



**MULTISTATE TAX COMMISSION**

*Working Together Since 1967 to Preserve Federalism and Tax Fairness*

**Uniformity Committee Report  
Fiscal Year 2011 - through May, 2011**

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The Uniformity Committee is chaired by Wood Miller, Missouri. The Committee structure includes two standing Subcommittees: the Sales & Use Tax Uniformity Subcommittee, chaired by Richard Cram, Kansas; and the Income & Franchise Tax Uniformity Subcommittee, chaired by Robynn Wilson, Alaska. Ms. Wilson was appointed in August, 2010. In addition, the Subcommittees have appointed Work Groups and Drafting Groups, as needed. Lennie Collins, North Carolina, chairs the Work Group for the Financial Institutions Apportionment project.

The Subcommittees met in-person on July 25-26, 2010, with 35 participants both in-person and by teleconference; on December 7-8, 2010, with 30 participants both in-person and by teleconference; and on March 1-2, 2011 with 29 in attendance both in-person and by teleconference. In addition, the subcommittees met via teleconference on September 30, 2010; October 19, 2010; November 16, 2010; February 8, 2011; April 26, 2011; and May 24, 2011. The Work Group for the Financial Institutions Apportionment has also met via teleconference several times throughout the fiscal year. And, in May, the Commission announced that in keeping with its commitment to an open and public process, the ad hoc drafting teams used periodically throughout the year to assist staff in producing draft uniformity language at the Subcommittee's policy direction will be treated as if they are a Commission body subject to public notice and public participation.

The Committee, together with its Subcommittees and Groups, has worked on the following eight projects during this fiscal year.

**Summary**

- Sales & Use Tax Uniformity
  1. Sales & Use Tax Notice and Reporting
  2. Centralized Administration of Telecommunications Transaction Tax
  3. Accommodations Intermediaries
  
- Income & Franchise Tax Uniformity
  1. Compact Art. IV Amendments
  2. Withholding for Multistate Employees
  3. Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax
  4. Financial Institutions Apportionment, Amendment

## 5. Combined Reporting Tax-Haven Provisions, Amendment

### Descriptions

#### Sales & Use Tax Uniformity Subcommittee

- 1. *Sales and Use Tax Notice and Reporting.*** At its March, 2010 meetings, the Subcommittee voted to develop a model sales and use tax notice and reporting statute. A drafting group prepared a policy question list, and based on the Subcommittee's answers to those questions, prepared a draft of a model statute for Subcommittee review. The draft requires sellers who are not collecting sales or use tax to notify purchasers of a potential tax liability at the time of sale if the product is to be delivered into the state. The draft also requires the seller to make annual reports to each such purchaser and an annual report to the state. The draft allows for certain de minimis exceptions and for penalties. The proposed model was approved by the Uniformity Committee in early March, 2011. Later in March, 2011, the Executive Committee approved the model for public hearing. The hearing has been held, and the hearing officer's report and recommendations are now before the Executive Committee.
- 2. *Centralized Administration of Telecommunications Transaction Tax.*** This project has three goals. First, develop "best practices" models for centralize administration of local telecommunications transaction taxes under 3 alternative state structures (state taxes distributed to locals, local taxes administered by state, or local taxes administered by centralized local authority). Second, adopt model telecommunications definitions and sourcing rules along the lines of those currently contained in SSUTA. And third, adopt model administrative procedures that would provide protections from class-action lawsuits as contained in SSUTA. The Subcommittee's drafting team, which includes representatives from both government and industry, has prepared a draft model statute for centralized administration of state and local telecommunications taxes which could apply in states where there is local authority to impose tax, but administration is at the state level (Proposal II).<sup>1</sup> Local government representatives have been invited to participate, and because proposed federal Streamlined legislation would require simplification of state and local telecommunications transactions tax administration, staff for the Streamlined Sales Tax Governing Board have been invited to participate as well.
- 3. *Accommodations Intermediaries.*** This model is for states that take the position lodging tax must be collected on the price intermediary charges its customer, which includes the intermediary's mark-up, rather than merely on the "wholesale" or "discount" price intermediary pays to the hotel. The model does not impose lodging tax, but addresses collection and remittance requirements: the intermediary is required to collect tax on full amount received from its customer, remit tax on mark-up directly to the state/ locality, and remit tax on "discount" price to the hotel (hotel would then remit to state/ locality). After a Public Hearing held July 21, 2010, the hearing officer provided a report and recommendations to the Executive Committee at its December, 2010 meeting. At the Executive Committee's January teleconference, the model was referred to a Bylaw 7 survey.

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<sup>1</sup> Proposal I could apply in states where tax imposition and administration are solely at the state level. Proposal III could apply in states where authority to tax as well as centralized administration is at the local level. The Subcommittee directed the Drafting Group to concentrate on further development of Proposal II first.

Eight Compact member states responded affirmatively and six responded in the negative or explicitly abstained. The Executive Committee then sent the model back to the Uniformity Committee for further consideration at the Uniformity Committee's discretion. The Uniformity Committee has surveyed states for additional input and is considering possible further amendment.

