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**MINUTES**  
**MTC Uniformity Subcommittee Meetings**  
**St. Louis, Missouri**  
**November 13 and 14, 2006**

**I. Welcome and Introductions**

The following state personnel and other individuals participated in the meetings.

<b>Name</b>	<b>State or Affiliation</b>	<b>Name</b>	<b>State or Affiliation</b>
Ted Spangler Committee Chair	ID	Wood Miller	MO
Michael Mason	AL	Lee Baerlocher	MT
Andrea Chang	CA/FTB	Lee Evans	NJ
Carl Joseph	CA/FTB	Rebecca Abbo	NM
Phil Horwitz	CO	Heidi Chowning	NM
Joe Thomas	CT	Donnita Wald	ND
John Kutsukos	CT	Mary Loftsgard	ND
		Lennie Collins	NC
Reva Tisdale	ID	Charlie Rhilinger	OH
Barbara Nichols	ID	Janielle Lipscomb	OR
Joe Randall	ID	Frank Hales	UT
Lynn Chenoweth	ID	Rod Marrelli	UT
Jerilynn Gordon	IL		
Bryan Vargas	KS	David Somerville	TX
Richard Cram	KS	Jan Bianchi	WA
		Joanne Perry	Asbill, Sutherland
Carol Ireland	KS	Jamie Fenwick	Time-Warner Cable
Dale Vettel	MI	Deborah Bierbaum	AT&T
Keith Getschel	MN	Diann Smith	COST
<b>MTC Staff</b>			
Joe Huddleston	Greg Matson	Tom Shimkin	Jackie Dalenberg
Steve Yang	Les Koenig	Sheldon Laskin	Cathy Felix
Shirley Sicilian	Marie Plesko	Roxanne Bland	Jeff Silver
Ken Beier	Elliott Dubin	Harold Jennings	

**II. Public Comment Period**

There was no public comment during the initial public comment period.

### **Income/Franchise Tax Subcommittee**

The Income and Franchise Tax Subcommittee was chaired by Wood Miller, Missouri

### **III. Reports**

#### *A. Report on Commission Action on Uniformity Projects*

Ms. Shirley Sicilian, MTC General Counsel, reported on the following projects.

#### 1. Model Combined Reporting Statute

The Commission adopted the proposal at its business meeting in August, and reviewed a clarifying technical change made at that meeting.

#### 2. Model Reportable Transaction Statute

The proposal was adopted at a special full Commission teleconference on September 7. It was amended to remove the “inconsistent filing positions” portion into a separate Model Compilation of State Tax Filing Data Statute.

#### 3. Model Compilation of State Tax Filing Data Statute

The proposal was adopted by the Commission on September 7, 2006. Prior to adoption, the provision was amended significantly. It now requires that companies file a “51 State spreadsheet;” and, a two (2) year lag was included to allow time to obtain necessary software. An additional option is to allow companies to file copies of tax returns filed in other states.

#### 4. Tax Avoidance Transactions VCI Statute

The proposal was adopted by the Commission on August 17, 2006.

#### 5. Model Add-Back Statute

This model statute was also adopted by the full Commission. Prior to adoption it was amended to include a credit for taxes paid in another state on income from intangible assets.

#### 6. Amendment to Model Sales Factor Regulations: Subcontractor Services Performed “On Behalf of” Taxpayer

A Public Hearing was held in late October. The Hearing Officer’s Report has been filed and recommended only one technical amendment.

7. Revision of Multistate Tax Compact Article IV § 17 – Sales Sourcing Rules for Other Than Sales of Tangible Personal Property

The Executive Committee is taking on this project. A Subcommittee consisting of Elizabeth Harchenko (OR), Ben Miller (CA FTB), Bruce Johnson (UT), and Dan Bucks (MT) has been formed. They have called on the National Conference of Commissioners of Uniform State Laws (NCCUSL), the original drafters of UDITPA, to revisit this section of UDITPA.

*B Federal Issues Affecting State Taxation*

Roxanne Bland, MTC Counsel reported on several bills currently being considered in Congress.

1. H.R. 1956 and S 2721: Business Activity Tax Simplification Act of 2005/2006

This bill was pulled out of consideration by the full House Judiciary Committee, the result of the intense efforts by several states in expression opposition to their respective congressional delegations. The bills are, however, expected to be reintroduced on the 110<sup>th</sup> Congress.

2. H.R. 1369 and S. 1201: Natural Gas Pipeline Property

There was no action on these bills in this session of Congress.

3. H.R. 5252: 1996 Telecommunications Act Re-write

Ms. Bland reported that the re-write contained provisions for a moratorium on new state/local taxes on mobile telecommunications, and a permanent moratorium on Internet access taxes. Rep. Dingell of MI may want to bring this bill up again in the 110<sup>th</sup> Congress.

4. H.R. 6167: Preemption of State Authority to Tax Employee Income Earned in Other States

The bill limits the ability of states to impose withholding tax obligations on an employer if an employee is working temporarily (fewer than 60 days) in that state and that state is not the legal residence of the employee.

**IV. Telecommunications Apportionment Regulation**

Ms. Sicilian reviewed the project for the Subcommittee members, stating that there are still significant differences between the industry's position and the language contained in the draft model regulation in the area of wholesale sales. For example, Ms. Sicilian suggested that the information contained in the Federal Communications Commission's Annual data book in Table 15-6 be used to measure wholesale sale. Ms. Sicilian noted that these data are industry aggregates and that there is a lag in the reporting, but that the data might still be valuable as proxy industry data for our purposes. Ms. Deborah Bierbaum, AT&T suggested that pre-paid cards be considered as a wholesale sale.

