

Williams, Tracy

From: Williams, Tracy
Sent: Wednesday, October 13, 2010 6:34 PM
To: 'Sheldon H. Laskin'
Cc: Shirley K. Sicilian
Subject: RE: MTC Non-corporate income taxpayer project

Sheldon:

Thanks for your email. I have discussed with the trades how best to approach an insurance regulator to speak with the Subcommittee, and it is our consensus that the optimal approach would be for a representative or representatives of a member state (rather than MTC staff) to approach insurance regulator(s) directly. We would be pleased to work with you to identify any potential candidates (whether a current commissioner, a former commissioner, or a commissioner's staff) and to support the MTC's invitation.

Knowing that the Subcommittee has not yet arranged to meet with insurance regulators or conducted any research regarding the investments of insurers or state retaliatory tax practices, we were surprised to review the October 5, 2010 staff memo, which contains factually incorrect statements regarding the business of insurance and the investments of insurers. Most notably, the memo concludes (without citing to any authority) that "the nature of the insurance business has changed dramatically over the past twenty-five years. Until relatively recently, insurance companies could not own a controlling interest in a pass-through entity that was actively engaged in a trade or business." We question what evidence there is to conclude that the "nature of the insurance business" has "changed dramatically" over the past 25 years. Moreover, it is clearly **incorrect** that "insurance companies could not own a controlling interest in a pass-through entity that was actively engaged in a trade or business." Insurance companies have invested in partnerships for as long as partnerships have been in existence. It also is unclear what "profit interest" means, or how such an interest can be "owned." These erroneous conclusions might well have been corrected had the Subcommittee pursued the research we have suggested.

We observe that the Draft Model Statute also has been subject to a series of material changes during the course of its consideration by the Subcommittee. This is not objectionable, of course, to the extent that the Subcommittee is responding to new information and input. What is troubling, however, is the recurrence of a process that has typified this project from the outset; such changes are made without notice and with little or no opportunity for public comment. In this case, for example, two alternative versions of a substantially revised Draft Model Statute were first released on October 5, together with notice that the Subcommittee might take final action on the Draft as soon as two weeks thereafter. The new Draft was noticed for potential Subcommittee action at the very time that the industry was attempting to coordinate a response to your request for assistance in obtaining input from insurance regulators, which input would be helpful to the MTC's evaluation of the Draft Model Statute. There was no opportunity to comment on these changes to the Draft Model prior to their release, there is insufficient time to provide for meaningful review and comment prior to the Subcommittee's newly-scheduled action, and it is unclear to the industry whether or not the Subcommittee still seeks the additional, requested input.

The inaccuracies described above simply prove the point that we have urged all along: it would be negligent of the Subcommittee to take action with respect to the Draft Model Statute without hearing from insurance regulators and surveying state retaliatory practices. Indeed, we interpreted your recent request for the trades help in securing input from regulators as an acknowledgement of the importance of such input to the instant process.

We urge the Subcommittee to refrain from acting on the basis of inaccurate information, conclusory statements, minimal outside input on prior versions of the model (other than from Professor Pomp and the trades), and no outside input at all on the latest versions of the model. The Subcommittee, the MTC, and the Member States would be far better served by arranging to hear from a fair cross-section of insurance regulators (or their delegates). As always, we stand ready to assist you in this regard.

Tracy

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From: Sheldon H. Laskin [mailto:slaskin@mtc.gov]
Sent: Monday, September 20, 2010 1:44 PM
To: Williams, Tracy
Cc: Shirley K. Sicilian
Subject: RE: MTC Non-corporate income taxpayer project

Tracy,

Thank you for getting back to me.

I appreciate your offer to facilitate insurance regulator involvement in the MTC non-corporate income taxpayer project. You should know that, from the beginning of this project, staff has reached out to regulator groups, including NAICS and individual state regulators. We have explained the corporate income tax problem we're dealing with and the proposal we're developing, and invited them to participate if they would like. So far, none have chosen to participate further. The MTC remains interested in discussing any concerns insurance regulators may have about this project, including the historical information regarding insurance company investments you mention in your e-mail. I would be happy to contact any regulatory representative you know of who is interested in working with us if you would supply me with the name and contact information of that person.

From: Williams, Tracy [mailto:tdwilliams@sidley.com]
Sent: Monday, September 13, 2010 10:35 PM
To: Sheldon H. Laskin
Cc: Shirley K. Sicilian
Subject: RE: MTC Non-corporate income taxpayer project

Sheldon:

Thanks for your message. I also enjoyed speaking with you in Oregon and I appreciate your attentiveness to the industry presentation. As you know, the industry believes that it is of utmost importance that Subcommittee members seek to better understand the existing framework of taxation and regulation of the insurance industry as part of evaluating the draft model statute.

Having spoken with the industry after the July meeting, I have learned that the insurance trade associations do not collect from their members historic financial data relating to insurer investments. We are aware, however, that the National Association of Insurance Commissioners ("NAIC") and state insurance regulators do collect

such data for all segments of the insurance industry. A.M. Best Company also maintains such information and can provide detailed reports for any period of time you believe relevant or helpful.

As you know, the trade associations strongly believe that the Subcommittee should receive further input on questions raised at and before the July meeting. The trade associations believe that a panel comprised of insurance regulators could respond to many of these questions. As was discussed in July, state insurance regulators exercise stringent financial oversight of insurance companies to ensure that companies can satisfy their obligations to pay policyholders. This oversight and regulation includes quarterly review of the company's financial condition, restriction on the type and form of insurance company investments, fixed minimum capital and "risk-based" capital requirements that fluctuate based on the form of an investment, and restrictions on payment of a dividend from an insurance company. In some states, such regulators also implement state insurance tax laws, including retaliatory taxation.

During our conversation after the meeting, you indicated that you had not been able to arrange for regulators to attend any of the Subcommittee's meetings to date. Once again, the trade associations feel that this input is essential to the MTC's process on this model statute. Given frequent meetings of the NAIC and other regulatory bodies and the multitude of current, complex regulatory developments relating to insurance, regulators' participation should be arranged by the MTC with sufficient lead time for the invited regulators.

The trade associations also believe that the Subcommittee should conduct the retaliatory tax survey and analysis that the Working Group has, on several occasions, recommended. Certain insurance regulators, their staff or state taxing authorities where the premium and retaliatory tax are administered by them would be well qualified to address the critical issues surrounding the potential retaliatory tax risks and the role and importance of the current insurance tax system, including "in lieu" protections.

Finally, the trade association written comments submitted at the July meeting identified many significant concerns about the draft model statute that could cause serious consequences for the industry. We believe it is critical that the Subcommittee examine these concerns carefully.

I would be happy to assist you in arranging for the Subcommittee to meet with insurance regulators. If you have other questions or comments about the comments submitted by the trade associations,, please contact me directly.

Tracy

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From: Sheldon H. Laskin [mailto:slaskin@mtc.gov]
Sent: Wednesday, August 11, 2010 10:12 AM
To: Williams, Tracy
Cc: Shirley K. Sicilian
Subject: MTC Non-corporate income taxpayer project

Tracy,

I enjoyed your presentation at the MTC Income and Franchise Tax Subcommittee meeting in Hood River and our conversation afterwards.

I understand industry would like to make a presentation to the subcommittee regarding how the nature of investments by insurance companies have changed since 1980. We are in the process of preparing our

Fall teleconference schedule and would like to include this on a subcommittee agenda. We would like to schedule a meeting by October 1st. Is that doable for industry?

Sheldon H. Laskin

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