unusual nature of electricity and inconsistent state treatment.

b. Public Comment

There were no comments.

c. Committee Discussion

Kathy Sher (NH) expressed concern regarding the amount of technical knowledge and variables involved in such a project. Mr. Humphrey stated even industry is not on the same page as far as sourcing. Chris Coffman (WA) pointed out the main industry concern is not necessarily the risk of double taxation. Since the area is so complicated, Mr. Horwitz proposed asking industry for their input. Brian Fliflet (IL) would be a particularly good contact for this purpose, since he has already been in contact with members of industry. Wood Miller (MO) moved to continue investigating the issue via an educational survey as to what options are available to the committee. The motion passed by show of hands, with 16 in favor and none opposed.

VII. New Business

Gene Walborn (MT) proposed a project on cloud computing. He noted that Harley Duncan did a presentation on the issue a few years back. Ms. Wald volunteered to make available some recent research she had done, as well. Mr. Horwitz moved staff investigate and prepare information regarding cloud computing as delivery of services vs rental of property. Mr. Cram recommended researching sourcing for both sales and income tax. The motion passed by voice vote, with 15 in favor and none against.

VIII. Adjourn