Multistate Tax Commission

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Commission Proposes "Simple, Certain" Standard for Business Taxes

(Washington, DC) The Multistate Tax Commission announced today that the Commission has approved a policy resolution that supports establishment of a "simple, certain and equitable" standard for state authority to collect business taxes. In a special meeting held on October 17, 2002, the Commission adopted an amendment to MTC Policy Statement 02-02, which incorporates by reference the proposed business activity tax nexus standard.

In Policy Statement 02-02, the Commission endorsed "the superiority of the factor presence nexus standard in protecting small businesses, in requiring large businesses to pay their fair share of tax, in providing a simple and certain numerical standard for multistate taxpayers and in reducing litigation." The proposed factor presence standard provides that a company is required to pay corporate income or other business activity taxes to a state if it has more than threshold levels of sales, property or payroll in that state.

Elizabeth Harchenko, Director of the Oregon Department of Revenue and Chair of the Commission, noted that the proposal "would significantly improve the clarity, reliability and fairness of business activity taxes." She explained that the proposal, because of its numerical thresholds, would protect small businesses from paying taxes to multiple states and would help curb tax sheltering activities used by some large businesses to avoid paying corporate taxes where they earn substantial income.

Bruce Johnson, Utah State Tax Commissioner and Vice-Chair of the Commission, stated, "This proposal will help taxpayers and tax agencies alike by making it clear and simple for businesses to know when they are required to pay taxes to a state." Johnson recalled that in his nearly two decades of private tax practice it was often difficult to advise clients as to when they were required to pay business taxes because of ambiguities in the case law on the subject. "The factor presence standard eliminates virtually all those ambiguities," Johnson added.

Harchenko noted that the Commission is proposing that the factor presence nexus standard be implemented through a partnership of states and Congress. "Through this partnership approach, states have the choice of adopting the factor presence standard. Congress would provide an incentive for uniform adoption and remove, for the adopting states, a federal barrier to the proper operation of the factor presence standard," Harchenko explained. Specifically, the Commission in its policy statement "urges Congress to enact a provision that relieves a state of the application of P.L. 86-272 if the state has enacted the factor presence nexus standard with specified thresholds."

Dan Bucks, Executive Director of the Commission, pointed out that the 1959 law, P.L. 86-272, was intended to be a temporary measure that is now outmoded in today's economy. "The old law never worked as it was intended. It was supposed to protect small business, but it has become a vehicle for some large businesses to engage in tax avoidance activities." He noted that it also creates inequities among businesses. "Two companies may be earning the same amount of income from within a state, but under P.L. 86-272 one company will be able to escape its fair share of tax as compared to the other company simply because of insignificant differences in their methods of business operation." Bucks remarked that the factor presence standard was vastly superior to P.L. 86-272 in terms of its clarity, equity and absence of issues that create costly litigation.

A copy of the MTC proposal on business activity tax nexus is available on its website at www.mtc.gov.

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