



MULTISTATE TAX COMMISSION

MINUTES

**Sales and Use Tax Uniformity Subcommittee Meeting
The Westin – Downtown Denver
1672 Lawrence Street
Denver, Colorado 80202**

***Tuesday, December 4, 2012
1:00 PM – 5:00 PM***

I. Welcome and Introductions

Subcommittee Chairperson Richard Cram welcomed the subcommittee and the public. The following persons were in attendance:

NAME	AFFILIATION	NAME	AFFILIATION
Chad M. Most	Frisco, CO	PRIVATE SECTOR	
Leslie Fischer	Breckinridge, CO		
Aaishah Hashmi	DC	Jaime Fenwick	Time-Warner Cable
Rich Jackson	ID	Terry Frederick	Sprint
Lennie Collins	NC	Todd Lard	COST
Alana Barrigán-Scott	MO	Tripp Baltz	Bloomberg-BNA
Dick Pond	CO		
Phillip Horwitz	CO	TELECONFERENCE	
Myles Vosberg	ND		
Gary Humphrey	OR	Amy Hamilton	State Tax Notes
Rebecca Abbo	NM	Deborah Bierbaum	AT&T
Kevin Wakayama	HI		

Wood Miller	MO	MTC STAFF	
Michael Fatale	MA		
Richard Cram	KS	Sheldon Laskin	
Michael Mason	AL	Shirley Sicilian	
Matt Peyerl	ND	Joe Huddleston	
		Greg Matson	
TELECONFERENCE		Bruce Fort	
		Roxanne Bland	
Rob Carter	KY		
Stewart Binke	MI		
Andrew Glancy	WV		
Pat Calore	MI		

II. Public Comment Period

No public comment was received at this time.

III. Approval of Minutes of In-person Meeting July 30, 2012; October 23, 2012 Teleconference; November 20, 2012 Teleconference

Upon motions duly made, the minutes of each meeting were approved unanimously.

IV. Reports and Updates

A. Federal Issues Affecting State Taxation

Ms. Roxanne Bland, MTC Counsel, reported on a long list of proposed federal legislation that would impact state taxation, including: H.R. 3179, Marketplace Equity Act; S. 1452, H.R. 2701, Main Street Fairness Act; S. 1832, Marketplace Fairness Act; H.R. 2869, End Discrimination for State Taxation of Automobile Renters Act of 2011; S. 971, H.R. 1860, Digital Goods and Services Tax Fairness Act of 2011; H.R. 1002, Wireless Tax Fairness Act; S. 135, Permanent Internet Tax Freedom Act of 2011; H.R. 1804, State Video Tax Fairness Act of 2011; S. 1934 (No Title; Internet Moratorium Extension, Automobile Rental Restrictions, Hotel Tax Restrictions).

B. Report on Commission Action on Uniformity Projects

1. Model Sales and Use Tax Notice and Reporting Statute

Ms. Sicilian, MTC general counsel, reported that this project remains at the executive committee level pending additional consideration after the U.S. Court of Appeals for the 10th Circuit issues its opinion in *DMA v. Brohl*.

2. Communications Transaction Tax Centralized Administration Model Statute
3. Model Statutes on State Options for Collection and Remittance of Lodging Taxes by Accommodations Intermediaries

Ms. Bland reported that both of these models were adopted by the Commission at its July business meeting.

V. Model Associate Nexus Statute

Ms. Bland summarized a memorandum and draft statute dated November 21, 2012. The subcommittee began by discussing the draft statute and directed staff to draft amendments: fill in the blanks with recommended amounts; clarify the “cumulative gross receipts” language; delete “that would satisfy the nexus requirement of the United States constitution” as a given, or clarify it.

The subcommittee then discussed how this type of associate nexus statute fits in to the big picture of nexus, and how it would fit into a state’s general nexus statutes. The Subcommittee discussed the “establish and maintain a market” requirement from the U.S. Supreme Court’s decision in *Tyler Pipe*, and how it has been applied by the state courts in recent cases. Members discussed the need to apply the concept broadly, but not so broadly that it would cause nexus for a wholesaler merely due to the fact that an independent retailer in the state sells that wholesalers product. The subcommittee discussed the place of an associate nexus statute in relation to affiliate nexus statutes and the scholastic book store cases. A continuum of types of relationships was recognized, with the idea that it is the activity that matters and not the technology used to accomplish that activity (i.e., solicitation is solicitation, regardless of whether it’s accomplished through the internet or some other way. This discussion culminated in the creation of a drafting group to consider a broad model nexus statute that encompasses these various types of activities and not just associate nexus. Volunteers for the drafting group included Wood Miller (MO), Richard Cram (KS), and Pat Calore (MI). The group will meet by conference call before the next in-person meeting in March.

VI. Model Communications Definitions and Sourcing Rules

Ms. Bland summarized the purpose and procedural status of this project. She presented a draft Proposed Commission Resolution dated November 21, 2012 that incorporated changes directed during the subcommittee teleconference on November 20, 2012. The draft resolution would commend the SUTA governing board for its uniformity efforts in telecommunications sourcing and definitions. It would also encourage states to consider enacting the SUTA agreement’s section 314, telecommunications sourcing definitions, section 315 telecommunications sourcing rules, and the tax base/exemption definitions contained in the Library of Definitions, Appendix C, Part II - either as currently in effect and as amended in the future or as in effect on the date of this resolution. The question is whether this uniformity subcommittee would recommend to the Commission executive committee that the executive committee forward this draft to the resolutions committee for further consideration. By a motion duly made, with none opposed and one abstention, the subcommittee took that action, choosing to use “as currently in effect and as amended in the future.”

VII. Model Administrative Procedures Protecting Communications Providers From Class Action Lawsuits

Mr. Sheldon Laskin, MTC Counsel, summarized a memorandum dated November 21, 2012. Mr. Laskin summarized the commission’s participation as *amicus curiae* in *AT&T Corp. v. Bobby Gene Allen, et al.* In that case, the commission filed an amicus brief at the U.S. Supreme Court in support of AT&T’s petition for writ of certiorari to the Oklahoma Court of Civil Appeals. The Oklahoma trial court had certified a

national class action of AT&T customers seeking refund of allegedly improperly collected municipal taxes. In doing so, the trial court ignored various state laws that require exhaustion of administrative remedies prior to filing suit for a tax refund. Mr. Laskin also drew the subcommittee's attention to the American Bar Association Model transactional Tax Overpayment Act. Mr. Laskin then described False Claims Act statutes that exist in some state.

Mr. Todd Lard, COST general counsel, supported MTC efforts on a model False Claims Act. He explained that many states have adopted language from the federal false claims act, so there is already the beginning of a uniform base among the states. Ms. Deborah Bierbaum, AT&T, recommended the membership read the ABA model act. She noted that California, the District of Columbia, Hawaii, Massachusetts, New Mexico, New York City, North Carolina, and Virginia all bar class actions against vendors for tax refund. Subcommittee members expressed recognition that vendors are the state's agents and the states should make an effort to address problem areas.

The subcommittee directed staff to organize a teleconference presentation by someone familiar with the development of the ABA model who could walk us through the key policy choices reflected in that model and explain why those were chosen. Commissioner Bruce Johnson was suggested. The staff is to contact the uniformity subcommittee and litigation committee chairs to see if a joint teleconference would be appropriate.

VIII. New Business

No new business.

IX. Adjourn