



MULTISTATE TAX COMMISSION

MINUTES of
Uniformity Committee Meeting
Wednesday, December 11, 2013
1:30 p.m. Central Time

I. Welcome and Introductions

Wood Miller, Chair of the Uniformity Committee, (MO) opened the meeting. The following persons were in attendance:

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| Pamela Hill | Alabama Department of Revenue | Roxanne Bland | Multistate Tax Commission |
| Michael E. Mason | | Bruce Fort | |
| Christy Vandevender | | Elizabeth Harchenko | |
| Chris Sherlock | | Thomas Shimkin | |
| Robynn Wilson | Alaska Department of Revenue | Jeffrey Silver | |
| Walter Anger | Arkansas Department of Finance and Administration | Ben Abalos | |
| Deanna Munds-Smith | | Lila Disque | |
| Phillip Horwitz | Colorado Department of Revenue | Joe Huddleston | |
| Karl Frieden | Council on State Taxation | Sheldon Laskin | |
| Liz Cha | Deloitte | Gregory Matson | |
| Karen Boucher | | Cathy Felix | |
| Helen Hecht | Federation of Tax Administrators | Lennie Collins | NC Department of Revenue |
| Maria Johnson | Florida Department of Revenue | Rebecca Abbo | New Mexico Taxation & Revenue |
| Phil Skinner | Idaho Office of the Attorney General | Lizzy Vedamanikam | |

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| Richard Jackson | Idaho State Tax Commission | Matt Peyerl | North Dakota Office of State Tax Commissioner |
| Steve Wynn | | Myles Vosberg | |
| Richard Cram | Kansas Department of Revenue | Cory Fong | |
| Jennifer Hays | Kentucky Legislative Research Commission | Gary Humphrey | Oregon Dept of Revenue |
| J.A. Cline, Jr. | Louisiana Department of Revenue | Frank Hales | Utah State Tax Commission |
| Kimberley Doley | | Charlie Kearns | Sutherland Asbill & Brennan |
| Michael Fatale | Massachusetts Department Of Revenue | Jamie Fenwick | Time Warner Cable |
| Wood Miller | Missouri Department of Revenue | John Ryser | Washington State Department of Revenue |
| Lee Baerlocher | Montana Department of Revenue | Tim Jennrich | |
| Gene Walborn | | Gil Brewer | |

Diann Smith (McDermott), Brian ? (PWC), and Jeff Henderson (Morgan) appeared by phone.

II. Approval of Minutes of In-person Meeting, July 22, 2013

The minutes of the July 22 meeting were approved by voice vote.

III. Public Comment Period

There were no public comments at this time.

IV. Reports and Possible Action Items

a. (Sales/Use Tax Segment)

Richard Cram, Chair of the Uniformity Subcommittee on Sales & Use Tax, (KS) presented the subcommittee’s report. The Model Associate Nexus statute was referred back for further work. The subcommittee also discussed the current project on developing a model statute on the false claims act and refund actions that expose sellers to liability. Craig Johnson gave a presentation explaining the simplification provisions currently contained in the Marketplace Fairness Act, particularly the measures that would apply to non-Streamlined states. The group then addressed the subcommittee's options regarding the MTC's Marketplace Fairness Act project, and decided to recommend to Uniformity that it form a workgroup and proceed. Richard Jackson (ID) moved to forward the recommendation to the Uniformity Committee. The motion passed with, 14 in favor, 0 against, and 2 abstentions.

b. Income and Franchise Tax Subcommittee

Robynn Wilson, Chair of the Uniformity Subcommittee on Income & Franchise Tax, (AK) presented the subcommittee report. The strategic planning work group plans to contact states regarding their adoption of uniformity provisions. Mr. Walborn passed around a sign-in sheet for volunteers to discuss their department’s motivation to adopt/not adopt MTC model language. Regarding the financial institutions model, it

was recommended that loans not be retained in the property factor calculation, but property should be retained. The workgroup recommended no standard weighting,. Michael Mason moved to send the draft model on for further action at the executive committee. The motion passed with 17 in favor, 0 opposed, and 0 abstentions.

