



MULTISTATE TAX COMMISSION

MINUTES of
Uniformity Subcommittee on Income & Franchise Tax Meeting
Tuesday, December 10, 2013
3:00 p.m. Central Time

Present at the Meeting:*

State		MTC Staff
	Chris Sherlock, AL	
	Misgana Tesfaye, CO	
Rebecca Abbo, NM	Christy Vandevender, AL	Roxanne Bland
Walter Anger, AR	Myles Vosberg, ND	Cathy Felix
Lee Baerlocher, MT	Gene Walborn, MT	Bruce Fort
Gil Brewer, WA	Steve Wynn, ID	Thomas K. Shimkin
Lennie Collins, NC	Phil Skinner, ID AG	Jeff Silver
Michael Fatale, MA	Dee Wald, ND	
Keith Getschel, MN	Kimberly Doley, LA	
Frank Hales, UT	Robynn Wilson, AK	
Jennifer Hays, KY		
Pamela Hill, AL	Private Sector	
Phil Horwitz, CO		
Gary Humphrey, OR	Karen Boucher, Deloitte Tax	
Richard Jackson, ID	Janie Fenwick, Time Warner Cable	
Tim Jennrich, WA	Karl Frieden, COST	
Maria Johnson, FL	Charlie Kearns, Sutherland	
Michael Mason, AL		
Wood Miller, MO	Teleconference	
Deanna Munds-Smith, AR	Diann Smith, McDermott	
Matt Peyerl, ND	Bank of America	
John Ryser, WA	Deutsch Bank	

* Some meeting participants were absent or delayed due to weather

I. Welcome and Introductions

Robynn Wilson, Chair of the Uniformity Subcommittee on Income & Franchise Tax, (AK) opened the meeting.

II. Approval of Minutes of In-Person Meeting, July 22, 2013

There were no comments or additions to the minutes. A motion was offered to approve the minutes. The motion passed by voice vote.

III. Public Comment Period

There were no comments.

IV. Reports and Updates

a. Federal Issues Affecting State Taxation

Roxanne Bland gave an overview of the climate in the current Congress. In general, Congress is in an unprecedented stalemate. It will probably take the 2014 elections to break the deadlock one way or another. No state tax bills will be considered before the end of the year.

i. 1. H.R. 1129, Mobile Workforce State Income Tax Simplification Act of 2013

This bill limits the authority of States to tax certain income of employees for employment duties performed in other States, and is very similar to the MTC's model statute. It exempts professional athletes and entertainers, and some other public figures. The main obstacle to the bill in the Senate comes from Senator Charles Schumer, D-NY.

2. H.R. 2992, Business Activity Tax Simplification Act, of 2013

This bill expands P.L. 86-272 to intangibles and services. It also contains carve-outs for various activities that would otherwise create nexus for a taxpayer. Last year, this bill passed the House Judiciary Committee but never made it to the House floor. Once the current deadlock is broken, it may come back to Judiciary for consideration, since Chairman Goodlatte, R-VA, has been its sponsor for many years. This year, the bill was introduced by Rep. Sensenbrenner, R-WI.

b. Report on Commission Action on Uniformity Projects

i. Report on Hearing Officer's Report on Recommended Amendments to Compact Art. IV [UDITPA]

Shirley Sicilian provided an update regarding recommended amendments to Compact Art. IV. The Hearing Officer's report has been issued, and is available on the MTC website. Professor Richard Pomp, the Hearing Officer, made a number of recommended changes to the model as drafted. The report will be discussed by the Executive Committee at its meeting on December 12, 2013, at which time the Committee will decide the next steps in the public hearing process.

**V. Project to Amend MTC Financial Apportionment Rule
Report of Work Group**

a. Lennie Collins (NC) presented the report. In July of 2013, the Income and Franchise Tax Subcommittee had instructed the workgroup to work on a draft that eliminated the use of SINAA factors for sourcing loans in the property factor. The workgroup met three times via teleconference over the next several months and explored alternative means of sourcing loan receipts, concluding that the loans should be excluded from the property factor entirely since no formulary sourcing approach for loans could be agreed to. The work group further agreed to specifying several types of income which could be sourced in the sales factor, and rejected a proposal to establish a specified level of “other” receipts which could be eliminated from the sales factor sourcing, and decided that the “triggering” event for adoption of the new model apportionment regulation should be a temporal one, deciding on 1/1/16 as the date the new model would become effective.

Mr. Collins then offered the subcommittee the workgroup’s proposed model apportionment regulation reflecting those decisions.

b. Public Comment:

There was no immediate public comment but Karen Boucher, who has represented certain financial institutions for many years on this project, made many comments and suggestions as part of the committee discussion, below.

c. Committee Discussion

Phil Horwitz of Colorado noted that he had advocated for some approach to keep loans in the property factor without using SINAA factors to source those loans. Karen Boucher stated that real and tangible property is not a good proxy for income generation and believed that while SINAA was a better alternative for sourcing income from loans.

There was a discussion of the percentage of gross income banks derive from loan activity. Phil Horwitz responded that his understanding was that typically banks derived 70% of their receipts from loans.

The subcommittee also discussed whether equal three-factor apportionment was appropriate in light of the decision to eliminate loans from the property factor. The workgroup stated that the issue had been considered extensively and it was felt that equal factor weighting was appropriate since the factors realistically captured where income was earned.

Ms. Boucher asked the subcommittee to consider a floor of 6% of “other receipts” that could be excluded from the apportionment formula because of the difficulty in tracking and sourcing those receipts. Several members of the subcommittee expressed sympathy with the proposal but stated that such a special rule would be difficult to administer. Other subcommittee members stated that a “carve-out” would be unjustified.

Mr. Collins moved that the subcommittee accept the proposal of the workgroup in its entirety. Mr. Horwitz seconded the motion. The subcommittee voted 14 ayes, 0 nays, with 5 abstentions.

VI. Process Improvements Discussion

a. Uniformity Process Strategic Planning Workgroup Recommendations

Gary Humphrey, (OR) gave the report. Since July 2013, the Project Team has focused on the element of uniformity recommendations not widely adopted. It developed a timeline measuring the length of time it took for an MTC uniformity recommendation to be adopted. Second, it chose eleven uniformity recommendations, from 2002 to 2012 to include in the survey. The team received 14 usable survey responses, which were compiled and sent to the Uniformity Committee. Of these responses, the Project Team selected the most and least widely adopted uniformity recommendations to pursue further. Mr. Humphrey stressed the importance of getting the surveys to the right people in the states, i.e., those most familiar with MTC uniformity recommendations.

b. Public Comment

None.

c. Committee Discussion

Some committee members asked why the initial surveys did not include queries about sales and use tax regulations. Mr. Humphrey responded that the workgroup is more interested in understanding the process used in the states in evaluating MTC uniformity proposals rather than objections to the content of those regulations, so limiting the initial survey to income atx proposals was adequate for that purpose. The subcommittee discussed how to identify key personnel in each state to respond to additional survey questions.

VII. New Business

There was no new business.

VIII. Adjourn

The meeting was adjourned.