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To: Executive Committee
From: Roxanne Bland, MTC Counsel
Date: April 29, 2009
Subject: Project: Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries.

The Sales and Use Tax subcommittee began this project in 2004 in response to the growing issue over hotel intermediaries' collection of lodging and/or other transaction-based taxes for sales of hotel or other types of lodging accommodations over the Internet. The project goal was to develop a model statute clarifying that tax should be collected on the price the intermediary charges its customer, which includes the intermediary's mark-up, rather than on merely the price the intermediary pays to the hotel.

The subcommittee spent several months gathering information on the industry as well as current state tax practices. The subcommittee, with industry participation, engaged in extensive discussions to identify relevant policy considerations and conceptual approaches to the issue. A drafting group was formed in late 2005, comprised of the following members of the subcommittee:

Richard Cram, KS
Ted Spangler, ID
Phil Horwitz, CO
Robert Babin, FL
Brandin Seibel, SD
Jan Bianchi, WA

In 2006, with substantial industry input, the drafting group developed a proposal imposing a single, state-level gross receipts tax on the mark-up charged by the accommodations intermediary to its customer. Subsequent discussions on the potential shortcomings¹ of a gross receipts tax approach prompted the subcommittee to develop a

¹In particular, questions arose over whether existing state tax policies would permit the intermediaries' mark-up to be treated as a fee for services, instead of as a component of the total price charged the customer for accommodations. Concerns were also raised over whether this approach was a "new tax" since it was to be imposed on in-state residents who use the internet to purchase hotel accommodations anywhere, in contrast to existing state lodging taxes which are imposed on travelers who use the internet to purchase hotel accommodations in the state.

second approach. The second approach simply clarifies the mark-up is part of the cost of the hotel accommodations and is therefore included in existing state and local tax bases. The language developed by the subcommittee went through several iterations, and at its July 2008 meeting, the subcommittee voted to pass the measure on to the Full Uniformity Committee. The Uniformity Committee voted to direct staff to make a special effort to receive input from local government organizations. Several representatives of local government organizations indicated an intent to comment, so the Uniformity Committee met by teleconference and voted to return the project to the Subcommittee to receive additional information from the locals. At its November, 2008 meeting, the subcommittee considered the comments submitted by the National League of Cities, and with further input from that organization, directed the drafting group to prepare an amended proposal for consideration at its March, 2009 meeting.

The subcommittee met on March 17, 2009, and voted to pass the proposal, as amended, to the Uniformity Committee. The Uniformity Committee met on March 18, 2009, and voted to recommend to the Executive Committee the attached proposed Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries for the Multistate Tax Commission's Public Hearing Process.

The proposed model statute would require accommodations intermediaries to collect all taxes due on the price charged to the customer for the accommodations (the room charge). The intermediary would subsequently remit to the accommodations provider the taxes calculated on the price charged by the provider to the intermediary for the room (the discount room charge). The provider would be responsible for remitting the taxes collected on the discount room charge to the appropriate state and local tax agencies. The accommodations intermediary would be responsible for remitting the taxes collected on the difference between the discount room charge and the price charged to the customer (the accommodations fee) to the appropriate state and local tax agencies.

**MODEL STATUTE CLARIFYING THE TAX COLLECTION
RESPONSIBILITIES OF ACCOMMODATIONS INTERMEDIARIES**

DRAFT 3/17/09—Recommended for Public Hearing

MTC Uniformity Committee

1. Definitions.—
 - (a) “Accommodations” means one or more individual sleeping rooms or suites for transient overnight lodging.
 - (b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of [less than thirty days ^{***alternative language***} thirty days or less] to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.
 - (c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

- (d) “Accommodations fee” means the room charge less the discount room charge, if any, provided that for purposes of this Act the accommodations fee shall not be less than zero.
- (e) “Room charge” means the full retail price charged to the customer for the use of the accommodations, including any accommodations fee before taxes.
- (f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for furnishing accommodation.
- (g) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. Section 1563(a), that includes the accommodations provider.

2. Collection and Remittance.—

- (a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge

but shall not be required to separately state on the invoice the specific amount of taxes collected.

- (b) An accommodations intermediary shall remit to the accommodations provider the tax collected on the discount room charge.
- (c) An accommodations intermediary shall remit to the [state or local tax agency] the tax(es) collected on the accommodations fee.
- (d) An accommodations provider shall collect and remit to the [state or local tax agency] the tax(es) imposed on the discount room charge.

3. Safe Harbor.—

- (a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.
- (b) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodations through Accommodations Intermediary (Intermediary). The Provider bills the Intermediary for a discount room charge of \$80.00. The price at which the Intermediary facilitates the sale of a one-night accommodations to the customer is \$100.00, which includes a \$20.00 accommodations fee. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to customer).

Intermediary remits \$4.00 tax (5% tax rate x \$80.00 discount room charge) to the Provider and a \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to [the state or local tax agency]. Provider remits the \$4.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to provider, and by provider to [state or local government] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to [state or local government] = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to customer including tax charged by Provider and Intermediary