



MULTISTATE TAX COMMISSION

**To: Julie Magee, Commission Chair  
Members of the Commission**

**From: Wood Miller, Uniformity Committee Chair  
Richard Cram, Sales & Use Tax Uniformity Subcommittee Chair  
Robynn Wilson, Income & Franchise Tax Uniformity Subcommittee Chair**

**Re: Uniformity Committee Report for Third Quarter of Fiscal Year 2015**

**Date: May 7, 2015**

---

The commission develops model state tax laws for states to consider adopting. Proposed model laws may be suggested by our executive committee, a standing committee, a single state, a taxpayer, taxpayer groups, or any other member of the public. Once members have identified a model to develop, initial drafting takes place in our subcommittees. The subcommittees appoint work groups and drafting groups, as needed. All committee, subcommittee, work group and drafting group meetings and teleconferences are public and public participation is encouraged.

Through the third quarter of this fiscal year, the committee and subcommittees have met three times in person, during the July annual meeting in Albuquerque, New Mexico, during the Fall meetings in Nashville, Tennessee and during the Winter meetings in Kansas City, Missouri. Drafting groups and work groups have met regularly by teleconference.

### **Projects by Status**

Currently before the Commission:

1. Revisions to the model Multistate Tax Compact Art. IV – Revisions to Sec. 18 and Conforming Amendments approved by the states in Bylaw 7 survey.
2. Revisions to the model Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions approved by the states in Bylaw 7 survey.

Currently before the Executive Committee:

Model Sales and Use Tax Notice and Reporting Statute (tabled)

Under Development or Consideration at the Uniformity Committee and Subcommittees:

#### Uniformity Committee

1. UDITPA Sec. 1 Work Group – “Receipts”
2. UDITPA Sec. 17 Work Group – Model Market-Sourcing Regulations

#### Income & Franchise Tax

1. Strategic Planning

2. Proposal for a project to simplify state reporting of federal adjustments

#### Sales & Use Tax

1. Sales and Use Tax Model Nexus Statute
2. Model Provisions Concerning Class Action and False Claims

### **Project Summaries**

#### Before the Commission

1. Revisions to the model Multistate Tax Compact Art. IV – Revisions to Sec. 18 and Conforming Amendments approved by the states in Bylaw 7 survey.

At the meeting of the Executive Committee held July 31, 2014 in Albuquerque, New Mexico, proposed revisions to Art. IV of the model Compact were discussed and approved in a form by the Committee for recommendation to the Commission, triggering the Bylaw 7 survey of the member states. Staff of the MTC conducted that survey. A majority of the states responded that they would consider the proposed revisions, and that result was reported to the Commission Chair. The proposed revisions are therefore now on the agenda for the next Commission meeting.

2. Revisions to the model Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions approved by the states in Bylaw 7 survey.

At the meeting of the Executive Committee held December 12, 2014, the Committee approved the Proposed Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions (without accepting a proposed revision by the Hearing Officer). The staff of the Commission subsequently sent out a Bylaw 7 survey to the states and a majority of the states responded that they would consider the proposed revisions. The proposed revisions are therefore now on the agenda for the next Commission meeting in July 2015.

#### Before the Executive Committee

##### Model Sales and Use Tax Notice and Reporting Statute

This project is on hold pending the constitutional challenge to the Colorado use tax information reporting statute. That litigation, *Direct Marketing Association v. Brohl*, is pending before the Tenth Circuit Court of Appeals and in the Colorado district court. The federal district court granted a permanent injunction against the state's enforcement of the information reporting requirements on Commerce Clause grounds. The Tenth Circuit, on remand of the case from the U.S. Supreme Court, will now hear additional arguments on the merits. The state district court also granted an injunction pending a final decision on whether the federal suit would be dismissed.

#### Under Development or Consideration at the Uniformity Committee

1. UDITPA Sec. 1 Work Group – "Receipts"

Work on regulations to implement changes to Sec. 1(g) of Art. IV of the model Compact was begun November 6, 2014 and is continuing. The work group consists of Donnita Wald, North Dakota; Steve Wynn, Idaho; Joseph DiNicola, Oregon; Jennifer Hays, Kentucky; and Scott Fryer, Arkansas. The work group has had several meetings.

2. UDITPA Sec. 17 Work Group – Model Market-Sourcing Regulations

Work on regulations to implement changes to Sec. 17 of Art. IV of the model Compact was begun November 5, 2014 and is continuing. The work group consists of Chris Coffman, Washington; Phil Skinner, Idaho; Michael Fatale, Massachusetts; Aishah Hashmi, District of Columbia; Jeffrey Henderson, Oregon; Holly Coon, Alabama; Nirmail Dhaliwal, District of Columbia, and Ben Miller. The work group will meet by phone weekly until the project is completed.

