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## The State of Colorado

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March 2, 1983

Mr. Eugene Corrigan  
Executive Director  
Multistate Tax Commission  
1790 30th Street  
Boulder, CO 80302

Dear Mr. Corrigan:

Enclosed is my report on the hearing held on December 6, 1982 in Denver, Colorado concerning the proposed MTC airline regulation.

You will note that I have recommended a special or different treatment for airlines involved in the freight industry. I do not believe further dialogue, however, would resolve the differences or objections now raised concerning the proposed regulation and I therefore do not recommend further hearings.

Very truly yours,

Chris J. Eliopoulos  
Assistant Solicitor General  
Department of Law  
State of Colorado

CJE:lh  
Enc.

HEARING OFFICER'S REPORT

SYNOPSIS OF

MULTISTATE TAX COMMISSION PUBLIC HEARING

Denver, Colorado

December 6, 1983

Notice of Public Hearing was issued in the Multistate Tax Commission Review publication, Volume 1 Number 4, distributed in October, 1982. This Notice called for a hearing on a proposed MTC airline regulation to be held on December 6, 1982 in Room B-200 of the United Air Line Flight Training Center, Denver, Colorado beginning at 9:00 a.m. Both personal appearances and written testimony was invited. The proposed MTC airline regulation was set forth in the Notice of Public Hearing.

The hearing, in accordance with notice, was called to order at 9:00 a.m. on December 6, 1982, by Chris J. Eliopoulos, Assistant State Solicitor General, Department of Law, State of Colorado, who presided as Hearing Officer for the Commission.

There were fifteen persons who registered as being in attendance. Ten persons represented commercial airlines or businesses. Five persons, including the MTC Executive Director and the hearing officer, represented the MTC or governmental agencies.

The record of these proceedings consists of the proposed MTC airline regulation (Reg. IV. 18.(e) Special Rules: Airlines), written statements received concerning the proposed regulation, and a transcript of a tape recording of the proceedings.

Reference was made by Eugene F. Corrigan, Executive Director, MTC, that the proposed regulation under consideration was the

subject of a prior hearing (held on March 22, 1978) and was now presented with substantial changes as recommended by interested parties at the prior hearing.

Appearing on behalf of the Air Transport Association of America (ATA), representing a substantial number of all of the scheduled airlines of the United States, was Mr. William Dowd, Chairman, ATA Task Force Committee on Interstate Taxation. Mr. Dowd is also Director of Tax Compliance and Planning of Trans World Airlines.

Mr. Dowd presented for the record a written nineteen page comment on the MTC proposed regulation offered by ATA, with an attached proposed regulation. This written comment was also read into the record by Mr. Dowd.

In substantive part Mr. Dowd's presentation embraced the following: The MTC regulation lacks consideration of income producing elements, that is, the inclusion of some measurement of time or distance; that only flying airplanes create income, consequently miles traveled must form an integral part of any regulation; that the MTC regulation as proposed may result in a further fragmentation of the apportionment systems employed by the states; and such regulation presents a question whether the income distribution will be reasonably related to the airline's economic activity within a taxing state.

Mr. David West, Director of Taxation for the Air Transport Association, suggested that it would be worthwhile to continue

dialogue on the statistics going into the factors and how they are measured. He further stated as an example that there was still a debate in the ATA membership as to the proper way to weight a departure factor that should be resolved.

Mr. Bill Folk of Frontier Airlines stated his company's concern that the mileage factor be given serious consideration as a proper weighted factor.

M's. Cassie Bradley of Federal Express Corporation spoke to the unique status of freight airlines whose operations are different than other commercial airlines and that, therefore, the formula factors developed for the regular airline industry would have to be adjusted for freight carriers.

It is my feeling that the objections currently voiced in regard to the proposed MTC regulation are in the general class of continuing objections peculiar to the development of the law relating to taxation of net income of multinational corporations whose activities are so widespread, varied and complex that there will always be an argument as to what is fair or constitutional and what is not.

It would be my recommendation that the current MTC proposed airline regulation be adopted. I would further recommend, because the Federal Express Corporation has aptly demonstrated that the nature of their freight business presents a unique and different situation from regular scheduled passenger flights, that

special consideration be given to freight businesses and the freight industry.

Respectfully submitted this 2<sup>nd</sup> day of March, 1983.



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Chris J. Eliopoulos  
Hearing Officer