

REPORT
Uniformity Committee Project Team
on
Barriers to Adoption of Uniformity Measures
Submitted to Strategic Planning Steering Committee
April 30, 2014

Background

At the suggestion of the Uniformity Committee, the MTC Strategic Planning Steering Committee chartered this project team in July 2013. The project purpose is to identify the barriers to adoption of MTC model regulations and statutes, and the characteristics of MTC models that have been adopted. The complete Project Plan (v 1.7) is attached. The project is expected to produce recommendations for possible solutions to address barriers to adoption of MTC models.

Project Team Members

The project team members are: Richard Cram, KS; Gary Humphrey, OR; Stewart Binke, MI; Holly Coon, AL, Chris Coffman, WA and Dee Wald, ND. Shirley Sicilian, former General Counsel to MTC, Rebecca Abbo, NM, and Mike Mason, AL, were also members of the project team. Lila Disque serves as our staff liaison, and Elizabeth Harchenko is our facilitator/consultant. In addition, Jennifer Hays, KY, volunteered to help with research support.

Project Status

The project team selected six recently adopted MTC model statutes and regulations for in-depth research. Team members and researchers interviewed people from 22 states to learn whether those states had adopted any of the six models, and what factors had influenced adoption or failure to adopt those models. The team also asked for information about the legislative and administrative processes in the states for consideration of adoption of statutes and regulations, including MTC models.

The six models that were the subject of the surveys were:

- Non-resident pass-through entity reporting (2003)
- Definition of “business income” (amendments proposed in 2003)
- Definition of “unitary business” (amendment proposed in 2004)
- Disclosure of reportable transactions (2006)
- Apportionment rules for telecommunications companies (2008)
- Sales factor: income producing activity “on behalf of” the taxpayer (2007)

The team interviewed people who were knowledgeable about each state’s processes for adoption of tax regulations or statutes. They asked about the specific circumstances surrounding consideration for possible adoption of the six models. They also asked about state participation in the MTC groups that drafted the models, and whether the taxpayer community was involved in the process of adopting or considering adoption of the models.

The survey responses indicated that the following factors affected adoption of the MTC models:

Reasons MTC Model Language was Adopted

- Need for additional funds
- Model was reflective of the business models and the language helped with compliance
 - Legislative agreement that the need exists and the model addresses that need.
- Legislator with knowledge of the MTC's efforts brought the proposal forward
- Tax Department actively pushed for adoption (sometimes with the assistance of a legislator)
- Lack of opposition from taxpayers

Reasons MTC Model Language was Not Adopted (number of times cited by states)

- The area was adequately covered by existing statutes - 8
- Department makes recommendations, which then pass through the chain of command; knowledge transfer on technical topics is difficult - 3
- State issue or policy precluded adoption - 5
- Lack of awareness of the model (although not clear if this was a significant factor, since state already had a statute or regulation on the topic) - 1
- Potential conflict with ongoing litigation - 2
- State did not specifically adopt the model, but its language or policy mirrors the MTC's - 5
- Misunderstanding of the MTC's purpose in creating model uniform statutes and regulations - 1
- Opposition (actual or expected) from taxpayers or legislators - 8
- Department had concerns about the scope (this was in relation to cost of performance) - 1
- Bad timing - 2

Analysis and Recommendations

The project team discussed these findings with the Income & Franchise Tax Subcommittee in Denver on March 12. The committee discussion validated the project team's findings. After that discussion, the project team considered the feedback from the subcommittee and further discussed the barriers to adoption of MTC models that were identified.

The project team has reached three tentative conclusions. First, political considerations are often the primary factor affecting whether MTC models are adopted by states. Those considerations include taxpayer and legislative support or opposition, and the practical realities of picking "battles" when review and approval processes limit the number of measures a tax agency could propose. Second, it seems that sometimes MTC models are developed after the optimal time for states to act on them. According to our data, if a state already had a statute or rule that adequately addressed an issue, it was unlikely that the matter would be revisited to adopt MTC language (often due to political considerations). Third, some of the projects selected appeared to have limited relevance to many states.

Recommendation: To address the first conclusion, the project team believes that the Steering Committee is in the best position to take up the issue of how to better engage legislators and

the taxpayer community in the promotion and adoption of MTC model legislation or rules. The team therefore recommends that the Steering Committee take the lead on development of any projects designed to have a positive impact on legislative or taxpayer support for MTC model statutes or regulations.

