MULTISTATE TAX COMMISSION
Maximizing the synergies of multi-state tax cooperation

To: MTC Uniformity Committee, Sales and Use Tax Subcommittee

From: Sheldon H. Laskin, Counsel

Date: July 11, 2014

Subject: ABA Transaction Tax Overpayment Act

Attached hereto is the latest draft of the proposed MTC resolution recommending that the states consider adopting the ABA Transaction Tax Overpayment Act ("Model Act").[1] This memo summarizes the salient features of the Model Act.

The Model Act applies to state and local taxes that a seller is required to collect from a purchaser on taxable sales. The Model Act establishes procedures that a purchaser may use to seek a refund of an overpayment on such taxes; limits the ability of the purchaser to assert claims against a seller arising from or in any way related to an overpayment; and establishes rights and obligations of purchasers, sellers, and the taxing jurisdiction with respect to such overpayments.

As used in the Model Act, the term "overpayment" means an amount charged by a seller to a purchaser **as tax.** The Model Act does not apply to amounts charged by a seller to a purchaser that are not charged **as tax.** Further, such an amount charged is an overpayment under the Model Act under one of the following circumstances.

- First, the tax was paid by the purchaser in error, including transactions that would not have been subject to tax if the purchaser had presented an exemption or resale certificate or other documentation at the time of sale.

- Second, when no tax was lawfully due to the taxing jurisdiction at the time of sale.

- Finally, if the amount charged was in an amount greater than the amount of tax that was lawfully due to the taxing jurisdiction at the time of sale.

Under the Model Act, the purchaser may file a claim for refund of an overpayment either with the seller or with the taxing jurisdiction. With the exception of cases of fraud, the seller cannot be named as a

[1] Staff would like to thank Dee Wald and Patricia Calore for their suggested revisions to the prior draft.

party to any action that arises from or relates to an overpayment. Furthermore, with the exception of fraud cases, the purchaser's remedy is limited to a refund of the amount charged as tax.

Should the purchaser file a refund claim with the seller, the seller has 90 days to approve or deny the claim for refund. If the seller fails to rule on the refund claim within 90 days of filing, the claim is deemed to have been denied. The purchaser may then file a claim for refund with the taxing jurisdiction to the extent that any refund claim was denied or deemed denied by the seller.

In the alternative, the purchaser may file a claim for refund directly with the tax administrator. The tax administrator has 90 days to rule on the refund claim. If the tax administrator denies the refund claim in whole or in part, or if the claim is deemed denied because the tax administrator did not rule on the claim within 90 days, the purchaser may pursue further review as per state law.

If the tax administrator approves a refund claim in whole or in part, and such approval is based on a new policy or interpretation that would apply to the tax treatment of other transactions, the taxing jurisdiction is to provide guidance concerning such policy or interpretation in the manner generally used for providing informal taxpayer guidance.

The Act provides for the payment of interest on refund claims filed with the tax administrator, using existing state law regarding the payment of interest on refund claims. A seller is not ordinarily obligated to pay interest on a refund claim, unless the seller is seeking a refund from the taxing jurisdiction. The seller is only entitled to a refund if it has previously paid the purchaser or agrees that it will do so within 30 days or longer if the taxing jurisdiction agrees to the longer period.