#### Income & Franchise Tax Uniformity Subcommittee

##### 1. Strategic Planning.

The commission's strategic planning committee has identified four strategic goal areas — areas in which MTC must focus in order to achieve its vision. One of these areas relates to the uniformity process:

Uniformity – Our goal is to increase uniformity in tax policy and administrative practices among the states. Achievement of the MTC's uniformity goal will be reflected by:

- Greater adoption of uniformity recommendations by state and local tax jurisdictions.
- Uniformity projects will have the greatest value to the states and stakeholders.
- More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers and the federal government.

The Uniformity Committee has now heard recommendations from the working group assigned to consider this goal and how it might be achieved. The workgroup recommends that the Committee develop a list of criteria that are responsive to the issues set out by the workgroup from its research into why past uniformity recommendations have not been more widely adopted. However, given that the Committee is now involved in projects stemming from the revisions to Art. IV, UDITPA, the Committee believes that the development of criteria can wait until these projects are complete.

##### 2. Proposal for a project to simplify state reporting of federal adjustments

The Uniformity Committee has been asked by industry to consider whether there are recommendations that could be made to the states for handling federal adjustments that could streamline the reporting and payment of state liabilities that result from those adjustments. The Commission had previously recommended a model statute which the states have not adopted. The Committee has therefore determined that it would not be useful to simply revisit that model. Instead, the Committee has asked staff to consider two possibilities: 1) whether changes to administrative reporting requirements might result in simplification for administrators and taxpayers—including changes that might incorporate technology solutions, and 2) whether the MTC itself might assist or provide a clearinghouse for handling certain simple adjustments.

#### Sales & Use Tax Uniformity Subcommittee

##### 1. Sales and Use Tax Nexus Model Statute.

A first draft of a proposed New York style “associate nexus” statute was presented during the uniformity committee teleconference in October, 2011. That draft largely followed so-called “Amazon” legislation first adopted in New York. A second draft was prepared for the July 2012 meeting that also largely followed the New York legislation and included aspects of the similar legislation adopted by California. The subcommittee has benefited considerably from comments and input by representatives from New York and California. The subcommittee held a teleconference in October, 2012 which resulted in a third draft incorporating elements of the MTC affiliate nexus statute. This draft was reviewed and discussed during the December 2012 meeting. During that meeting, the subcommittee voted to expand

the project to create a model sales and use nexus statute. A work group was formed that reviewed nexus research, developed a policy checklist, and identified state legislation that could serve as a template for the model. The workgroup met several times in 2013. At the subcommittee's meetings in March, July and December 2013, the subcommittee reviewed the drafts prepared by the workgroup and returned them with suggested amendments. At its March 2014 meeting, the subcommittee reviewed the draft prepared by the workgroup and sent it back to the workgroup for further revisions. The draft prepared by the work group and approved by the subcommittee was presented to the Uniformity Committee at its meeting July 2014. Additional changes were recommended regarding the model statute, which was returned to the work group. The work group presented its revised model to the subcommittee at the December 2014 meeting.

At the December 2014 and March 2015 meetings, the Committee made additional changes and also sent the draft back to the working group. The working group has held additional phone calls refining the provisions and responding to the Committee's suggestions. The Committee will take up the nexus model again at the Annual Meeting in July 2015.

## **2. Model Provisions Concerning Class Actions and False Claims.**

This project was originally requested by the telecommunications industry. Industry representatives gave a presentation in July 2012 on issues arising from class actions for alleged over collection of tax from communications customers. In December, 2012, after hearing input from COST and others, the project was expanded to include all industries, not just communications, and to include a look at false claims acts actions for alleged under collection of tax. The project now encompasses exploring ways to protect retailers from lawsuits in both under and over collection situations. The subcommittee met with the litigation committee in February, 2013, to review a class action model recommended by the American Bar Association. In March, 2013, the subcommittee directed staff to provide an overview of state laws on class action and false claims acts in the state tax context. That research was reviewed by the subcommittee at its July 2013 meeting. An industry-state work group was formed. The workgroup focused on nuisance lawsuits, and in April 2014 the subcommittee considered a resolution endorsing the ABA Model Transactional Tax Overpayment Act. The subcommittee referred the resolution back to staff for further drafting. The draft resolution, as amended, was referred to the subcommittee, which then referred the draft to the committee. The draft was approved by the committee and recommended the proposed resolution be referred to the Executive Committee for adoption.

In the course of the workgroup's consideration of the issues involved in class action and false claims act cases with respect to state taxes, the group determined that there were situations in which states might benefit from whistleblower or false claims act processes for uncovering tax liabilities that would otherwise be difficult to identify. The workgroup has brought in speakers and the Uniformity Committee has heard presentations for and against the Commission recommending any kind of false claims act statute. The Uniformity Committee has asked staff to summarize the issues that have been discussed for presentation to the Executive Committee, so that the Uniformity Committee can obtain guidance as to how to proceed. (That presentation will be set out in a separate report.)