



**Report of Hearing Officer
Concerning
A Model Uniform Statute for Reporting Federal Tax Adjustments
(With Accompanying Model Regulation)**

January 7, 2003

Executive Summary

The proposal, a uniform statute for reporting adjustments to a taxpayer's federal return to the states, (see Exhibit A) is intended to alleviate the burden of providing notification to those states where the taxpayer's liability may have changed as a result of the federal adjustments. The Hearing Officer recommends that the proposal be referred to the Compact Member States for a By-Law 7 survey.

Report

The Hearing Officer, Roxanne Bland, opened the hearing at 1:30 PM. She gave the hearing participants a brief background regarding the proposal under consideration, noting that the idea of a uniform statute and regulation for reporting adjustments to a taxpayer's federal return to the states stemmed from a study conducted by the AICPA in 1995, wherein it was determined that the states' differing procedures for reporting adjustments to a taxpayers federal return posed a burden that could be alleviated through use of a uniform statute.

Shortly thereafter, the AICPA approached the MTC Uniformity Committee with a proposal to work jointly to develop a uniform statute. Originally, the proposal called for the Uniformity Committee to develop a draft model statute and regulation with input from AICPA, and the AICPA was tasked with developing a uniform reporting form. As the work progressed, the Uniformity Committee tabled the reporting form proposal, which it may take up at a later time.

During the hearing, Leslie Rawlings, Kansas Department of Revenue raised a question concerning the definition of a "final definition" and use of the term

“official act.” Jennifer Hays, Kentucky Revenue Cabinet and Chair, Income & Franchise Tax Subcommittee, referring to the text of the proposed statute, noted that the “official act” considered to be a “final determination” will depend on the route taken by the taxpayer with the Internal Revenue Service; therefore, the form of the determination might vary. The proposed statute relies on the taxpayer to advise the state when an assessment should be considered final. Ms. Hays further noted that examples of “final assessments” are set forth in the accompanying regulation.

Written commentary was received from South Carolina and California (see Exhibit B). While the comments are well taken, the comments are not substantive enough to warrant redrafting the proposal.

Recommendation

The Hearing Officer recommends to the Executive Committee that the proposal be referred to a survey of the affected Compact Member States as required by By-law 7.

Respectfully submitted,

Roxanne Bland, Hearing Officer

Exhibit A

MULTISTATE TAX COMMISSION

Proposed Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation

APRIL, 2002

Statute:

SECTION A. Reporting Federal Adjustments; assessment of additional tax

- (1) As used in this section and Section B, unless the context requires otherwise, "final determination" shall refer to
 - (a) the allowance of a refund or credit under Section 6407 of the Internal Revenue Code of 1986; or
 - (b) the official act of assessment under Section 6203 of the Internal Revenue Code of 1986, except assessments that result from the following shall not be considered final determinations:
 1. tax under a partial agreement,
 2. tax in jeopardy, and
 3. advance payments; or
 - (c) a final denial of a refund claim where a state refund claim has been filed or any other final action by the Internal Revenue Service that increases or decreases the state tax liability of a taxpayer for any tax year.
- (2) Every Taxpayer or group of taxpayers whose federal taxable income, federal tax liability or federal tax return has been changed, adjusted, or corrected for any income tax year pursuant to a final determination under Section A.(1) shall, within one hundred eighty (180) days of the date of the final determination, file the report of federal changes or state amended return as prescribed herein reporting the changes, adjustments or corrections to taxpayer's federal taxable income, federal tax liability or federal tax return resulting from the final determination under Section A.(1) and pay additional state tax due. The taxpayer shall also submit available documentation sufficiently detailed to allow computation of the tax change.
- (3)
 - (a) If the taxpayer files the report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final

determination under Section A.(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of:

{(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; *optional*} or

(ii) The last day of the one (1) year period following the due date of the report of federal changes or state amended return prescribed in Section A.(2).

(b) If the taxpayer fails to file a report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final determination under Section A.(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of:

{(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; *optional*} or

(ii) The last day of the one (1) year period following the date the report of federal changes or state amended return is actually filed with the [State Agency]; or

(iii) The last day of the one (1) year period following the date the [State Agency] is notified by the Internal Revenue Service in writing or by electronic means that a final determination has been made, provided the taxpayer has not filed a report of federal changes or state amended return prior to the [State Agency's] receipt of the IRS notification.

(4) The time periods provided for in this section may be extended by agreement between the taxpayer and the [State Agency]. Any extension granted for filing the report of federal changes or state amended return shall also be considered as extending the last day prescribed by law for any additional tax resulting from the final determination being assessed and a notice of assessment being issued to the taxpayer by the [State Agency].

SECTION B. Claim for refund or credit of tax

(1) Any claim for refund or credit related directly to changes, adjustments or corrections to the taxpayer's federal taxable income, federal tax liability or federal tax return resulting from a final determination under Section A.(1) shall be filed on or before the expiration of the later of the limitations period specified in [citation to state statute setting forth normal limitations period for allowing refund or credit *optional*] or the last day of the one (1) year

period from the due date of the report of federal changes or state amended return prescribed in Section A.(2).

