



MULTISTATE TAX COMMISSION

Uniformity Committee Report Fiscal Year 2012 through May 10, 2012

The Multistate Tax Commission develops model laws – statutes and regulations - that states may consider adopting. Proposed model laws may be suggested by our Executive Committee, any of our standing committees, a single state, a taxpayer, taxpayer groups, or any other members of the public.

Once members have identified a model that they would like to develop, the initial drafting process takes place in our Uniformity Committee. All Committee meetings and teleconferences are open to the public and public participation is encouraged. The Commission’s Uniformity Committee is chaired by Wood Miller, Missouri Department of Revenue. Its structure includes two standing Subcommittees: the Sales & Use Tax Uniformity Subcommittee, chaired by Richard Cram, Kansas Department of Revenue; and the Income & Franchise Tax Uniformity Subcommittee, chaired by Robynn Wilson, Alaska Department of Revenue. The Subcommittees have appointed work groups and drafting groups, as needed. Lennie Collins, North Carolina Department of Revenue, chairs the work group for the financial institutions apportionment project. The Uniformity Committee meets three times during the year in person and six or more times during the year by teleconference. Drafting groups associated with various uniformity projects meet regularly by teleconference, some as frequently as weekly.

The Commission adopted three model laws at its annual meeting in July, 2011:

1. Amendment to our Combined Reporting model statute’s tax-haven provision
2. Model mobile workforce statute
3. Model add-back statute for payments to captive REITs

Currently before the Executive Committee:

1. UDITPA related amendments for corporate income tax apportionment
 - Sales factor sourcing for services and intangibles
 - Definition of “sales”
 - Factor Weighting
 - Definition of Business Income
 - Section 18 Distortion Relief
2. Sales and Use Tax Notice and Reporting
3. Centralized Administration of Telecommunications Transaction Tax
4. Tax Collection Responsibilities of Accommodations Intermediaries

Under development at the Uniformity Committee:

Income & Franchise Tax

1. Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax Withholding for Multistate Employees
2. Financial Institutions Apportionment, Amendment

Sales & Use Tax

1. Model Associate Nexus Statute (New York – style “Amazon law”)
2. Protection of Telecommunications Providers from Class Action Lawsuits
3. Telecommunications Definition and Sourcing

Project Summaries

Adopted by the Commission at its 2011 Annual Meeting

1. **Combined Reporting Tax-Haven Provisions, Amendment.** The MTC model combined reporting statute requires world-wide combination but allows a water's-edge election. The water's edge election does not exclude unitary entities doing business in a tax haven, and defines "tax haven," in part, by reference to an OECD list. The OECD no longer maintains its list. This model amendment would eliminate the reference to that list.

2. **Model Mobile Workforce Statute.** This was a priority project to develop a uniform state withholding threshold for non-resident employees. 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.

3. **Add-back for Payments to Captive Real Estate Investment Trusts.** This model statute would disallow deductions for payments to captive REITs.

Currently Before the Executive Committee

1. **Compact Art.IV [UDITPA] amendments.** Article IV of the Multistate Tax Compact contains UDITPA virtually word for word. In July 2009, the Executive Committee directed the Uniformity Committee to begin drafting model amendments for five of its provisions: **section 17 sales factor numerator sourcing, definition "sales," definition "business income," factor weighting, clarification of section 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 on UDITPA background and apportionment concepts. The Uniformity Subcommittee, working with a drafting group, has recommended amendments for each of these five provisions. All five are now before the Executive Committee for consideration for public hearing.

2. **Sales and Use Tax Notice and Reporting.** At its March, 2010 meetings, the Subcommittee initiated two projects related to sales and use tax education and enforcement: (1) a sales and use tax notice and reporting model, and (2) an associate nexus model (the associate nexus model is discussed below). The Subcommittee determined it would work first on the sales and use tax notice and reporting model. The resulting proposal 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. Sellers are also required to make annual reports to each such purchaser and an annual report to the state. De minimis exceptions and penalties are provided. The draft was approved by the Uniformity Committee in early March, 2011. Later that month, the Executive Committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of the proposal to the Commission. The proposal was not placed on the Commission's agenda, however, because it had not passed the bylaw 7 survey at that point. The proposal is before the Executive Committee for its recommendation to the Commission and potentially another bylaw 7 survey.

3. **Centralized Administration of Telecommunications Transaction Tax.** This project was requested by the telecommunications industry and has three goals. First, develop "best practices" models for centralize administration of local telecommunications transaction taxes under three

alternative state structures: **state** taxes distributed to locals – Proposal I, local taxes administered by state – Proposal II, or local taxes administered by centralized local authority – Proposal III. 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 Group, which includes representatives from both government and industry, prepared draft statutes for Proposals I, II and III. These were approved by the Uniformity Committee in November, 2011 and in February, 2012 were approved by the Executive Committee for public hearing. Local government representatives have been invited to participate in this project, 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. The hearing officer’s report has been submitted and the matter is before the Executive Committee for its recommendation to the Commission and potentially a bylaw 7 survey.

4. Tax Collection Responsibilities of Accommodations Intermediaries. This model is intended for use in 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 the 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, 2009, the Hearing Officer provided a report and recommendations to the Executive Committee at its December, 2009 meeting. At the Executive Committee’s January 2010 teleconference, the model was referred to a bylaw 7 survey. Eight Compact member States responded affirmatively and six responded in the negative or explicitly abstained. The Executive Committee then requested the Uniformity Committee provide further recommendations. The Uniformity Committee surveyed states for additional input and ultimately added an alternative proposal to the recommended models. The Executive Committee approved both for a second public hearing. The hearing has been held and the Hearing Officer’s report submitted. The matter is now before the Executive Committee for its recommendation to the Commission and potentially a bylaw 7 survey.

Under Development at the Uniformity Committee

Income & Franchise Tax

1. 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. 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 were provided to the Executive Committee, which discussed the matter in June and continued the discussion to its meeting in July. At the July meeting, the Executive Committee requested the Uniformity Committee work with industry and provide additional input and comments regarding any possible alternative recommendations or amendments to the current recommendation.

2. 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 “cost of performance” 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.

Sales & Use Tax Uniformity Subcommittee

1. Associate Nexus Presumption. A first draft of this proposal was presented during the Uniformity Committee teleconference in October, 2011. The draft largely follows legislation first adopted in New York. The Subcommittee has benefited considerably from comments and input by representatives from that state.

2. Protection of Telecommunications Providers from Class Action Lawsuits. This project was requested by the telecommunications industry. It was set aside so that work could be completed on models for Centralized Administration of Telecommunications Transaction Taxes (above). We are now ready to begin work on the project and the industry plans to provide a presentation to the Subcommittee in July.

3. Telecommunications Definition and Sourcing. This project was requested by the telecommunications industry. It was set aside so that work could be completed on models for Centralized Administration of Telecommunications Transaction Taxes (above). We are now ready to begin work on the project and the industry plans to provide a presentation to the Subcommittee in July.