



**Minutes**  
**Multistate Tax Commission Uniformity Committee Meeting**

Radisson Blu Mall of America  
 2100 Killebrew Drive  
 Bloomington, Minnesota 55425  
 Wednesday, April 25, 2018  
 8:30am - 4:30pm Central Time

**I. Welcome and Introductions**

Holly Coon, Chair, Alabama, opened the meeting at 8:32 a.m. asked for those who wished to introduce themselves. The following people were in attendance:

<b>Holly Coon</b>	Alabama Department of Revenue
<b>Michael Emfinger</b>	Alabama Department of Revenue
<b>Timothy Sanders</b>	Alabama Department of Revenue
<b>Christy Vandevender</b>	Alabama Department of Revenue
<b>Deanna Munds-Smith</b>	Arkansas Department of Finance and Administration
<b>Phil Horwitz</b>	Colorado Department of Revenue
<b>Renee Nacrelli</b>	Comptroller of Maryland
<b>Ken Roberts</b>	Idaho State Tax Commission
<b>Tom Shaner</b>	Idaho State Tax Commission
<b>Randy Tilley</b>	Idaho State Tax Commission
<b>Layne Haddock</b>	Idaho State Tax Commission
<b>Nathan Nielson</b>	Idaho State Tax Commission Office of the Attorney General
<b>Phil Skinner</b>	Idaho State Tax Commission Office of the Attorney General
<b>David Young</b>	Idaho State Tax Commission Office of the Attorney General
<b>Brian Fliflet</b>	Illinois Department of Revenue
<b>Jenny Starr</b>	Minnesota Department of Revenue
<b>Tracee Abel</b>	Montana Department of Revenue
<b>Richard Cram</b>	Multistate Tax Commission
<b>Cathy Felix</b>	Multistate Tax Commission
<b>Keith Getschel</b>	Multistate Tax Commission
<b>Harold Jennings</b>	Multistate Tax Commission
<b>Robert Schauer</b>	Multistate Tax Commission
<b>Lawrence Shinder</b>	Multistate Tax Commission
<b>Jeffrey Silver</b>	Multistate Tax Commission
<b>Marshall Stranburg</b>	Multistate Tax Commission
<b>Brian Hamer</b>	Multistate Tax Commission
<b>Bruce Fort</b>	Multistate Tax Commission

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<b>Greg Matson</b>	Multistate Tax Commission
<b>Lila Disque</b>	Multistate Tax Commission
<b>John Frasier</b>	New Hampshire Department of Revenue
<b>Violeta Leroy</b>	New Hampshire Department of Revenue
<b>Lennie Collins</b>	North Carolina Department of Revenue
<b>Dee Wald</b>	North Dakota Office of State Tax Commissioner
<b>Katie Lolley</b>	Oregon Department of Revenue
<b>Nia Ray</b>	Oregon Department of Revenue
<b>Tommy Hoyt</b>	Texas Comptroller of Public Accounts
<b>Julio Mendoza-Quiroz</b>	Texas Comptroller of Public Accounts
<b>Nancy Prosser</b>	Texas Comptroller of Public Accounts
<b>Frank Hales</b>	Utah State Tax Commission
<b>John Valentine</b>	Utah State Tax Commission
<b>Karolyn Bishop</b>	Washington State Department of Revenue
<b>Gil Brewer</b>	Washington State Department of Revenue
<b>David Hesford</b>	Washington State Department of Revenue
<b>Bryan Kelly</b>	Washington State Department of Revenue
<b>Olufemi Obikoya</b>	Washington, DC OCFO/OTR/Audit Division
<b>Jayne Kulberg</b>	Wisconsin Department of Revenue
<b>Tripp Baltz</b>	Bloomberg Tax
<b>Nikki Dobay</b>	COST
<b>Pilar Mata</b>	Tax Executives Institute
<b>By Phone:</b>	
<b>Michael Mazerov</b>	Center on Budget and Policy Priorities
<b>Ann Oakman</b>	Kentucky Department of Revenue
<b>Lee Baerlacher</b>	Montana Department of Revenue
<b>Dan Armer</b>	New Mexico Department of Revenue

**II. Initial Public Comment Period**

Michael Mazerov, Center on Budget and Policy Priorities, requested the committee consider adopt a *Finnigan* option under the Commission’s model combined filing statute. There has been a general move among the states toward adopting *Finnigan*-style combined reporting, and it is increasingly important considering many states have adopted a single sales factor. Ms. Coon saved the item for new business.

**III. Approval of Minutes of Meeting Held November 16, 2017**

Phil Horwitz, Colo., moved to adopt the minutes as written. The motion passed by voice vote.

**IV. Report – General Uniformity Update**

Helen Hecht, MTC General Counsel, provided a recap of the status of uniformity projects and litigation with respect to MTC models.