- (2) An extension of time for filing the report of federal changes or state amended return extends the last day prescribed for filing the claim for refund to the extended date.

Regulation:

- A. Examples of assessments considered to be final determinations include, but are not limited to:
 1. A final judicial decision;
 2. A closing agreement under Section 7121 of the Internal Revenue Code of 1986;
 3. An uncontested assessment as defined by Regulation; or
 4. The execution of a waiver of restriction on assessment that is not a partial agreement. Examples of an assessment that results from the execution of a waiver of restriction on assessment include assessments that result from the signing of Forms 870, 870AD, or 4549.
- B. The term “uncontested assessment” shall mean:
 1. **An assessment pursuant to an amended return filed by the taxpayer or**
 2. an assessment that follows a taxpayer’s receipt of a statutory notice of deficiency wherein the taxpayer does not petition the Tax Court.

Exhibit B-1

Memorandum

TO: Roxanne Bland, Esquire

FROM: Rick Handel
Chief Counsel for Policy
South Carolina Department of Revenue
Phone: (803) 898-5132 Fax: (803) 737-5963
E-mail: handelr@sctax.org

RE: Comments on MTC Uniformity Proposal Concerning a Model
Uniform Statute for Reporting Federal Tax Adjustments

Date: December 7, 2002

These comments on the Uniformity Proposal Concerning a Model Uniform Statute for Reporting Federal Tax Adjustments are my personal comments and not necessary the position of the South Carolina Department of Revenue. I believe that this is an important uniformity project and very well done, but I do have the following recommendations:

1. Sections A.(2), and A.(3)(a) — I recommend changing the phrase “report of federal changes or amended return” to “amended return.” I also recommend eliminating the last sentence of Section A.(2), which states “[t]he taxpayer shall also submit available documentation sufficiently detailed to allow computation of the tax change.”

The taxpayer would have to do the work necessary to fill out an amended return in order to compute and submit the calculations showing the tax change. Therefore, why not have the taxpayer submit an amended return so that the Department can process it efficiently, instead of having to do a desk audit on each one. This is a waste of state resources which could be better spent elsewhere. If preparing an amended return is burdensome, we should work toward making a simpler more uniform amended return so all taxpayers who have to file amended returns can benefit, not just those who have to correct their federal returns.

Finally, if the taxpayer makes the effort to complete an amended return, we should not require them to submit documentation that we don't require for other

taxpayers who file amended returns. If we decide to audit the amended return, we can ask for additional information.

2. Section B. — I believe that this section should be clarified or corrected. I'm not sure I am reading it correctly, but it appears to allow a taxpayer to file a claim for refund one year after it files an amended return. I don't see the point of this. Does this mean that the taxpayer whose federal adjustment results in a refund has one year to file an amended return and then another year to file an additional claim for refund. If so, why? It seems to me that the period for filing a claim for refund (which may be in the form of an amended return) should be the later of the normal limitations period or one year from the date of the federal adjustment.

Thanks for your consideration of these comments.

Exhibit B-2

To: Roxanne Bland
Multistate Tax Commission

At the Uniformity Hearing on December 17, you stated that the record would remain open until January 2 for written comments on the MTC Uniformity Proposal for Reporting Federal Tax Adjustments, and asked that they be sent to you by e-mail.

1. The first comment is a general one about the one-year time frames for assessment of additional tax by state agencies following a federal determination. For a number of reasons, this is much too short for a large state like California, which received more than 42,000 paper Revenue Agent's reports last year, and millions of electronic records of federal tax changes.

California's current Revenue and Taxation Code sections 18622, 19059, 19060 and 19311 provide much more manageable time frames for processing federal adjustment notices: Assessments can be made within two years following a timely notification, and four years following an untimely notification. Where no notification is made at all, the period never begins to run, so an assessment may be made at any time. Refund claims may be made within two years after the final federal determination. Therefore, we suggest that the time frames for assessment and refund claims be lengthened to at least the current California periods.

My remaining comments are technical in nature and have to do with the wording of the proposed statute.

2. In Subsection A(1)(c) the phrase "where a state refund claim has been filed" should be deleted. The purpose of this provision was to cover the situation where an amended return had been filed for both state and federal purposes and the state had allowed the item, but the IRS was still considering it. If and when IRS denies the claim there is no "change" to the federal liability, so without this provision, the state is unable to recover the amount previously allowed. While this will often be in the context of a state refund claim, that will not always be the case. Sometimes the item will have been shown on the original state return, and in other cases it will be one of a number of issues on an amended return that may or may not be a refund claim. Nevertheless, upon a final denial of the federal refund claim by the IRS, that should be considered a "federal determination" for purposes of this statute.

