



Annual Report of the Uniformity Committee To the Multistate Tax Commission

Wednesday, July 26, 2023

Laurie McElhatton (California), Uniformity Committee Chair
Phil Skinner (Idaho), Uniformity Committee Vice Chair

Work of the MTC Uniformity Committee – The Last Fifty Years

While lawmakers choose the tax policies for their states, the tax systems they have built have much in common. The MTC’s Uniformity Committee serves to facilitate sharing of state experiences and leveraging of acquired knowledge so that states can more easily identify critical problems and find the best potential solutions to choose from.

It was about 50 years ago that the Uniformity Committee produced its first finished product—an agreed upon set of regulations to implement formulary apportionment, a groundbreaking approach for sourcing business income which turned out to be more functional than the international method. Like these first regulations, much of the committee’s work has proven to be both innovative and enduring—including unitary business reporting methods, bright-line nexus standards, and anti-abuse rules.

The work of the Uniformity Committee has changed somewhat over the last five decades. The committee is not the only group looking at best state tax practices. The Federation of Tax Administrators (FTA), the Streamlined governing board, and other organizations focus on making tax systems work better and more consistently. So the committee is also devoted to coordinating with these and other groups sharing similar goals. And the issues states face are also growing in complexity—requiring more study and analysis.

In the past, the ultimate product of the committee’s uniformity projects was typically a model law or regulation. This not only provided states with actual provisions to adopt, but also served as a “proof of concept” of the theory or principles on which the model was based. But over time, the states sometimes found that just having the model was insufficient to fully understand those principles or the basis for the model. To solve this, we have adopted more detailed explanations and drafters notes, and have also used white papers rather than models, in some cases, to communicate recommendations.

But some things have not changed. The Uniformity Committee has always been inclusive, welcoming representatives from all states. There are no fees or any other requirements for attending meetings or joining calls. The committee’s business is done openly, giving the public multiple opportunities to give input—and the work has often benefited significantly from this input. Staff of the MTC continue to assist the committee with background research and other support, including training as needed.

Fiscal Year Ending June 30, 2023

The Uniformity Committee met in person three times last fiscal year, drawing representatives of 33 states. Members of the public also attended. The committee has established work groups for three major projects (see below), and has held state roundtables and other presentations, including from taxpayer representatives.

During the year, the committee's Chair, Maria Sanders (Missouri) left her position with the state and also resigned from her role in the committee. As a result, the committee Vice Chair, Laurie McElhatton (California) stepped up and Phil Skinner (Idaho) volunteered to be the Vice Chair.

The committee also tracks critical developments related to past projects. Because the work of the committee is public and its work groups make their materials and any analysis available and accessible, these projects often bear fruit even before a final recommendation has been approved, as states make use of the information provided. Commission staff also assist states as they are considering the adoption of models or other recommendations.

Current Uniformity Projects

The Uniformity Committee has established three work groups which are currently engaged in large, ongoing projects that may occupy the committee's members and the Commission's staff for at least the next two years. Each of the work groups is holding regular meetings using video conferencing in which there are typically between 50-100 participants.

State Taxation of Partnerships

In April, 2021, the committee approved an income tax project to address state taxation of partnership income. It set up a work group chaired by Laurie McElhatton (California), who is also the Chair of the Uniformity Committee. Two-dozen states regularly participate in that work group, which meets monthly. In the last two years, it has published a comprehensive issue outline, a white paper on investment partnerships, a draft model for sourcing of investment partnership income, and a draft white paper on the sourcing of guaranteed payments. The work group has also agreed to defer finalizing any draft models or other recommendations until it can address the most significant issues as outlined, to ensure that proposals and recommendations are consistent.

In the coming year, the work group is expected to move onto the sourcing of partnership income generally, and especially sourcing income earned in complex partnership structures, including multi-tiered structures. To support the work on the project, MTC staff also prepared a basic training course on federal taxation of partnerships. At the July 25th meeting of the committee, representatives of Texas have agreed to make a presentation on the application of their franchise tax, and its requirement for combined filing, to pass-through entities.

Information on this project can be found on the project webpage, here: <https://www.mtc.gov/Uniformity/Project-Teams/Partnership-Tax>.

Sales Taxation of Digital Products

At its July 28, 2021 meeting, the Uniformity Committee approved a sales tax project to draft a white paper recommending the best approach for taxing digital products. The committee asked MTC staff to conduct stakeholder interviews and prepare a detailed outline of the white paper. This work was completed last year. The committee established a work group in July 2022 and Gil Brewer (Washington) is the chair. The work group is having monthly meetings and is reviewing issues that may be covered in the white paper. Commission staff also prepared analysis of the current application of sales tax to certain digital products and the approaches taken by the various states.

The work group has been discussing whether FTA and Streamlined will express formal support for the work being done by the states on this project and the result of these discussions is expected to be announced at the committee meeting on July 25th. Also, some of the public input received on this project has focused on the question of whether states, in expanding their tax base to include digital products, can and will provide exemptions for business inputs. Therefore, the work group has asked those groups who have an interest in this issue to make a presentation at the July 25th meeting.

All this information on the project can be found on the project webpage, here: <https://www.mtc.gov/Uniformity/Project-Teams/Sales-Tax-on-Digital-Products>.

Model Receipts Sourcing Regulation Review

At its August 2, 2022 meeting, the Uniformity Committee agreed to undertake a project and form a work group to review its model receipts (sales) sourcing regulations for income apportionment purposes, including special industry regulations and more recently adopted market-based sourcing regulations. The goal of this project is to identify updates, corrections, or conforming changes, to consider issues that may not be sufficiently addressed by existing model regulations, and to make recommendations to the committee for its action. The work group is chaired by Katie Frank (California) and has been meeting monthly. In recent meetings, the group has focused on special industry rules for trucking and airlines.

Information on this project is available on the MTC website, on the project page, here: <https://www.mtc.gov/uniformity/model-receipts-sourcing-regulation-review-project/>.

Other

The Uniformity Committee also assisted with a proposal by members of the public that the states provide a universal power of attorney (POA) form that would be executed by multistate businesses hiring representative to assist them with tax filing issues in multiple states. The committee hosted calls for this purpose and the information on the development of the POA has also been posted on the MTC website, here: <https://www.mtc.gov/uniformity/universal-power-of-attorney/>. Millenia