



**MULTISTATE TAX COMMISSION**

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

**Uniformity Committee Report to Executive Committee**

**May 2009**

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The MTC Uniformity Committee is chaired by Ted Spangler, Idaho. The Committee structure includes two standing Subcommittees. Wood Miller, Missouri, chairs the Income and Franchise Tax Subcommittee and Richard Cram, Kansas, chairs the Sales and Use Tax Subcommittee.

The Committee and its Subcommittees held meetings on March 17 and 18, 2009 in Nashville, Tennessee. 27 attendees were present (6 of these via telephone), representing 14 states, in addition to taxpayer representatives, representatives from the state tax press, and MTC staff. These figures compare to the March, 2008 attendance of 61 attendees, representing 18 states.

The Committees took the following action on current projects.

- ***Model Statute Regarding Accommodations Intermediaries.*** The Sales and Use Tax Subcommittee reviewed a draft proposal under which an accommodations intermediary is responsible for collecting all applicable taxes imposed on the room charge (i.e., the full retail price charged to the purchaser for the use of the accommodations), and for remitting tax on its mark-up (defined as the room charge less the discount room charge) to the state and for remitting tax on the amount it pays the accommodations provider (defined as the discount room charge) to the accommodations provider. The Subcommittee voted to recommend the proposal favorably to the full Uniformity Committee. In turn, the full Uniformity Committee voted to refer the proposal to the Executive Committee with a recommendation that the proposal be approved for public hearing. (see Memorandum to Executive Committee, Accommodations Intermediaries Proposed Model Statute).
- ***Model Statutes on Administration of Certain Aspects of Telecommunication Taxation.*** The Sales & Use Tax Subcommittee was addressed by Scott Peterson, Executive Director, Streamlined Sales Tax Governing Board. Mr. Peterson noted that the draft proposed federal Streamlined legislation would require states to simplify state and local telecommunications transactions tax administration. The language of the provision contains no specifics, but is intended to address broad reforms in telecommunications taxation. Mr. Peterson further said that the Executive Committee

of the SST Governing Board had directed him to coordinate with the subcommittee's current project to develop centralized administration models for telecommunications transactions taxes. The subcommittee expressed concern regarding the impact the federal legislation would have on the current project, raising issues such as whether the Sales and Use Tax Subcommittee is the appropriate forum for what undoubtedly would be an expansion of the current project, possibly to issues beyond the subcommittee's area of expertise. The subcommittee determined to ask the Executive Committee for further guidance before continuing work on this project (see memorandum to Executive Committee, Telecommunications Transaction Tax Project).

- ***Comparison of MTC Model Sales Tax Related Rules with Streamlined Sales & Use Tax Agreement.***
  - Applicability of Sales and/or Use Tax to Sales of Computer Software. At its November 2008 meeting, the Sales & Use Tax Subcommittee directed staff to prepare a draft amendment to the existing recommendation. The subcommittee reviewed a draft that substantially incorporates the provisions for computer and computer software from the Streamlined Sales and Use Tax Agreement's Library of Definitions at Appendix C. The question posed to the subcommittee was whether it should take this approach or simply repeal the MTC model. After discussion, a number of subcommittee members indicated that they would prefer to have more time to discuss the matter with their home revenue agencies. The subcommittee determined that it would continue discussing the possibilities and ramifications of adopting the SST definition at its July 2009 meeting.
  - Uniform Principles Governing State Transactional Taxation of Telecommunications Services—Vendee and Vendor Versions. After discussing the potential for repeal of this provision, members of the Sales & Use Tax Subcommittee (representatives from non-SST States) expressed the need for more time to discuss the issues contained in white paper with the appropriate persons in their respective revenue agencies before proceeding further. By consensus, the subcommittee decided to continue discussion of the white paper's suggestions and its potential impacts at the July 2009 meeting
- ***Non-Income Taxpayer Work Group.*** During the March 2009 meeting, the Income & Franchise Tax subcommittee reviewed a report from the non-income taxpayer work group. After an extensive discussion of the project, the subcommittee suggested that the work group examine the use of pass through entities to avoid state taxation of affiliated companies, consider the adoption of a narrower definition of captive insurance companies for state income tax purposes, examine state taxation of insurance companies that uses a tax base broader than gross premiums, and that the work group study the federal income taxation of insurance companies to assist its analysis of the state taxation of those companies. The work group will perform this research and report back to the Subcommittee in July.

- ***Amendments to MTC Model Regulations for Section 18.*** The Income and Franchise Tax Subcommittee had narrowed its focus to three possible models. It rejected two of those models and asked the Drafting Group to work on re-drafting the language of the third. The Drafting group will provide this language to the Subcommittee at a June teleconference.
- ***Amendments to MTC Model Special Apportionment Rule for Financial Institutions.*** The Subcommittee has formed a work group to identify issues and propose solutions. The work group includes representatives from several states and industry, and met weekly for a number of months. The work group reported to the Subcommittee its policy recommendations for all but two of the issues that have been identified. The Work Group is now meeting to resolve recommendations on the two remaining issues. It will give a full report, and seek policy direction from the Subcommittee, at a June teleconference.
- ***Project to Amend MTC Add-back Model to Address REITs.*** The Income and Franchise Tax Subcommittee voted to initiate this new project. The Subcommittee requested a background memorandum be prepared for its July meetings that explains the problem and sets out possible solutions.