Recommendation: It also appears that Uniformity Committee members may not be fully aware of the true potential for adoption of model proposals when concepts are first proposed for drafting. Further, the current process for consideration of proposals doesn't allow the states to fully analyze the need for a particular model, or the level of interest in a topic. Project team members have observed that there is often little discussion about the need for uniform models, or information on which to base a conclusion about the usefulness of a proposed model to a significant number of states, before the committee votes on concepts suggested for drafting.

To address these conclusions, the project team recommends that the Steering Committee or the Uniformity Committee consider chartering a project to design a front-end information gathering and survey process so that projects that are approved for Uniformity Committee drafting have a higher potential for adoption by the states. A draft project description for such a project is attached to this report.

Attachments

- Project Plan upon completion – Barriers to Adoption of Uniformity Recommendations
- List of States Interviewed
- Survey document
- Project Description – Proposal for a Uniformity Project Assessment Process v 2 4-30-14

PROJECT PLAN –upon completion
April 30, 2014
Barriers to Adoption of Uniformity Measures

Project Team: Richard Cram, KS; Gary Humphrey, OR; Stewart Binke, MI; Rebecca Abbo, NM;
Dee Wald, ND. Research support: Jennifer Hays, KY; Chris Coffman, WA; Holly Coon, AL.

Staff: Lila Disque, MTC
Facilitator: Elizabeth Harchenko, Consultant

Project Description: The purpose of MTC uniformity recommendations is to provide the states with model or uniform statutes or regulations that address issues of multistate tax compliance or consistency of policy and administrative practice among the states. It appears that some uniformity recommendations have not been as widely adopted by the states as is desirable. This project will review data on adoption of uniformity recommendations, to identify both the barriers to adoption of recommendations by the states and to look for indicators of success for recommendations that have been widely adopted. The project will identify possible solutions that will address barriers to adoption, in order to encourage greater adoption of past and future uniformity recommendations. The project may develop recommendations for immediate implementation, or may lead to other projects that will focus on specific changes to implement the solutions that are identified by this project.

Target Completion Date: July, 2014

High-Level Project Time Line:

- August, 2013 – Project team formed and first teleconference held. Project plan review; identify specific data to be gathered; discuss methods for gathering data. Identify baseline data concerning adoption of uniformity recommendations. [Meeting held 8-28]
- September, 2013 – Teleconference. Report on baseline data – inventory of uniformity recommendations; rate of adoption by the states. Identify specific uniformity recommendations to research – how many models, which ones? [Meeting held 9-25]
- October, 2013 – Teleconference. Review preliminary adoption data for 200-2010 models. Discuss research tools to use – e-mail survey; telephone survey; in-depth interviews; who to contact; questions to be answered. Assign tasks: in depth survey question development; additional background research needs. [Meeting held 10-30]
- November, 2013 – Teleconference. Report back on research results from state adoption survey. Any problems? Any follow up needed? Decide which models to use for in-depth research on supports for adoption and barriers to adoption. Develop rough draft survey questions for in-depth research. Decide how to use time at December Uniformity Committee to best advantage. Prepare interim report for Steering Committee and Uniformity Committee. [Meeting held 11-25]
- December 10-11, 2013 – Uniformity Committee meetings, New Orleans. Report on project progress; discuss with UC importance of responding to inquiries; seek feedback on rough draft survey questions; brainstorm on supports and barriers. [Meeting held 12-10]
- December, 2013 – Teleconference. Finalize survey questions; Make assignments for team members; establish reporting process for survey results. [Meeting held 12-19]
- January, 2014 – Teleconference. Update on survey progress from team members. Any follow up needed? Assign tasks: analysis of data. Complete survey calls. [Meeting held 1-29]
- February, 2014 – Teleconference. Decide whether sufficient data has been collected to identify trends, patterns and possible solutions. Any additional field research needed? Discuss content of

report to Uniformity Committee, whether discussion will be desirable at March UC meeting. [Meeting held 2-26]

- March 2014 – Uniformity Committee meeting – gather feedback and input from committee members. Meeting by teleconference or in person – decide whether any process changes are needed as a result of conversation with UC. Discuss potential for solution development. [Meeting held 3-26]
- April 2014 – Teleconference. Approve final report to Steering Committee and Uniformity Committee. [Meeting held 4-30]

List of States Interviewed

- Alaska
- Alabama
- Arkansas
- Colorado
- District of Columbia
- Florida
- Hawaii
- Idaho
- Kansas
- Kentucky
- Louisiana
- Michigan
- Minnesota
- Missouri
- Montana
- New Mexico
- North Dakota
- Oregon
- South Dakota
- Texas
- Utah
- Washington State

In-depth state survey questions about adoption of specific MTC model statutes or regulations.

