



**Multistate Tax Commission  
DRAFT**

**Resolution No. 2020-\_\_**

**Resolution Recommending All Tax Issues Be Specifically Carved Out  
of State False Claims Acts**

**Whereas**, the Multistate Tax Commission, in a resolution dated July 29, 2015, resolved “that the Commission hereby encourages the consideration of the ABA Model Transactional Tax Overpayment Act for adoption by the states,” (the 2015 resolution, see attached), and

**Whereas**, the ABA Model Transaction Tax Overpayment Act set forth uniform transaction tax refund procedures in states that impose a sales and use tax or similar transaction tax on purchasers and would make explicit that sellers are not to be named in any action to recover tax allegedly overpaid to such states, and

**Whereas**, the 2015 resolution is set to expire at the Annual Business Meeting of the Multistate Tax Commission in 2020, and

**Whereas**, since the resolution was adopted, state legislation has been proposed that would remove the prohibition for bringing tax-related claims (*i.e.*, the “tax bar”) under the state false claims acts, and

**Whereas**, the removal of the tax bar from a state false claims act would allow a state Attorney General and/or private attorney to determine or redetermine whether a taxpayer had correctly paid direct taxes, such as income taxes, as well as whether the taxpayer collected and remitted the proper amount of indirect taxes, such as sales and use taxes, and

**Whereas**, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee formed a joint state/industry workgroup in December 2012 to study the issues pertaining to class action refund claims, as well as similar issues pertaining to the application of state false claims acts to tax issues ultimately concluded states should consider the ABA Model Transactional Tax Overpayment Act, and

**Whereas**, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee, as part of its work also determined that state whistleblower acts, similar to the federal statute, would be preferable to allowing false claims act suits for tax issues since whistleblower acts ensure that the state tax agency oversees any enforcement action, and

**Whereas**, the Multistate Tax Commission now determines that it should update its earlier resolution to extend it for another five years and also recommend that states consider whistleblower legislation rather than removing the tax bar from false claims acts, and

NOW THEREFORE, be it resolved by the Multistate Tax Commission that the Commission hereby encourages the states to consider the ABA Model Transaction Tax Overpayment Act and also encourages the states to consider whistleblower statutes, similar to the federal statute, rather than removing the tax bar from state false claims act statutes.

*Adopted, this \_\_ day of \_\_\_\_\_, by the Multistate Tax Commission.*

Greg Matson  
Executive Director

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MULTISTATE TAX COMMISSION

**Multistate Tax Commission  
Resolution No. 2015-02**

**Resolution Recommending to States the ABA Model Transactional Tax  
Overpayment Act**

**Whereas**, state law in states imposing a sales and use tax or similar transaction tax on purchasers of taxable goods and services may require retailers to collect and remit such tax on taxable purchases, and

**Whereas**, retailers that collect such taxes remit the taxes to the appropriate taxing jurisdiction, and

**Whereas**, many state tax statutes require purchasers to recover any sales and use tax allegedly overpaid by filing a refund claim, either with the retailer or directly with the state revenue department, and

**Whereas**, such statutes generally provide the exclusive remedy for a purchaser to seek a refund of taxes allegedly overpaid, and

**Whereas**, notwithstanding such statutes in recent years there has been a proliferation of class actions filed by purchasers against sellers that seek to recover tax that has allegedly been overpaid, and

**Whereas**, sellers are subject to audit by state taxing authorities which could result in an assessment of tax for under-collection or a refund to purchasers for over-collection of sales and use tax, and

**Whereas**, the American Bar Association has adopted a Model Transactional Tax Overpayment Act that would set forth uniform transaction tax refund procedures in states that impose a sales and use tax or similar transaction tax on purchasers and would make explicit that sellers are not to be named in any action to recover tax allegedly overpaid to such states, and

**Whereas**, a taxpayer coalition has approached the Multistate Tax Commission for its endorsement of the Model Transactional Tax Overpayment Act, and

**Whereas**, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee formed a joint state/industry workgroup in December 2012 to study the issues

pertaining to class action refund claims, as well as similar issues pertaining to the application of state False Claims Acts to tax under-collection, and report back to the Executive Committee with its recommendations, and

**Whereas**, the workgroup has been meeting via teleconference since July 2013, and

**Whereas**, the workgroup met on March 26, 2014 and voted to recommend states consider the ABA Model Transactional Tax Overpayment Act, and

**Whereas**, the MTC Uniformity Committee voted by teleconference on July 21, 2014 to recommend that states consider the Model Act, and

**Whereas**, the MTC Resolutions Committee has decided to recommend to the Commission that it encourage the states to consider enacting the Model Act,

NOW THEREFORE, be it resolved by the Multistate Tax Commission that the Commission hereby encourages the consideration of the ABA Model Transactional Tax Overpayment Act for adoption by the states.

*Adopted, this 29<sup>th</sup> day of July, 2015, by the Multistate Tax Commission.*

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Joe Huddleston  
Executive Director

This resolution shall expire at the Annual Business Meeting of the Multistate Tax Commission in 2020.