V. **Project: Use Tax Information Reporting Model – Phil Horwitz and Helen Hecht**

Mr. Horwitz announced he will be moving to the private sector. He gave a short farewell speech to the committee and Ms. Coon thanked him for his years of service. He then presented the proposed model, recommending that it be moved forward to the Executive Committee for their consideration.

Mr. Horwitz first outlined Colorado's experience with the state's notice and reporting statute. The first reports were due to be filed with the state on March 1, 2018, and initial results show low compliance. Colorado received about 800,000 reports representing about \$250M in untaxed purchases (which ones are taxable is unclear). The average report reflected about \$300 of purchases. This result, however, is skewed by a few extremely large purchases.

Regarding the model act, Mr. Horwitz pointed out that the result in the *Wayfair* case could affect how states view the model. A smaller issue concerned the minimum threshold: \$200 for the notice to the purchaser. Mr. Horwitz said there had been a split in the workgroup and his own view was that there should be a minimum. Ms. Coon asked for discussion on the matter. Tommy Hoyt, Tex., also preferred to have a minimum.

A secondary question concerned whether the notice could be sent via e-mail or whether postal service should be required. Mr. Horwitz noted that the model is written to require that the purchaser opt into an electronic notice and that the opt-in election be made annually. He asked for input from the committee. Ms. Coon agreed that delivery via e-mail should be an opt-in. Brian Fliflet, Ill., pointed out that states are abandoning postal service in favor of electronic notices. Some general concern was expressed regarding whether the e-mails could be filtered as spam or might be taken less seriously by the recipients. There is also no presumption that an e-mail has been received. Dee Wald, N.D., noted that there may also be security issues. Mr. Horwitz pointed out that this is indicative of a bigger issue. State agencies will need to do some education to help ensure compliance.

Matt Peyrl, N.D., asked whether Colorado plans to assess based on the reports. Mr. Horwitz said the state is still considering how to treat the reports.

Ms Wald also pointed out an incorrect reference. The reference in 11(C), should say (a)(11)(B), rather than (a)(10)(B). It should also say "described" instead of "defined." Phil Skinner., Idaho, noted a few conforming changes on references throughout the document.

Mr. Horwitz moved that the uniformity committee vote send the model act, with edits, to the Executive Committee for consideration, subject to a cleanup of formatting and minor conforming issues. The motion passed by a show of hands, with 13 in favor and none opposed.

**VI. Project: Partnership/RAR Model Work Group**

Tracee Abel, Montana, the work group chair, introduced the current model and provided some background and explanation. Georgia has now passed a law addressing federal partnership audits and California is considering one. There have been revisions to the proposed model, including Section C. Tracee believes that there is a consensus on most issues except for that of what the partnership-pays election would look like and how it works in situations with multi-tiered structures.

Ms. Hecht explained that, in some cases, the partnership that gets audited will not know who the indirect partners are. Instead of adjustments, and related tax, being reported to proper state, tax may get reported nowhere. She gave an example involving investment income that most states source to the state of a partner's residence. Pilar Mata and Nikki Dobay from the Interested Parties provided an update on their members views. The question the group wished the committee to weigh in on is whether to address the partnership-pays issue through an anti-abuse provision or a provision that would effectively eliminate the use of the partnership-pays option for multi-tiered entities.

There was discussion about how the election might be made to work better or might be limited. Ms. Coon polled the states regarding how to proceed. Seven states were in favor of looking for ways to allow the use of the partnership-pays election in the context of multi-tiered entities, but limiting it as necessary. Two states preferred to have the partnership-pays election used only where the partnership has residency information on all indirect partners.

The work group will proceed as directed. Tracee will be stepping down, and Katie Lolley, Oregon, will be taking over as chair of the group.

**VII. Federal Tax Update**

Bruce Fort, MTC Counsel, provided an update about how states are responding to federal tax reform.

**VIII. State Roundtable**

Members of the committee discussed important legislative initiatives or regulatory projects (or litigation concerning related regulations) in their state that might be of general interest. The most common issue, by far, was that of conforming with the federal tax code.

**IX. Presentation: MTC Drafting Rules**

Ms. Hecht led a brief orientation on basic rules of drafting.

**X. New Business**

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Mr. Mazerov reiterated his proposal to make adjustments to the model combined reporting statute so it doesn't just reflect *Joyce*. Ms. Coon noted that the entire statute need not be amended; a work group could decide to add a *Finnigan* option. Mr. Skinner, Idaho proposed that he would be willing to look at the issue and then give a report at the summer meeting, before forming an official work group. Mr. Horwitz made a motion consistent with this suggestion. The motion passed by voice vote. The meeting adjourned at 3:47 on motion from Frank Hales, Utah.