### Income & Franchise Tax Uniformity Subcommittee

1. ***Compact Art. IV Amendments.*** In July, 2009, the Executive Committee directed the Uniformity Committee to begin drafting amendments for 5 Compact Art. IV provisions (Section 17, Definition Gross Receipts, Definition Business Income, Factor weighting, Clarification Sec. 18), and instructed the Uniformity Committee to report back if it recommends the scope of review be changed. In December, 2009, Richard Pomp, Prentiss Willson, and Michael McIntyre provided an educational foundation of UDITPA background and apportionment concepts for the Subcommittee. The Subcommittee determined it would begin with section 17 and the definition of gross receipts. It has completed its initial draft of a new section 17 and has turned its attention to the definition of gross receipts. The Subcommittee's goal is to complete both of these proposed models during its July in-person meetings.
  
2. ***Withholding for Multistate Employees.*** This is a priority project to develop a uniform state withholding threshold for non-resident employees. A work group held 3 teleconferences in August, 2009, to develop a policy question list. The Subcommittee then held three teleconferences in September, October and November of 2009 to answer those questions. Based on the Subcommittee's policy choices, staff produced a draft model statute which was further amended by the Subcommittee at in-person and teleconference meetings held December 2009, January 2010, and March 2010. The Subcommittee received valuable input from the Council on State Taxation, the American Payroll Association, and other business representatives. In March, 2010, the Subcommittee voted to approve the model and the Uniformity Committee then voted to recommend it favorably to the Executive Committee for public hearing. In April, 2010, the Executive Committee approved the model for public hearing. A public hearing was held on May 10, 2010, and a hearing officer's report was provided to the Executive Committee on May 18, 2010. The proposed model sets a 20 work-day *de minimis* threshold for both employer withholding responsibility and employee individual income tax filing responsibility; includes a reciprocity provision (though it would not supersede existing reciprocity agreements); and provides exceptions for professional entertainers, professional sportsmen and women, certain other high-income individuals, and any person who earns any type of income other than wage income in the state. At its May 24, 2010 teleconference, the Executive Committee voted to adopt the hearing officer's recommended amendments and return the model to the Uniformity Committee for further consideration in light of concerns raised by Montana. The Subcommittee reconsidered the model during its July, 2010 in-person meeting and formed a drafting group to list the issues and options for further discussion. In December 2010, the Subcommittee voted to recommend additional changes. The two main changes were: (1) add language to require an aggregate day count among related employers, and (2) clarify that the "key employee" exception applies to both corporate and non-corporate employees. The Executive committee adopted the changes at its March, 2011 teleconference and approved the model for a bylaw 7 survey.

- 3. *Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax.*** This project addresses tax gap issues that arise when a pass-through entity is owned by another entity that is not subject to corporate income tax. The Subcommittee appointed a drafting group to list issues and options. After considering several alternative approaches and receiving significant input from the insurance industry, the Subcommittee chose its preferred approach and directed that a draft be developed. The industry is not in favor of the approach. After several meetings and teleconferences, the Subcommittee voted to approve a draft in at its in-person meeting in December, 2010. In March, 2011, the Executive Committee approved the proposal for public hearing. The hearing was held and a hearing officer's report and recommendations are now before the Executive Committee.
- 4. *Financial Institutions Apportionment, Amendment.*** The Subcommittee's work group, which includes representatives from several states and the banking industry, identified problems with the current MTC financial institutions model and proposed conceptual amendments for addressing them. The amendments included clarifications to the property factor rule for sourcing loans (based on SINAA – solicitation, investigation, negotiation, approval and administration); new receipts factor rules for sourcing ATM fees, merchant discounts, and trust account fees; and revisions to the receipts factor rule that requires use of COP for sourcing any receipts not otherwise specified. The Subcommittee agreed with the work group's conceptual recommendations, and directed the work group to draft amendments accordingly. The work group completed a draft of recommended changes to the receipts factor, which the Subcommittee has reviewed, amended, and preliminarily approved. The work group has now begun drafting amendments to the property factor – in particular, the sourcing of loans using the "SINAA" approach. When the property factor provision is complete, the Subcommittee will consider the proposal as a whole.
- 5. *Combined Reporting Tax-Haven Provisions, Amendment.*** The MTC model combined reporting statute requires world-wide combination but allows a water's-edge election. The election limits the combined group to domestic, and some foreign, unitary affiliates. At the request of Organization for International Investment and a number of jurisdictions that had been identified as "tax havens" by the OECD, the Executive Committee requested the Uniformity Committee considered whether to review 3 water's-edge provisions. The Uniformity Committee determined it should initiate a project on one of the three, the Tax-Haven provisions. A draft model amendment was approved by the Subcommittee in December, 2010. The Executive Committee approved the proposal for public hearing in March, 2011. The hearing has been held and the hearing officer's report and recommendations are now before the Executive Committee.