MULTISTATE TAX COMMISSION

*Working Together Since 1967 to Preserve Federalism and Tax Fairness*

# Uniformity Committee Report
# July – November, 2010

The Uniformity Committee is chaired by Wood Miller, Missouri. The Committee structure includes two standing Subcommittees: the Sales & Use Tax Uniformity Subcommittee, chaired by Richard Cram, Kansas; and the Income & Franchise Tax Uniformity Subcommittee, chaired by Robynn Wilson, Alaska. Ms. Wilson was appointed in August, 2010. In addition, the Subcommittees have appointed Work Groups, Drafting Groups, and Study Groups, as needed. Lennie Collins, North Carolina, chairs the Work Group for the Financial Institutions Apportionment project. The Committee, together with its Subcommittees and Groups, worked on the following seven projects from July through November, 2010.

## Summary

- Sales & Use Tax Uniformity

  1. Sales & Use Tax Notice and Reporting
  2. Administration of Telecommunications Transaction Tax

- Income & Franchise Tax Uniformity

  1. Compact Art. IV Amendments
  2. Withholding for Multistate Employees
  3. Pass-throughs Owned by Entities Not Subject to Corporate Income Tax
  4. Financial Institutions Apportionment, Amendment
  5. Combined Reporting Tax-Haven Provisions, Amendment

## Description

### Sales & Use Tax Uniformity Subcommittee

1. ***Sales and Use Tax Notice and Reporting.*** At its March, 2010 meetings, the Subcommittee voted to develop a model sales and use tax notice and reporting statute. A drafting group prepared a policy question list, and based on the Subcommittee's answers to those questions, prepared a draft of a model statute for Subcommittee review. The draft requires sellers who are not collecting sales or use tax to notify purchasers of a potential tax liability at the time of sale if the product is to be

delivered into the state. The draft also requires the seller to make annual reports to each such purchaser and an annual report to the state. The draft allows for certain de minimis exceptions and for penalties. The Subcommittee will continue its review and amendment of the draft at its December in-person meetings.

2. ***Administration of Telecommunications Transaction Tax.*** This project has three goals. First, develop "best practices" models for centralize administration of local telecommunications transaction taxes under 3 alternative state structures (state taxes distributed to locals, local taxes administered by state, or local taxes administered by centralized local authority). Second, adopt model telecommunications definitions and sourcing rules along the lines of those currently contained in SSUTA. And third, adopt model administrative procedures that would provide protections from class-action lawsuits as contained in SSUTA. The Subcommittee's drafting group, which includes representatives from both government and industry, has prepared a draft model statute for centralized administration of state and local telecommunications taxes which could apply in states where there is local authority to impose tax, but required administration at the state level (Proposal II).[1] Local government representatives have been invited to participate. Because proposed federal Streamlined legislation would require simplification of state and local telecommunications transactions tax administration, staff for the Streamlined Sales Tax Governing Board will also participate.

<u>Income & Franchise Tax Uniformity Subcommittee</u>

1. ***Compact Art. IV Amendments.*** In July, 2009, the Executive Committee directed the Uniformity Committee to begin drafting amendments for 5 Compact Art. IV provisions (Section 17, Definition Gross Receipts, Definition Business Income, Factor weighting, Clarification Sec. 18), and instructed the Uniformity Committee to report back if it recommends the scope of review be changed. In December, 2009, Richard Pomp, Prentiss Willson, and Michael McIntyre provided an educational foundation of UDITPA background and apportionment concepts for the Subcommittee. The Subcommittee determined it would begin with section 17 and the definition of gross receipts. A drafting group, which meets weekly, prepared a policy question list, and based on the Subcommittee's answers to those questions, prepared draft amendments. The Subcommittee has reviewed and discussed the draft amendments over the course of two in-person meetings and several teleconferences. A four hour, special session has been scheduled for the Subcommittee to discuss the draft during its December in-person meetings.

