



**Multistate Tax Commission  
Resolution No. 2020-1**

**Resolution Recommending All Tax Issues Be Specifically Carved Out of  
State False Claims Acts**

**Whereas**, the Multistate Tax Commission, in a resolution dated July 29, 2015, resolved “that the Commission hereby encourages the consideration of the ABA Model Transactional Tax Overpayment Act for adoption by the states,” (the 2015 resolution, see attached), and

**Whereas**, the ABA Model Transaction Tax Overpayment Act set forth uniform transaction tax refund procedures in states that impose a sales and use tax or similar transaction tax on purchasers and would make explicit that sellers are not to be named in any action to recover tax allegedly overpaid to such states, and

**Whereas**, the 2015 resolution is set to expire at the Annual Business Meeting of the Multistate Tax Commission in 2020, and

**Whereas**, since the resolution was adopted, state legislation has been proposed that would remove the prohibition for bringing tax-related claims (*i.e.*, the “tax bar”) under the state false claims acts, and

**Whereas**, the removal of the tax bar from a state false claims act would allow a state Attorney General and/or private attorney to determine or redetermine whether a taxpayer had correctly paid direct taxes, such as income taxes, as well as whether the taxpayer collected and remitted the proper amount of indirect taxes, such as sales and use taxes, and

**Whereas**, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee formed a joint state/industry workgroup in December 2012 to study the issues pertaining to class action refund claims, as well as similar issues pertaining to the application of state false claims acts to tax issues ultimately concluded states should consider the ABA Model Transactional Tax Overpayment Act, and

**Whereas**, the Multistate Tax Commission Uniformity Committee Sales and Use Tax Subcommittee, as part of its work also determined that state whistleblower acts, similar to the federal statute, would be preferable to allowing false claims act suits for tax issues since whistleblower acts ensure that the state tax agency oversees any enforcement action, and

**Whereas**, the Multistate Tax Commission now determines that it should update its earlier resolution to extend it for another five years and also recommend that states consider whistleblower legislation rather than removing the tax bar from false claims acts, and that state tax enforcement agencies be properly funded, and

**NOW THEREFORE**, be it resolved by the Multistate Tax Commission that the Commission hereby encourages the states to consider the ABA Model Transaction Tax Overpayment Act and also encourages the states to consider whistleblower statutes, similar to the federal statute, rather than removing the tax bar from state false claims act statutes.

*Adopted this 30<sup>th</sup> day of July, 2020, by the Multistate Tax Commission.*



Gregory S. Matson  
Executive Director