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# **PROPOSED UNIFORMITY PROJECTS**

To Increase Ease of  
Administration and Compliance

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Before the Commission's Subcommittee on Income & Franchise Tax  
March 10, 2015

# **MTC STAFF REPORT**

# BACKGROUND

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- One of the purposes with which the MTC was created, in addition to promoting uniformity and compatibility of state tax systems, was to —
  - Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

# FACILITATING EASE OF COMPLIANCE

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- Examples:
  - Multistate Voluntary Disclosure Program
  - Ability of States to Request a Joint Audit
  - Voluntary Alternative Dispute Resolution
- Specific Uniformity Examples:
  - Reporting Federal Adjustments Model Regulations
  - Uniform Protest Model Statute

# RELATED PROJECTS

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- Approval by the Uniformity Committee of a resolution endorsing the ABA Model Statute addressing class action claims against retailers for overcharging sales tax—as part of the workgroup on False Claims/Whistleblower model statutes.

# ANATOMY OF THE FEDERAL ADJUSTMENT ISSUE

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- Definition of “triggering event”
  - The final determination
- Notice required (or not)
  - Of the final IRS determination affecting state taxes
- Statute of limitation provision
  - Tolling the normal statute of limitations – assessment/refund or setting a separate SOL
- Interest imposed
  - On the amount due and the period to which it applies
- Filing requirements
  - For the required amended return or other documents
- Scope
  - What issues can be adjusted as part of the filing
- Deadlines
  - For notice and/or for filing before penalties will be imposed
- Penalties
  - For failing to provide notice and/or comply with filing
- Other issues
  - Efiling
  - Pass-through entities
  - Netting or offsetting between years
  - Adjustments in tax accounts/attributes

# Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation

*Adopted August 1, 2003*

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## SECTION A. Reporting Federal Adjustments; assessment of additional tax

(1) As used in this section and Section B, unless the context requires otherwise, "**final determination**" shall refer to

(a) the allowance of a refund or credit under Section 6407 of the Internal Revenue Code of 1986; or

(b) the official act of assessment under Section 6203 of the Internal Revenue Code of 1986, except assessments that result from the following shall not be considered final determinations:

1. tax under a partial agreement,
2. tax in jeopardy, and
3. advance payments; or

(c) a final denial of a refund claim where a state refund claim has been filed or any other final action by the Internal Revenue Service that increases or decreases the state tax liability of a taxpayer for any tax year.

# Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation

*Adopted August 1, 2003*

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(2) Every Taxpayer or group of taxpayers whose federal taxable income, federal tax liability or federal tax return has been changed, adjusted, or corrected for any income tax year pursuant to a final determination under Section A.(1) shall, **within one hundred eighty (180) days of the date of the final determination, file the report of federal changes or state amended return as prescribed herein reporting the changes**, adjustments or corrections to taxpayer's federal taxable income, federal tax liability or federal tax return resulting from the final determination under Section A.(1) and pay additional state tax due. The taxpayer shall also submit available documentation sufficiently detailed to allow computation of the tax change.



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## (3) **[Statute of Limitations]**

(a) If the taxpayer files the report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final determination under Section A.

(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of: {(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; optional} or (ii) The last day of the one (1) year period following the due date of the report of federal changes or state amended return prescribed in Section A.(2).

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(3) (b) If the taxpayer fails to file a report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final determination under Section A.(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of:

{(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; *optional*} or

(ii) The last day of the one (1) year period following the date the report of federal changes or state amended return is actually filed with the [State Agency]; or

(iii) The last day of the one (1) year period following the date the [State Agency] is notified by the Internal Revenue Service in writing or by electronic means that a final determination has been made, provided the taxpayer has not filed a report of federal changes or state amended return prior to the [State Agency's] receipt of the IRS notification.

# **Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation**

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(4) The time periods provided for in this section may be extended by agreement between the taxpayer and the [State Agency]. Any extension granted for filing the report of federal changes or state amended return shall also be considered as extending the last day prescribed by law for any additional tax resulting from the final determination being assessed and a notice of assessment being issued to the taxpayer by the [State Agency].

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## **SECTION B. Claim for refund or credit of tax**

(1) Any claim for refund or credit related directly to changes, adjustments or corrections to the taxpayer's federal taxable income, federal tax liability or federal tax return resulting from a final determination under Section A.(1) shall be filed on or before the expiration of the later of the limitations period specified in [citation to state statute setting forth normal limitations period for allowing refund or credit *{optional}*] or the last day of the one (1) year period from the due date of the report of federal changes or state amended return prescribed in Section A.(2).

(2) An extension of time for filing the report of federal changes or state amended return extends the last day prescribed for filing the claim for refund to the extended date.

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## Regulation:

A. Examples of assessments considered to be **final determinations** include, but are not limited to:

1. A final judicial decision;
2. A closing agreement under Section 7121 of the Internal Revenue Code of 1986;
3. An uncontested assessment as defined by Regulation; or
4. The execution of a waiver of restriction on assessment that is not a partial

agreement. Examples of an assessment that results from the execution of a waiver of restriction on assessment include assessments that result from the signing of Forms 870, 870AD, or 4549.

B. The term “uncontested assessment” shall mean:

1. An assessment pursuant to an amended return filed by the taxpayer or
2. an assessment that follows a taxpayer’s receipt of a statutory notice of deficiency wherein the taxpayer does not petition the Tax Court.

## THE PROBLEM

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*The MTC's model was not adopted by many (if any) states. In fact, this may be an apt illustration of how MTC uniformity models are, at times, not conceived with the right problem in mind or are not addressed to the issue so that states either see an advantage in adopting the model, or can overcome the tendency to prefer their own rule.*

- Practitioner input —
  - Uniform triggering event
  - Longer filing window
  - Consideration of streamlined filing/reporting
  - De minimis threshold
  - Simplified rules for effects limited to tax attributes
  - Resolution of minor differences

# OTHER IDEAS FOR POSSIBLE PROJECTS

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- Potential projects to increase ease of administration and compliance –
  - States
  - Practitioners
  - Taxpayers