



MULTISTATE TAX COMMISSION

MINUTES of
Income and Franchise Tax Subcommittee Meeting
Monday, July 28, 2014
8:30 a.m. Mountain Time

I. Welcome and Introductions

Robynn Wilson, Chair of the Uniformity Subcommittee on Income & Franchise Tax, (AK) opened the meeting. The following persons were in attendance:

Chris Sherlock	Alabama Department of Revenue	Lizzy Vedamanikam	New Mexico Taxation and Rev Department
Craig Banks		Daniel Armer	
Holly Coon		Janice McGee	
Kelley Gillikin		Myles Vosberg	North Dakota Office of State Tax Commissioner
Mary Majors		Matt Peyerl	
Rouen Reynolds		Dee Wald	
Tom Atchley	Arkansas Department of Finance & Administration	Christi Daniken	Oregon Department of Revenue
Scott Fryer		Gary Humphrey	
Deanna Munds-Smith		Christy Vandevender	State of Alabama - Department of Revenue
Phillip Horwitz	Colorado Department of Revenue	Robynn Wilson	State of Alaska
Grant Sullivan	Colorado Attorney General's Office	Chris Coffman	State of Washington, Dept. of Revenue

Greg Turner	Council on State Taxation (COST)	Frank Hales	Utah State Tax Commission
Charles Wilson	DC Office of Tax and Revenue	Bruce Johnson	
Phil Skinner	Idaho Attorney General / State Tax Commission	Tim Jennrich	Washington State Department of Revenue
Michael Chakarun		Gil Brewer	
Richard Jackson		Andrew Glancy	West Virginia Department of Revenue
Randy Tilley		Ben Miller	N/A
Steve Wynn		Deborah Bierbaum	AT&T
Richard Cram		Kansas Department of Revenue	Karen Boucher
Jennifer Hays	Kentucky Legislative Research Commission	Shirley Sicilian	KPMG LLP
Leonore Heavey	Louisiana Department of Revenue	Bill Smith	Organization of MISO States
Stewart Binke	Michigan Department of Treasury	Jonathan Gerth	Revenue Discovery Systems
Wood Miller	Missouri Department of Revenue	Terry Frederick	Sprint
Lee Baerlocher	Montana Department of Revenue	Jamie Fenwick	Time Warner Cable
Eugene Walborn			
Ben Abalos	Multistate Tax Commission		
Ken Beier			
Roxanne Bland			
Lila Disque			
Elliott Dubin			
Helen Hecht			
Joe Huddleston			
Sheldon Laskin			
Diane Simon Queen			
Michelle Lewis			
Bruce Fort			

I. Approval of Minutes of In-Person Meeting, December 11, 2013 and March 11, 2014

Phil Horwitz moved to approve the minutes. There was no discussion. The motion passed by show of hands with 15 in favor.

II. **Public Comment Period**

There were no comments

III. **Reports and Updates**

Federal Issues Affecting State Taxation

1. H.R. 1129, Mobile Workforce Income Tax Simplification Act: No action
2. H.R. 292, Business Activity Tax Simplification Act: No action yet, but it may be attached to Market Place Fairness Act

IV. **Process Improvements Discussion**

Status Report on Uniformity Website Improvements.

Greg Matson reported that the new MTC website is expected to go online soon, and will be much more intuitive than the last version.

Uniformity Process Strategic Planning Workgroup Recommendations

In 2013, MTC strategic planning chartered this team to identify barriers to adoption of model statutes and regulations. The group also looked for common characteristics in models that were adopted. Once they had identified factors related to adoption of models, the group's recommendation was to charter a project that would involve working with state commissioners to remedy the situation.

Public Comment

There were no comments.

Committee Discussion

Richard Cram (KS) felt the opportunity is ripe to discuss process changes, especially since the agenda shows three new potential projects being introduced. Ms. Wilson stated this would be a great opportunity to talk about process, since it would be useful to think about what criteria the group would use to prioritize one project over another. Holly Coon noted, however, that sometimes a state will vote to move forward with a project even though there is no need for it in that particular state, because they wish to support the needs of their sister states. Dee Wald (ND) pointed out that MTC staff has limited resources and other ongoing duties, so the group needs to be cognizant of that when deciding which activities to pursue.

In order to reduce opposition to MTC projects, the committee recommended that the Uniformity Committee should *not* adopt projects that have little or no interest; and, that the Uniformity Committee should better engage stakeholders – get more public input.