2. ***Withholding for Multistate Employees.*** This is a priority project to develop a uniform state withholding threshold for non-resident employees. A work group held 3 teleconferences in August, 2009, to develop a policy question list. The Subcommittee then held three teleconferences in September, October and November of 2009 to answer those questions. Based on the Subcommittee's policy choices, staff

[1] Proposal I could apply in states where tax imposition and administration are solely at the state level. Proposal III could apply in states where authority to tax as well as centralized administration is at the local level. The Subcommittee directed the Drafting Group to concentrate on further development of Proposal II first.

produced a draft model statute which was further amended by the Subcommittee at in-person and teleconference meetings held December 2009, January 2010, and March 2010. The Subcommittee received valuable input from the Council on State Taxation, the American Payroll Association, and other business representatives. In March, 2010, the Subcommittee voted to approve the model and the Uniformity Committee then voted to recommend it favorably to the Executive Committee for public hearing. In April, 2010, the Executive Committee approved the model for public hearing. A public hearing was held on May 10, 2010, and a hearing officer's report was provided to the Executive Committee on May 18, 2010. The proposed model sets a 20 work-day *de minimis* threshold for both employer withholding responsibility and employee individual income tax filing responsibility; includes a reciprocity provision (though it would not supersede existing reciprocity agreements); and provides exceptions for professional entertainers, professional sportsmen and women, certain other high-income individuals, and any person who earns any type of income other than wage income in the state. At its May 24, 2010 teleconference, the Executive Committee voted to adopt the hearing officer's recommended amendments and return the model to the Uniformity Committee for further consideration in light of concerns raised by Montana. The Subcommittee reconsidered the model during its July in-person meeting and formed a drafting group to list the issues and options for further discussion. At a later teleconference, the Subcommittee voted to recommend two additional changes to the Executive Committee: (1) add language to require an aggregate day count among related employers, and (2) clarify that the "key employee" exception applies to both corporate and non-corporate employees. The Subcommittee will review specific statutory language at its December in person meeting.

3. ***Entities with Affiliates Not Subject to Corporate Income Tax.*** This project addresses tax gap issues that arise when a pass-through entity is owned by another entity that is not subject to corporate income tax. The Subcommittee appointed a drafting group to list issues and options. After considering several alternative approaches and receiving significant input from the insurance industry, the Subcommittee chose its preferred approach and directed that a draft be developed. After several meetings and teleconferences, the Subcommittee voted to approve an amended draft in October, 2010. The matter will be considered by the Uniformity Committee as a whole at its in-person meeting in December.

4. ***Financial Institutions Apportionment, Amendment.*** The Subcommittee's work group, which includes representatives from several states and the banking industry, identified problems with the current MTC financial institutions model and proposed conceptual amendments for addressing them. The amendments included clarifications to the property factor rule for sourcing loans (based on SINAA – solicitation, investigation, negotiation, approval and administration); new receipts factor rules for sourcing ATM fees, merchant discounts, and trust account fees; and revisions to the receipts factor rule that requires use of COP for sourcing any receipts not otherwise specified. The Subcommittee agreed with the work group's conceptual recommendations, and directed the work group to draft amendments accordingly. The work group completed a draft of recommended changes to the receipts factor, which the Subcommittee has reviewed, amended, and approved. The work group has

now begun drafting amendments to the property factor – in particular, the sourcing of loans using the "SINAA" approach.

**5.** ***Combined Reporting Tax-Haven Provisions, Amendment.*** The MTC model combined reporting statute requires world-wide combination but allows a water's-edge election. The election limits the combined group to domestic, and some foreign, unitary affiliates. At the request of Organization for International Investment and a number of jurisdictions that had been identified as "tax havens" by the OECD, the Executive Committee requested the Uniformity Committee considered whether to review 3 water's-edge provisions. The Uniformity Committee determined it should initiate a project on one of the three, the Tax-Haven provisions. Staff has gathered background information and possible amendments for the Subcommittee to consider.