V. Discussion of Hearing Officer's Report on Proposed Recommended Amendments to Model Multistate Tax Compact Article IV (UDITPA)

Shirley Sicilian, MTC General Counsel, presented the Report. She provided the background to the project, with the 5 areas to be changed: definition of sales, definition of business income, factor weighting, section 18 distortion relief, and section 17. Richard Pomp held a hearing in March of this year, and released his report in October. In sum, he proposes the following changes (note that he also proposed wording changes, whereas the committee had purposely retained as much of the previous wording as possible):

Definition of sales

The Hearing Officer recommends not limiting receipts. He would leave the definition as the broader definition. However, he provides two alternative proposals. One would be the narrow approach as recommended, but with wording changes. The other would be a broader approach. He recommended that the model not address the treasury function, and instead address it as before, in the regulations.

Definition of business income

The committee clarified there are two tests, transactional and functional. The Hearing Officer recommends clarifying the language by removing the word "regular" from the transactional test. This would somewhat broaden the language. He also pointed out that there is no time limit on property that 'is or was' functional, and a time limit should be established.

Factor weighting

In its draft, the Uniformity Committee provided for a double-weighted sales factor. The Executive Committee recommended double-weighting but preferred not to dictate a particular factor weighting. The hearing officer endorsed the Executive Committee's approach.

Section 18

The committee wanted the current rule to make clear that the tax administrator could discretionary relief. But they wanted to clarify that this applies, as well, to industry-specific and transaction-specific issues. The hearing officer recommends language that would require publication of the rule.

The Hearing Officer would also specify who has the burden of proof: whoever is proposing the change. He would also add a standard of proof (that being what the state currently uses) and what has to be proved: 1) current rule does not fairly reflect activity in the state and 2) the proposed alternative is reasonable. The second addition removes penalties when the taxpayer follows the general rule. So tax administrators cannot use Section 18 to deviate from the general rule and apply penalties. He also recommends no retroactive revocation.

Section 17

The Hearing Officer discussed this in-depth. He does not actually endorse the proposal or remaining with Cost of Performance, but says he presumes the

executive committee will go with the committee's proposal as far as market-based sourcing. There is a caveat: a large part of his discussion concerned how difficult it will be to apply the statute without guidance (regulations). The MTC should act as quickly as possible to implement regulations

Mr. Miller noted that at this time no action is required. Phil Horwitz (CO) asked about the process in the interests of speed. If the model is referred back to Uniformity, does it make sense to authorize the workgroup to meet before March to discuss the recommendation? Mr. Miller stated this would be an option. Gary Humphrey (OR) asked about the retroactive portion of Section 18. Ms. Sicilian explained that the revocation of the grant of an alternative would be prospective only. Michael Fatale (MA) asked whether it was possible to vote on certain portions of the model. Mr. Miller stated this is subject to the wishes of the Committee, and they may do so if they choose.

VI. Status Report on Uniformity Website Improvements

Ms. Sicilian reported on the MTC's project to update its website. The first step was to put the foundation in place. Mr. Matson has been working with the developer and they are in the process of migrating old content over to the newer iteration of the website.

V. Roundtable Discussion

The states discussed current issues and developments in tax law. Washington and Colorado have legalized recreational use of marijuana, and the taxing departments are developing regulations on its sale. Colorado's department was also charged with recommending a revenue-neutral, uniform base, which is challenging because it is a home rule state. DMA has now filed in district court and is seeking an injunction; argument is set for January 7th. Massachusetts has two regulations moving forward, one on basis adjustments in the context of combined reporting, and the other on intercompany transactions in subsidiary circumstance. They have formed a combined reporting focus group to identify and resolve problems. On July 24, the Massachusetts legislature passed an expanded sales and use tax base, but it ended up being repealed retroactively in September. In light of DOMA, Idaho is working on a conformity bill due to their constitutional definition of "marriage." Their cost of performance case is now in the Supreme Court after the District Court's finding in favor of the tax commission.

VI. New Business

There was no new business.

VII. Adjourn

The meeting adjourned.