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March 12, 2024

Ms. Helen Hecht
Uniformity Counsel
Multistate Tax Commission
444 North Capitol Street, N.W., Suite 425
Washington, DC 20001

Via E-mail

Re: Model Receipts Sourcing Regulation Review Work Group on Trucking Services Receipts Does Not Promote Uniformity

Dear Ms. Hecht:

On behalf of the Council On State Taxation (COST), I am writing to express our concerns with the process and value of the Model Receipts Sourcing Regulation Review Work Group (Work Group). Promoting “uniformity or compatibility in significant components of tax systems” is one purpose of the Multistate Tax Compact. Compact, Art. I, Sec. 2. The Compact confers the power to the Multistate Tax Commission (MTC) to “[d]evelop and recommend proposals for an increase in uniformity or compatibility of State and local tax laws with a view toward encouraging the simplification and improvement of State and local tax law and administration.” Compact, Art. VI, Sec. 3. The Work Group, a current uniformity project, however, fails to align with the Compact’s goals, and the MTC should reconsider whether to continue with the project.

About COST

COST is a nonprofit trade association consisting of approximately 500 multistate corporations engaged in interstate and international business. COST’s objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members impacted by this uniformity project.

Low Member Participation Does Not Promote Uniformity

The Charter for the MTC Uniformity Committee provides that the Uniformity Committee is “responsible for furthering the uniformity goals of the MTC by identifying areas in need of greater simplicity, fairness, and consistency.” Charter, Responsibilities. The Uniformity Committee’s work is highly visible and has a broad impact. As a result, it is imperative that the Uniformity Committee’s actions are taken with due consideration and care.

Robust interest and participation in a uniformity project is fundamental. There is no uniformity, simplicity, fairness, or consistency without it. To that end, active state interest and participation in a project is a critical success factor. Without it, there is serious concern as to whether undertaking a uniformity project is aligned with the purpose of the Compact and the MTC.

The work thus far by the Work Group calls that into question. Although all actions by the Work Group are within the framework of the Charter for the MTC Uniformity Committee, it is not within furtherance of the Compact's uniformity goals and overall spirit of promoting uniformity and simplicity. The MTC has 16 full Compact members, 10 Sovereignty members, and 24 Associate members. This represents almost all the states in the United States. On February 15, however, the Work Group moved forward with drafting an alternative model to source some or all trucking receipts based on pickups and/or deliveries. But only 6 states participated in voting (4 states voted in favor—2 of which stated that they would not shift away from the mileage approach, and 2 states voted against or abstained). This low member participation is consistent with the April 2023 poll asking state member representatives to vote on their preferred methodology for sourcing trucking services receipts, with most voting in favor of the mileage approach (4 states voted in favor of the mileage approach and 2 states voted in favor of the pickup and/or delivery approach).

Yet the Work Group proceeds down the path of an alternative model apportionment formula, unwilling to pause and ask whether this project still aligns with the Compact's uniformity goals. The fact only 6 states are participating, with no clear unanimity among even this small group, clearly reflects a lack of interest in the project. The lack of engagement indicates that a uniformity problem does not exist at a level that warrants the Uniformity Committee's involvement. Thus, the Uniformity Committee's decision to move forward on this creates newfound problems that are inconsistent with uniformity and simplification.

There is Uniformity and Minimal Controversy with Sourcing Trucking Services Receipts

The Work Group's efforts to create an alternative apportionment methodology for trucking services receipts is exacerbated by the fact that most states use a mileage approach and there has been minimal controversy related to sourcing trucking services receipts. The MTC staff's March 2023 research found that 29 states currently use the mileage approach, 5 states use an alternative mileage approach, and only 3 states use some type of the pickups and/or deliveries approach. Moreover, only 1 state—Massachusetts—has adopted a pickups and/or deliveries approach since adopting market-based sourcing. There has been minimal controversy stemming directly from use of the mileage approach and existing case precedents reflect that equitable adjustment relief exists for special apportionment rules as well. *See Montana Dep't of Revenue v. United Parcel Serv.*, 830 P.2d 1259 (Mont. 1992), *United Parcel Service Inc. (Ohio) & Affs. v. New Mexico Dep't Revenue*, 535 P.3d 715 (N.M. Ct. App. 2023). None of these actions lend support to continuing the Work Group's efforts related to sourcing trucking services receipts.

Conclusion

Given these circumstances, continuing this Work Group raises serious doubts about the underlying reasons and intentions behind the Work Group. These doubts damage the Uniformity Committee's reputation.

While COST appreciates the Work Group's efforts and the opportunity to work and collaborate with the MTC, we respectfully urge the Work Group and the Uniformity Committee to re-evaluate whether it is appropriate for the Work Group to continue addressing trucking services receipts or move forward to other priorities.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Stephanie T. Do', is written over a light blue circular stamp.

Stephanie T. Do

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director