The Committee determined it would like to see the next draft include the FCC table as a proxy for these particular apportionment purposes. Industry representatives expressed a preference to retain cost-of-performance sourcing of receipts. Industry representatives may make a presentation to the Income/Franchise Tax Subcommittee at the Winter meeting in San Diego.

## **V. RICS and REITS**

Thomas Shimkin, MTC Counsel, led the discussion on RICs and REITs. He stated that states usually follow the federal law regulating these forms of business organization and define them as corporations that essentially are pass-throughs in nature. A tax problem for states regarding these types of organizations is that some states have both dividend paid deductions and dividend received deductions. The REIT can take a deduction for dividends paid to its owners. If the owner is a corporation, the corporation need not report the dividend received as income, which achieves a double deduction on the same income. A second tax problem for states is that the corporation receiving the dividend is often taxable with respect to the dividends in a state other than where the income was earned by the REIT, and sometimes only in a state that does not tax that type of income. Another problem is the determination of fair market rents, in the case of REITs, and fair market dividends, in the case of RICs.

Phil Horwitz (CO) made three points: 1) there is a need to separate the double deduction issue from the nexus (income shifting) issue; 2) the Committee should deal only with captive REITs and not consider those REITs that are publicly traded; and 3) RICs and REITs should be treated separately from each other because RICs are regulated by the SEC and REITs are regulated by the IRS.

Carl Joseph (CA FTB) noted that the subcommittee should be sure to deal with the dividend paid/dividend received deduction problem. Someone stated that eliminating the dividend received deduction at the state level would take care of the problem of bank-owned RICs. There would also be a need to tighten up the definition of a RIC for tax purposes because many companies register as RICs with the SEC but do not function as RICs.

AL moved that the RIC/REIT problem be separated into two separate model statutes, but be maintained as a single MTC project. UT seconded the motion. The motion carried unanimously – 17 yes votes and 0 no votes.

Other questions involving the definition of a captive REIT arose after the vote. One suggestion was to define a captive REIT as one where the corporate parent (a “C” corporation) owned > 50% of the REIT. Another suggestion was to define a REIT as a captive REIT if the individual owners were employees or executives of the corporate parent. The group decided to ask MTC staff to provide additional information to the subcommittee regarding Louisiana’s definition of a captive REIT and its legislative solution in general.

## **VI. New Business**

There were no items of new business.

### **Sales/Use Tax Subcommittee**

The Income and Franchise Tax Subcommittee was chaired by Richard Cram, Kansas.

#### **VII. Reports and Updates**

##### *A. Report On Commission Action on Uniformity Projects – Model Sales Tax Affiliate Nexus Statute*

Ms. Sicilian reported this model statute was not adopted by the Commission at the August Business Meeting and was not sent back for reconsideration.

##### *B. Federal Issues Affecting State Taxation*

###### 1. Streamlined Sales Tax Legislation

Roxanne Bland reported that the two bills in the Senate – one sponsored by Senator Enzi (R-WY) and one sponsored by Senator Dorgan (D-ND) differ only in their definitions of a small business. Sen. Enzi's bill defines a small business as a business with annual sales under \$5 million; Sen. Dorgan's bill would use the guidelines being developed by the Small Business Administration. Each bill would exempt small businesses from the burden of collecting sales taxes in states in which they do not have physical presence. Ms. Bland informed the Subcommittee that there would likely be action in 2007.

###### 2. Report on H.R. 1369 and S 1201 Natural Gas Pipeline Property

Ms. Bland reported that there would be no action on this bill in the "lame duck" session. She responded that she did not know how the prospects for this bill would be affected by the change in the composition of both the House and Senate.

#### **VIII. Hotel Intermediaries Project**

Phil Horwitz (CO) described his outline regarding the tax on intermediaries. The subsequent discussion turned on whether his proposal would be acceptable under the Streamlined Sales Tax. John Allen of Jones Day, representing the Intermediaries brought a recent Internal Revenue Ruling on the nature of hotel intermediary services to the attention of the committee. Richard Cram, Chair of the Sales/Use Tax Subcommittee, said the Subcommittee should continue working on this project.

#### **IX. Model Statistical Sampling Project**

The Subcommittee made some changes to the draft document such as substituting the word technique for method or procedure; and adding language to the effect that statistical sampling is expected to yield reasonable results.

Ohio moved that the revised language be accepted. Colorado seconded the motion. The vote was unanimous to accept the revised Model Regulation. Utah moved that the revised Model

Regulation be sent to the Full Committee for approval; Idaho seconded the motion. This motion passed unanimously.

#### **X. Possible Project on Uniform Power of Attorney Form**

The Uniform Power of Attorney Form Project would be considered an MTC Taxpayer Service rather than a Model Regulation.

Ted Spangler, Uniformity Committee Chair, expressed doubts that non-uniformity among the states for Power of Attorney Forms was a major problem for the private sector. The private sector representatives present replied that they are not sure whether non-uniformity among the states in this is a problem.

Utah suggested that the Subcommittee look at the IRS Form. COST said it would get back to the Subcommittee with suggestions on whether this is an issue for their members.

#### **XI. Possible Project on Uniform Penalties.**

The Subcommittee discussed the background paper presented by Roxanne Bland. Minnesota noted that uniform penalties could improve compliance. There was a question of whether the Federation of Tax Administrators (FTA) was going to survey the states regarding penalties therefore, the Subcommittee should wait for the FTA to publish the results of their survey, if, indeed there is such a survey.

#### **XII. New Business**

There was no new business to come before the committee

#### **XIII. Adjourn**

The subcommittee meetings were adjourned.