3. The second half of A(1)(c), beginning with "any other final action" should be a separate subsection (d). That phrase refers to all final determinations, not just final denials of a refund claim.

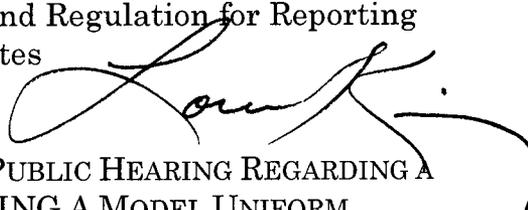
4. at the end of new subsection A(1)(d), the phrase should be added: "including but not limited to the tax year of the federal change." This will make it absolutely clear that the state change may be made where, because of differences in state and federal law, carryovers or credits, the tax effect of the federal change is in a different year for state purposes. California added "for any year" to RTC section 18622, and yet there are still people who argue that the state change cannot be made if it is in a different year than the federal change.

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Multistate Tax Commission Memorandum

To: Roxanne Bland, Counsel and Hearing Officer for MTC Uniformity
Proposal Concerning Uniform Statute and Regulation for Reporting
Federal Tax Return Adjustments to States

From: Loretta King, Administrative Assistant 

Date: January 6, 2003

Subject: CERTIFICATE OF MAILING OF NOTICE OF PUBLIC HEARING REGARDING A
UNIFORMITY PROPOSAL CONCERNING A MODEL UNIFORM
STATUTE FOR REPORTING FEDERAL TAX ADJUSTMENTS WITH
ACCOMPANYING MODEL REGULATION

In compliance with the Multistate Tax Commission Bylaw 7, the
“Notice of Public Hearing Regarding a Uniformity Proposal Concerning an
Model Uniform Statute for Reporting Federal Tax Adjustments with
Accompanying Model Regulation was mailed on November 15, 2002 to the
names on the mailing lists maintained by the MTC.

EXHIBIT C



NOTICE OF PUBLIC HEARING

Regarding a

UNIFORMITY PROPOSAL CONCERNING A MODEL UNIFORM STATUTE FOR REPORTING FEDERAL TAX ADJUSTMENTS WITH ACCOMPANYING MODEL REGULATION

The MULTISTATE TAX COMMISSION ("MTC") has scheduled a public hearing to obtain comments from interested parties on a proposed recommendation to States for enactment of a uniform provision concerning the reporting of federal tax adjustments to States.

The proposal provides a uniform method for reporting changes in a taxpayer's federal taxable income, tax liability, or federal tax return to States after a final determination by the Internal Revenue Service has been issued. The proposal also includes provisions for determining the limitations period for taxpayers to notify the State of any such changes, and make claims for refunds if appropriate, as well as the limitations period for States to make assessments of additional taxes due.

The hearing on this proposal will be held at the time, date and location specified below:

TUESDAY, DECEMBER 17, 2002 AT 1:30 P.M. (EST)

Suite 231
Hall of the States
444 North Capitol Street, N.W.
Washington, D.C.

Public comment is sought on whether the MTC should recommend adoption of the proposal. The full text of the proposal has been provided with this notice. (The proposal and this notice are available on the MTC's website at www.mtc.gov). General comments about the proposal as well as comments regarding the specific language of the provisions are encouraged.

All comments received as part of the hearing process will be set forth in a hearing officer's report that will be submitted to the MTC Executive Committee. The MTC Executive Committee will read what you say and then will consider the proposal for appropriate action. See The MTC's Uniformity Recommendation Development Process at step seven, available at www.mtc.gov/uniform/9steps.htm

The hearing officer in this matter is Roxanne Bland. Please submit all questions, comments and correspondence regarding this hearing matter to: Hearing Officer Roxanne Bland, Multistate Tax Commission, 444 N. Capitol Street, N.W., Suite 425,

Washington, D.C. 20001-1538, Phone: (202) 624 8699, Fax: (202) 624 8819, E-mail: rbland@mtc.gov

All interested parties are invited to participate in this public hearing. Parties wishing to make formal oral presentations are requested to notify the hearing officers in writing at least two (2) working days prior to the hearing date. Written comments are acceptable and encouraged. They may be submitted at any time prior to or on the hearing date or by such later date as may be announced at the closing of the public hearing. Interested parties may participate by telephone. Please contact the hearing officer for specific instructions on how to connect by telephone.

EXHIBIT D



Multistate Tax Commission Memorandum

States Working Together Since 1967 . . . To Preserve Federalism and Tax Fairness

To: Elizabeth Harchenko, Chair
From: Dan Bucks, Executive Director
Date: November 4, 2002
Subject: Appointment of Hearing Officer for Public Hearing on Proposed Uniform Statute for Reporting Federal Tax Adjustments

The Executive Committee approved the holding of a public hearing on the subject uniformity proposal at its meeting held January 2002. I am therefore appointing Roxanne Bland, Counsel, Hearing Officer and request that she proceed with the conduct of this hearing.

Dan Bucks
Executive Director

EXHIBIT E