V. **Proposed Project on the Use of Trusts for State Tax Avoidance**

A. Presentation of Memorandum

Lila Disque, MTC counsel, presented a memorandum on the use of trusts as tools for tax avoidance, particularly incomplete non-grantor trusts and charitable use remainder trusts, and some potential solutions that could become an MTC project.

B. Public Comment

There were no comments

C. Committee Discussion

Mr. Horwitz stated that this issue is at the core of what the MTC is about: because of a mix of inconsistent state residency rules, one can essentially set up a trust with no

state residency at all. He believed Charitable Remainder Use Trusts (CRUTs), were less viable for a project, since the charitable implications seem to bleed over into policy issues, but felt the Incomplete Gift Non-Grantor Trusts (IGNGs) and state residence rules are something the subcommittee should look at. Ms. Wilson asked whether other states have had issues. Mr. Cram replied that Kansas had an inquiry from the tax committee chair regarding how to attract trustee business. This shows that legislative interest is going in the opposite direction, and legislators want state players to use Kansas as an attractive place to locate trusts. But as the economy continues to experience income division, trusts will be increasingly important tax avoidance tool, and states need to stay on top of it. He would be in favor of taking this up as a project Rich Jackson (ID), stated that from the point of view of a CPA, CRUTs were designed for large estates to avoid estate tax, and philanthropy behind it going to the charity, providing something to support the donor for their life. Matt Peyerl (ND) agreed with Mr. Jackson that DING trusts would be more viable for residence rules than CRUTs

Mr. Horwitz stated the speakers seemed to have the same feelings in terms of moving forward, and moved that the committee take up a project on trust taxation with a focus on trust residency and whether DING trusts are being used appropriately, and whether they're being used as a tool for tax avoidance, and whether states should consider legislation regarding DING trusts. The motion passed by show of hands with 10 in favor, 1 opposed, and 5 abstentions. The group then discussed how to proceed with the project, and decided to put a work group together (Phil Horwitz, CO; Holly Coon, AL; Leonore Peavey, LA; and Steve Wynn, ID) to develop pros and cons and weigh forward on the project.

VI. Proposed Project on Sourcing of Electricity for Tax Purposes

A. Presentation by Industry Representatives

Ken Beier, MTC Director of Training presented the survey of the states regarding how they source electricity for tax purposes. Bill Smith then gave a presentation outlining the nature of the industry and how it has evolved; the market participants; and factors to take into account when considering a sourcing project.

B. Public Comment

There were no comments.

C. Committee Discussion

Mr. Smith then took a number of questions from the committee regarding electricity, particularly involving end users. In response to a question from Ms. Wilson, the committee decided not to take action on an electricity-sourcing project at this time.

VII. Proposed Project on Cloud Computing

A. Presentation

Roxanne Bland, MTC counsel, presented a memo regarding a proposed cloud computing project. Cloud computing is a service offered to consumers by vendors. The resources are available when needed and are paid for by usage. It impacts everybody because instead of buying many separate pieces of software, the purchaser buys a single piece of software for everyone, who then accesses what they need through a web-based portal. There is no one definition of cloud computing; however, there is a growing consensus as to what it involves.

B. Public Comment

Shirley Sicilian, KPMG, offered her and Harley Duncan's services to do a presentation similar one they previously did on cloud computing if the project goes forward.

C. Committee Discussion

Bruce Johnson (UT) noted that Utah's statutes on tangible personal property (TPP) include the right to use TPP, so the state has taken the position that some of the things the industry would like to characterize as services are in fact rentals-of tangible personal property. Idaho's legislature has been through two different iterations as to what is cloud computing and how to define it. They are getting closer to the perspective that anything accessed over internet is a service, except for books, music, videos and games. Ms. Wald stated that North Dakota has had requests for opinions in the sales and use tax arena. Their experience has been with companies that are offering several different types of polyservices, so this may not be a one-size-fits-all project. Mr. Johnson stated there is a need to move toward market-based sourcing for services and intangibles. He would recommend prioritizing this project over sourcing of electricity, but he would like to retain UDITPA as the highest priority. Gary Humphrey (OR) agreed. Idaho moved to table the projects for electricity and cloud computing in order to focus on UDITPA rules. In this case, tabling would mean "putting on the back burner, to be revived at a later juncture for further consideration." The motion passed by show of hands with 14 in favor.

VIII. New Business

There was no new business

IX. Adjourn

Mr. Horwitz moved to adjourn. The meeting adjourned at 11:49 p.m.