



**MULTISTATE TAX COMMISSION**

**Sales and Use Tax Subcommittee  
March 6, 2012  
Doubletree by Hilton Hotel  
Nashville, TN  
Minutes of the Meeting**

**1. Welcome and Introductions**

The Chair called the meeting to order at 1:00 P.M. The following persons attended the meeting.

Name	Affiliation	Name	Affiliation
Michael Mason	AL DOR	Dee Wald	ND DOR
Tom Atchley	AR DOR	Rebecca Abbo	NM DOR
Phil Horwitz	CO DOR	Louie Joe Gomez	
Marshall Stranburg	FL DOR	Nancy Prosser	TX DOR
Richard W. Jackson	ID DOR	Frank Hales	UT DOR
Phil Skinner		Jeff Oakes	WV DOR
Randy Tilley		Private Sector	
Richard Cram	KS DOR	Jean Russell	AT&T
Michael Fatale	MA DOR	John Allan	Jones Day
Stewart Binke	MI DOR	Amy Hamilton	State Tax Notes
Keith Getschel	MN DOR	MTC Staff	
Pam Evans		Bruce Fort	Les Koenig
Wood Miller	MO DOR	Elliott Dubin	Roxanne Bland
Lennie Collins	NC DOR	Sheldon Laskin	
Myles Vosberg	ND DOR	Shirley Sicilian	

**II. Public Comment**

There was no public comment at this time.

**III. Approval of Minutes of In-Person Meeting November 29-30, 2011; January 31, 2012 Teleconference; February 21, 2012 Teleconference**

Texas moved approval of all minutes. The motion carried unanimously.

**IV. Reports and Updates**

*A. Federal Issues Affecting State Taxation*

Roxanne Bland, MTC Counsel, gave the report. Ms. Bland informed the members of the subcommittee that there were four Streamlined Sales Tax bills in both houses – H.R. 3179 The Market Place Equity Act; S.1452 and H.R. 2701 Main Street Fairness Act; S. 1832 Market Place Fairness Act. Ms. Bland said that there is an initiative in Congress to pass legislation this year.

Ms. Bland also said that there is a coalition of state groups working on the Digital Goods and Services Act, H.R. 1860; and, the Wireless Tax Fairness Act, H.R. 1002 is now before the Senate Finance Committee but no action has been taken. Ms. Bland informed that members of the subcommittee that other bills: the End Discrimination for State Taxation of Automobile Renters Act of 2011; E911 Fairness Act; and, the Video Tax Fairness Act will not be acted upon this year.

*B. Report on Commission Action on Uniformity Projects*

1. Model Sales and Use Tax Reporting Statute

Shirley Sicilian, MTC General Counsel, reported that this model statute did not pass the Bylaw 7 survey. The Executive Committee considered the next steps at its meeting last December and sent the model back to the Uniformity Committee to recommend thresholds and de minimis levels for reporting levels. The Executive Committee understood that the levels had been purposely unspecified as different levels may be appropriate for states with different size population or economies, but asked that recommended minimum threshold levels be supplied to give states some idea of what might be appropriate. The Uniformity Committee reconsidered the thresholds by teleconference and recommended minimum “small seller” exemption levels for reporting and notice requirements be set at \$200,000 and \$100,000 respectively. The Uniformity Committee recommended minimum de minimis levels of \$100,000 and \$50,000 for reporting and notice requirements respectively.

Ms. Sicilian informed the subcommittee that the amended model statute will be before the Executive Committee at its May meeting. The Executive Committee can resend the statute for another Bylaw 7 survey or retain the model to see if any further changes should be made in light of an eventual decision in the *DMA* case in the 10<sup>th</sup> Circuit.

2. Communications Transactions Tax Centralized Administration Model Statute

Roxanne Bland, MTC Counsel, told the subcommittee that a public hearing on the model statute will held in the first week in April.

3. Model Statutes on State Options for Collection and Remittance of Lodging Taxes by Accommodations Intermediaries

Ms. Bland explained that the original model statute did not pass the Bylaw 7 survey, and was referred by the Executive Committee to the Uniformity Committee for further work. These model statutes were passed out of the Uniformity Committee at its November 2011 meeting. A public hearing for this model statute is scheduled on same day as the public hearing on the model statute for centralized administration of communications transactions taxes.

**V. Model Associate Nexus Statute**

Ms. Sicilian reminded the members of the subcommittee that the policy questions were presented at the November meeting. Issues such as whether to include middlemen/aggregators and/or a national sales threshold were not answered at that meeting and are up for discussion at this meeting. A national sales volume threshold could be optional for states.

Other policy considerations included whether to include an explicit advertising exception in the statute, how to define the terms seller and affiliated seller. Ms. Bland presented a draft of a list of state definitions of an entity “doing business” in the state.

The sense of the Subcommittee was to retain the safe harbors and make the statute prospective only. The question of advertising was not settled.

Ms. Bland will explain how section 1504 is used in California and other states at the next meeting. Ms. Bland will also look at how the term “resident” is defined by CA and NY, and whether an “affiliated group” (or “combined group” or “consolidated group”) are taken into account for the thresholds. She will report to subcommittee regarding her findings at the next meeting.

**VI. Model Communications Definitions and Sourcing Rules;**

**VII. Protection from Class Action Lawsuits**

A representative from AT&T addressed the Subcommittee regarding these two topics. She explained the issues and indicated that members of the Communications industry would like to request a uniformity project for each of them. The Subcommittee discussed the matter briefly and asked for a full presentation at the next meeting.

**VIII. New Business; Emerging Issues Regarding Cloud Computing and Vouchers**

The Subcommittee discussed these two topics and asked that staff prepare background materials that would assist the Subcommittee in understanding the issues and determining if there is any role for the MTC Uniformity Subcommittee on these topics.