MULTISTATE TAX COMMISSION

Multistate Tax Commission 51st Annual Meeting
The Boston Westin Waterfront
425 Summer Street
Boston, Massachusetts

Uniformity Committee Report to the Commission
July 26, 2018

Holly Coon (Alabama), Chair
Tommy Hoyt (Texas), Vice Chair

In the last year, the Uniformity Committee met on August 1, 2017, November 16, 2017, and April 25, 2018. It also met by phone on July 6, 2018, to discuss possible work on issues raised by the U.S. Supreme Court's decision in *Wayfair*. It will also meet July 24, 2018. Any updates to this report from the July meeting will be given orally.

At its July meeting, the committee is expected to consider whether to continue with the Section 18 group and suggest revisions to special industry apportionment rules. It may also consider two new projects. One involves the question of whether the MTC should adopt an alternative approach to combined filing that follows the *Finnigan* theory of taxing jurisdiction over a unitary group, and the other that involves issues raised by the *Wayfair* decision.

Three work groups have been working on uniformity projects this past year as summarized below.

Project Work Groups	
Sales and Use Tax Information Reporting Model Work Group	
Chair and Staff	Phil Horwitz, Colorado and Sheldon Laskin, MTC Staff
Scope of Project	The uniformity committee has asked the work group to recommend revisions to a draft model statute that requires non-collecting sellers and others to: (1) give notice to in-state purchasers, with each sale, that tax may be owed; (2) give a report to in-state purchasers, annually, summarizing purchases made; and (3) file an information return with the state, annually, listing in-state purchasers and total purchases.
Background	This committee previously referred the draft model statute to a public hearing and a Bylaw 7 survey. When it failed to pass the Bylaw 7 survey, the committee referred the draft model statute back to the uniformity committee for clarification. Those clarifications were submitted in May 2012, but the draft was tabled pending a decision in

	Direct Marketing Ass'n v. Brohl, which involved a similar Colorado statute. After the Tenth Circuit upheld the Colorado statute and the U.S. Supreme Court denied certiorari (see *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (2016)), this committee referred the draft model statute back to the uniformity committee for its recommendation. That committee convened a work group to consider any necessary revisions and it began its review in June 2017, with weekly calls in which a number of states and members of the public have participated.
Status	The work group submitted a draft model to the uniformity committee at the November 16, 2017 meeting. After discussion, the model was sent back. The work group completed work on a revised draft model on January 31, 2018, and presented it to the uniformity committee at the April 25th meeting, where it was approved and sent to the executive committee. The executive committee sent the model to public hearing, which took place on June 14, 2018. The hearing officer's report will be presented to the Executive Committee on July 26.
Section 18 Regulation Work Group	
Chair and Staff	Holly Coon, Alabama and Bruce Fort, MTC Staff
Scope of Project	Recommend any new or amended model regulations under Compact, Art. IV (UDITPA) Section 18 that may be required by the Commission's adoption of recommended changes to Art. IV in 2014 and 2015.
Background	Following the Commission's adoption of recommended changes to the Compact, Art. IV (UDTIPA), this committee recognized the need for new or amended model regulations and asked the uniformity committee to undertake the drafting of those regulations. The first projects assigned to work groups involved the amendments to the Model General Allocation and Apportionment Regulations, Section 1 and Section 17. Those work groups also identified issues to be addressed under Section 18 and in early 2016, the uniformity committee established a Section 18 work group for this purpose. The group conducted weekly meetings for over a year and submitted proposed draft models to the uniformity committee for discussion and approval at the November 16, 2017 meeting. The committee approved the model for public hearing. After proper notice, the hearing took place on February 20, 2018, with former Judge William Thompson as the hearing officer.
Status	• <u>Special Rules – Receipts Factor</u>: The work group focused its efforts on "special purpose" corporate entities that would lack a receipts factor under changes adopted by the Commission because certain categories of gross receipts would not be included in the factor. The categories of gross receipts covered by the rule include dividends, interest, capital gains and losses, receipts from

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<tr><td></td><td>factoring accounts receivable, other gross receipts from investment activity, and certain other gross receipts. The proposed regulations would be included in subsection IV.18.(c) of the Model General Allocation and Apportionment Regulations.

• <u>Receipts Factor – Bank Holding Companies and Subsidiaries</u>: Based on public comments submitted at the uniformity committee meeting in August of 2017, the work group ultimately approved a special industry regulation for financial institution holding companies and subsidiaries that may be engaged in banking and related activities. The proposed regulation is intended to provide guidance that the receipts of such entities should be apportioned under the state's rules applicable to financial institutions, if any, or under the MTC model rules for financial institutions, and not using the receipts factor under the proposed model regulation IV.18.(c).

The hearing officer's report was presented to the executive committee during its April 26, 2018 meeting, and the model was sent to a Bylaw 7 survey. The survey has resulted in a majority of affected states responding affirmatively, that they would consider adopting the model. Therefore, the model is on the agenda for the Commission to consider at its annual meeting on July 25, 2018.</td></tr>
<tr><td colspan="2">Partnership/RAR Project Work Group</td></tr>
<tr><td>Chair and Staff</td><td>Katie Lolley, Oregon and Helen Hecht, MTC Staff</td></tr>
<tr><td>Scope of Project</td><td>Recommend: (1) model provisions that states may need in order to assess the additional tax due as a result of federal audit adjustments made under new statutory requirements for entity-level audits of large partnerships; (2) provisions necessary for the entity-level assessment of taxes; and (3) revisions to the Commission's existing model for Reporting Federal Tax Adjustments.

NOTE: This project is subject to certain time constraints because we expect that state legislatures will want to begin considering the necessary changes to state statutes during 2018 legislative sessions.</td></tr>
<tr><td>Background</td><td>In 2015, Congress passed the Bipartisan Budget Act which requires the IRS to conduct entity-level audits of large partnerships and assess the partnership, unless the partnership elects to do the administrative work of "pushing out" the audit adjustments to its partners. The uniformity committee initially established an informational project in 2016 to study these federal changes. Later, it determined that a work group should be established to draft model provisions that states may need in order to assess the additional tax that will result from any federal partnership audit adjustments.

The uniformity committee was also approached by "Interested Parties" (ABA, AICPA, COST, TEI, & IPT) asking that the committee</td></tr>
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	consider changes to its existing model for Reporting Federal Tax Adjustments. The committee was separately asked to consider any related issues that states would need to address in assessing state tax at the entity level. The committee agreed to both of these requests. It also agreed that the working group should use a draft of proposed language put forward by the Interested Parties as its starting point and prioritize the partnership-related provisions.
Status	The work group has held periodic meetings in which the Interested Parties have participated and have made substantial contributions. In August, the work group approved comments to be submitted to the IRS on proposed federal regulations. The work group also agreed that the chair and staff should have an in-person meeting with the Interested Parties to clarify the understanding of how the federal process is expected to work, and what that would mean for the states. Subsequent to that meeting, the Interested Parties submitted a substantially revised draft for consideration. After review of that draft and based on input received from the work group, MTC staff made recommendations as to changes that may need to be considered. This process was repeated several times—with intermittent discussions via teleconference—and the work group and Interested Parties also asked the committee for guidance at its April meeting. The work group will present a revised proposed model to the uniformity committee at the July meeting.