These questions should be asked of each state, for each of the models being used for the in-depth research. The answers to some questions will likely lead to more conversation and information. The models we are asking about are:

- Non-resident pass-through entity reporting (2003)
- Definition of “business income” (amendments proposed in 2003)
- Definition of “unitary business” (amendment proposed in 2004)
- Disclosure of reportable transactions (2006)
- Apportionment rules for telecommunications companies (2008)
- Sales factor: income producing activity “on behalf of” the taxpayer (2007)

At a minimum, we want the answers to each of the following questions:

Preliminary inquiry of each state:

Ask to speak to the person in the state who is most knowledgeable about the process for adoption of tax regulations or statutes. Ask whether a different person would have first-hand knowledge about consideration of regulations or statutes adopted or considered for adoption during 2000-2012. Try to speak to everyone who has first-hand knowledge about consideration of MTC models for adoption during that time period.

Ask for a general description of the process the state goes through when considering whether to adopt a statute or regulation on a particular tax topic.

Ask whether the state has a formal process for review of MTC proposed model regulations and laws. If so, ask about that process and who the key participants are. If there is no formal review process within the state, ask who decides whether an MTC model will be proposed or considered for adoption.

Ask whether the state has recommended to MTC that issues be addressed by developing uniformity proposals. If so, what issues? If not, why not?

What do we want to know about why the state adopted certain MTC models?

- How did your state decide to adopt Model “X”?
- Who decided whether to recommend adoption?
- Did your state participate in developing the MTC model?
- What were the primary drivers leading to adoption of model “X” in your state?
- Was the taxpayer community involved during the adoption of Model “X”? If so, what was the nature of that involvement?

What do we want to know about why the state did not adopt certain MTC Models?

- Was your state aware of MTC model “X”?
- Did your state participate in developing the MTC model?
- Was the model actively considered and rejected for adoption in your state? If so, at what level was the model rejected (e.g., within the agency, Governor’s Office, Legislature)?
- Did your state already have a statute or regulation on this topic before the MTC model was developed?
- Were there any specific issues that prevented your state from adopting Model “X” or considering it for adoption?
- Was the taxpayer community involved during consideration of Model “X” for adoption? If so, what was the nature of that involvement?
- Are there any requirements or steps in your rulemaking process or in the process by which statutes are proposed that make it difficult to adopt model regulations or statutes?

Uniformity Committee Project Description: Proposal for a Uniformity Project Assessment Process

This project would involve development of a process and standards for the Uniformity Committee to use when it is considering whether to undertake a model drafting project.

Problems: Very few states have adopted model statutes and regulations that have been proposed by the Uniformity Committee and approved by the Commission as uniformity recommendations in the past ten years. Barriers to adoption include political opposition. In addition, when states have previously addressed the subject matter of a uniform model, they are less likely to consider the model. Currently, the Uniformity Committee does not have a structured process to evaluate whether a suggested model will be adopted by a significant number of states upon completion.

Risks: The Compact member states and the MTC have limited resources for drafting model statutes and regulations. Those resources may be fully employed on projects with a low potential for adoption by the states, and be unavailable for projects with a high potential for adoption.

Issues for review:

- What kind of process would better inform the Uniformity Committee of the potential for adoption of a model statute or regulation on a specific topic before drafting is begun?
- What opportunities exist for public input and participation at this process stage?
- What information would help the Uniformity Committee decide whether a model statute or regulation on a specific topic has high potential for adoption by a significant number of states upon completion?
- How would a “front-end” process affect other parts of the drafting and review process for model statutes and regulations in the Commission’s overall uniformity recommendation process?

Expected outcomes from the project:

- Description of a process for gathering and considering information related to the potential for adoption of model recommendations on a specific topic before the drafting process begins, including public input in this phase of the process.
- Description of information to be gathered and considered.
- Standards for approval of a drafting project.
- Description of changes, if needed, in other parts of the uniformity recommendation adoption process.

Who should be involved in the project:

- MTC legal staff
- Uniformity Committee members

[Proposal developed by Uniformity Committee Project Team – Barriers to adoption of MTC Uniformity Recommendations]