



MULTISTATE TAX COMMISSION

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Working Together Since 1967 to Preserve Federalism and Tax Fairness

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Commissioner Michael Houghton
Chair, Scope and Program Committee
National Conference of Commissioners
on Uniform State Laws
111 N. Wabash Ave., Suite 1010
Chicago, IL. 60602

Re: Support for Continuing the ULC's Review of UDITPA

Dear Commissioner Houghton:

Thank you for the opportunity to comment on whether the ULC should continue review of its 1957 Uniform Division of Income for Tax Purposes Act (UDITPA). We believe it clearly should.

UDITPA governs one of the most prominent features of state corporate income and franchise taxes – division of the tax base among the multiple states in which a taxpayer does business. Of the forty-seven states with a corporate income tax, thirty-six have adopted all or substantial parts of the Act. The remaining eleven states employ at least some of its concepts. Although UDITPA has held up remarkably well over the 50 years since it was developed, certain provisions are no longer tenable. States have begun to move away from these provisions and that movement will continue. For there to be any hope for maintaining and enhancing uniformity, states must have a revised uniform Act to guide them.

It is appropriate for ULC to take the lead in UDITPA's revision. Indeed, the ULC may perceive it has a responsibility to review one of its Acts where that Act has been significantly relied on by the states and is now clearly in need of targeted modernization. Further, we believe this project easily meets the ULC's criteria that uniformity in the subject area be both desirable and practicable. To appreciate that uniformity is desirable, one need only reference the Willis Committee report, a 1965 congressional research study that surveyed the then state corporate income tax situation and found the need for uniformity to be so compelling that it recommended preemption of state tax base determinations and apportionment formulae. The states rallied toward UDITPA and achieved the high level of uniformity we have today.

We are equally confident that an effort to maintain and enhance this current level of uniformity is practicable. The subject matter is clearly appropriate for state legislation. And we know states are willing to reconsider their current laws in these problem areas because a number of them have already begun to do so, even without the benefit of model uniform amendments. States can and should make every effort to uniformly address these provisions on their own. In light of UDITPA's success so far, Congress has given no indication of an interest in this area since the mid-1960s, nor should it. Federal preemption of state tax sovereignty would dramatically and negatively impact governmental functions nationwide and is not warranted in today's state tax environment.

Some have argued uniformity is not practicable because state legislatures want to differentiate their laws and create an economic development advantage. State legislators certainly do pay close attention to the effect enactments will have on their state's ability to attract jobs and investment. But likely alternatives to the problem UDITPA provisions are either already in line with current state legislative trends (e.g., definition of gross receipts, definition of business income, special industry apportionment rules) or would actually promote economic development (e.g., over-weighting the sales factor and refocusing the sales factor sourcing for services on the market rather than on the factors of production).

There is an urgent need to amend certain provisions of UDITPA. There is a reasonable likelihood model amendments targeted to those provisions will be enacted in state legislatures. Such a likelihood is very high if taxpayer groups will support the amendments. The ULC is the proper forum for determining what those model amendments should be.

Respectfully submitted,

Joe Huddleston