



To: Executive Committee, Multistate Tax Commission

**From: Wood Miller, Uniformity Committee Chair
Chris Coffman, Vice Chair**

Re: Uniformity Committee Report to the Executive Committee

Date: May 12, 2015

The Uniformity Committee has met three times in person — in July 2015 in Spokane, WA; in December 2015 in Charleston, SC; and in March 2016 in Salt Lake City. Work groups established by the committee have met regularly by telephone. Those include the Compact Art. IV, Section 1 and Section 17 Work Groups, and the Compact Art. IV, Section 18 work group.

Projects by Status

On the Agenda for the Commission in July:

- Model Sales and Use Tax Nexus (Engaging in Business) Statute

Before the Executive Committee:

- Model Sales and Use Tax Notice and Reporting Statute (tabled)
- Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Section 1 and Section 17 Work Groups) – Report of the Hearing Officer

Current Uniformity Committee Projects:

- Art. IV, Section 18 Work Group
- Partnership Informational Project

Summaries of Projects Completed by the Uniformity Committee and Pending Further Action

Model Sales and Use Tax Nexus (Engaging in Business) Statute (Report of the Hearing Officer) - This model was approved by the Executive Committee in July 2015 for public hearing pursuant to Compact Art. VII and Bylaw 7. After giving 30-days' notice, a public hearing was held by the staff of the Commission and the Hearing Officer's Report was provided for the Executive Committee's consideration on December 11, 2015. The Executive Committee approved the model for Bylaw 7 survey of the Compact member states on that same day and a majority of affected states have now responded that they would consider the model. Therefore, it will be placed on the agenda for the Commission's annual meeting in July.

Model Sales and Use Tax Notice and Reporting Statute (tabled) - The model would require sellers who are not collecting sales or use tax to notify in-state purchasers of a potential tax liability at the time of sale. Sellers are also required to make annual reports to each in-state purchaser and an annual report to the state. De minimis exceptions and penalties are provided. The Uniformity Committee approved a draft in March, 2011. Later that month, the executive committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of a Bylaw 7 survey. The proposal came back

before the Executive Committee in December, 2011, after not passing the Bylaw 7 survey, and clarifications were requested. The Uniformity Committee made those clarifications and the Executive Committee took the matter up again in May, 2012. During that meeting, the executive committee voted to retain the proposal pending a decision in the *Direct Marketing Ass'n v. Brohl* case. The Tenth Circuit has now ruled that the Colorado statute is constitutional and that *Quill* does not apply to the information reporting requirements. *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (2016). The Direct Marketing Association (DMA) moved for rehearing en banc, but that motion was denied April 1. The DMA may petition the U.S. Supreme Court for certiorari but would likely have until the end of the summer to do so (with extensions).

Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Sec. 1 and Sec. 17 Work Groups) - Work on regulations to implement changes to Compact, Art. IV, Sections 1 and 17 was begun November 6, 2014. The work groups completed their work which takes the form of draft amendments to the MTC Model Allocation and Apportionment Regulations, and submitted a draft to the Uniformity Committee, which approved that draft with one minor change on December 10, 2015. The Uniformity Committee submitted the draft to the Executive Committee on December 11, 2015 for its consideration. The Executive Committee approved the draft for public hearing on January 29, 2016. On March 9, 2016, the Brian Hamer, acting as the Commission's Hearing Officer, conducted a public hearing taking both written and oral comments and also extended the period for comments after the hearing. The report and recommendations of the Hearing Officer are now before the Executive Committee for consideration.

Summaries of Current Uniformity Committee Projects

Art. IV, Section 18 Work Group – The Uniformity Committee formed a work group to consider issues created by the Commission's adoption of amendments to Compact, Art. IV (both amendments to Section 18 itself and other sections) and to recommend rules or amendments to model rules to address those issues. That work group is currently meeting weekly by phone.

Partnership Informational Project – The Uniformity Committee has formed a work group to begin consideration of issues that affect the application of state taxes to partnerships and to consider the implications of new federal audit and adjustment rules. There have been informational sessions held which included the Uniformity and Audit Committees and there will likely be additional informational sessions before the work group determines the issues that may need to be taken up. States that have volunteered to participate in the work group include: Alabama, Montana, New Hampshire, North Carolina, Oregon, Texas (and perhaps others).