

INSIGHTS INTO THE MTC

**Uniformity Committee Meeting – Spokane, WA & Virtual
April 29, 2025**

Hayes Holderness, Professor of Law, University of Richmond

I speak for myself.

My comments do not necessarily represent the views
of my employer.

Nothing in this presentation should be considered
legal advice.

Visiting Academician

A Brief History of the MTC

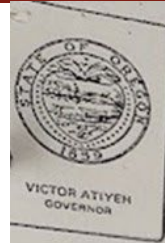
Uniformity

Establishing the MTC's Place

Evaluating the Early MTC

State Sovereignty and Uniformity

VISITING ACADEMICIAN



OREGON DEPARTMENT OF REVENUE

REVENUE BUILDING, 955 CENTER STREET, N.E., SALEM, OR 97310
~~STATE OF OREGON, SALEM, OREGON~~

October 29, 1981

Eugene F. Corrigan
Executive Director
Multistate Tax Commission
1790 30th Street
Boulder, CO 80301

Again, Gene, thanks for the prompt service of preparing the proposed minutes from the Washington, D.C. meeting. It certainly benefits all of those in attendance while the action of the meeting is fresh in our minds.

As I mentioned on the phone, I agree in all areas except Item No. 6, Visiting Academician. It is my opinion that the Executive Committee was more negative regarding [REDACTED] than is shown in your minutes.

As I remember, we were of the opinion that a research person would be more appropriate than someone such as [REDACTED] because whoever comes on board, you or Bill Dexter, will do most of the writing and that this person would fill the role of gathering all of the research data from which you and Bill would work.

We were also concerned that we may not be able to control the direction of someone such as [REDACTED].

Please correct the minutes to reflect the direction of the Executive Committee. Also, please don't take any final steps until you receive our approval in this area.

Robyn L. Godwin
Director

RLG:bas

What makes for effective interstate compacts?

Coercive authority to force compliance with compact goals

A formative reason such as a federal initiative or crisis

Participation of the federal government

No “one state veto voting power”

A high degree of communication among member states

Elite constituencies

Flexibility

James Perry Hill, *Managing the Nation's Waters Without Washington: The Interstate Compact Experience* (1992)

A BRIEF HISTORY OF THE MTC

Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959)

The Court held that solicitation of customers in a state was enough to establish nexus for taxation, upsetting the business community's understandings.

Congressional response

P.L. 86-272

Willis Committee

Multistate Tax Compact, Art. I

The purposes of this compact are to:

Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

Promote uniformity or compatibility in significant components of tax systems.

Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

Avoid duplicative taxation.

UNIFORMITY

Economic Benefits

No advantage to conducting activities in one state or another

Less complicated compliance burdens

Ease of developing reasonable expectations about taxation

Boon to economic activity, even if the substance of the law is not optimal

Governance Benefits

- Eases enforcement costs

- Curtails opportunities for tax evasion

- Requires less legislative attention to tax laws

Equity Benefits

- Puts interstate commerce on more equal footing with intrastate commerce

- Treats interstate taxpayers the same regardless of geography

Foundational Principle

South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018)

“The Commerce Clause ‘reflect[s] a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.’”

Foundational Principle

The Federalist No. 7 (Alexander Hamilton)

“The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations, on one side, the efforts to prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars.”

How to achieve uniformity in state taxation of interstate commerce?

Imposition

Congress

U.S. Supreme Court

Collaboration

Interstate Compacts

Uniformity by Imposition

Efficient, but

Comes at the cost of state sovereignty,

Can lock the states into methods of taxation that may not work

P.L. 86-272?

Political considerations

Moorman Manufacturing Co v. Bair, 437 U.S. 267 (1978)

“Although the adoption of a uniform code would undeniably advance the policies that underlie the Commerce Clause, it would require a policy decision based on political and economic considerations that vary from State to State.”

Mobil Oil Corporation v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980)

“We agree with Mobil that the constitutionality of a Vermont tax should not depend on the vagaries of New York tax policy.”

Container Corp. v. Franchise Tax Board, 463 U.S. 159 (1983)

“A final point that needs to be made about the unitary business concept is that it is not, so to speak, unitary: there are variations on the theme, and any number of them are logically consistent with the underlying principles motivating the approach.”

Uniformity by Collaboration

Allows for more state sovereignty and addresses some of the political issues of federal intervention, but

Reaching consensus or even a majority position can be difficult,

Requires buy-in from a significant number of states

Ad Hoc Committee proposal for federal legislation in response to the Willis Committee

ESTABLISHING THE MTC's PLACE

Multistate Tax Compact, Art. I

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Avoid duplicative taxation.

Why is the “promotion of uniformity or compatibility in significant components of tax systems” a stated purpose of the Multistate Tax Compact?

Ease the flow of interstate commerce

Reduce enforcement costs for the states

Stave off federal action that would impair state sovereignty

As the facilitator of the collaborative effort of the Multistate Tax Compact, how did the MTC establish itself?

Early years involved significant recruitment efforts to convince states to adopt the Multistate Tax Compact

Lobbied against federal uniformity legislation

Lobbied for federal consent bill

Established joint audit program and training programs

Established litigation and uniformity committees, among others

Recruited highly-qualified staff

Aggressively defended against efforts to diminish the MTC's role

The initial efforts of the MTC and states to adopt UDITPA and to lobby against federal action proved successful.

The joint audit program became a focus of attention within the MTC.

Tool to recruit more states by demonstrating the value that the MTC could provide.

Niche areas of taxation aside, less of a pressing need for substantive uniformity proposals?

Taxpayers used the program as the basis to challenge the constitutionality of the Multistate Tax Compact.

EVALUATING THE EARLY MTC

What makes for effective interstate compacts?

Coercive authority to force compliance with compact goals

A formative reason such as a federal initiative or crisis

Participation of the federal government

No “one state veto voting power”

A high degree of communication among member states

Elite constituencies

Flexibility

James Perry Hill, *Managing the Nation's Waters Without Washington: The Interstate Compact Experience* (1992)

Coercive authority to force compliance with compact goals?

No, but the goal is the preservation of state sovereignty?

Soft power by recognizing and highlighting federal threats to act

A formative reason such as a federal initiative or crisis?

Northwestern States Portland Cement Case

P.L. 86-272

Willis Committee

Federal bills regarding state taxation

Participation of the federal government?

No, but the goal is the preservation of state sovereignty

Communication with federal lawmakers

Federal consent bills?

Supreme Court recognition in U.S. Steel Case

No “one state veto voting power”?

Collaborative effort between the member states

Not imposing laws/regulations on any state

A high degree of communication among member states?

Meetings

Communications regarding MTC's work

Shared Expertise

Elite constituencies?

Recruitment of states to join the Compact

Flexibility?

Responsiveness to the desires of the states

Responsiveness to proposed federal action

Responsiveness to taxpayer input and pushback

STATE SOVEREIGNTY AND UNIFORMITY

Promoting uniformity while preserving state sovereignty can feel at odds

Goes to the core difficulty of the dormant Commerce Clause

Moorman Manufacturing Co v. Bair, 437 U.S. 267 (1978)

“While the freedom of the States to formulate independent policy in this area may have to yield to an overriding national interest in uniformity, the content of any uniform rules to which they must subscribe should be determined only after due consideration is given to the interests of all affected States.”

Perfect uniformity is not, or should not, be the goal

Trying to go to far in promoting uniformity at the expense of state sovereignty brings dangers

Invites challenges from taxpayer community

The joint audit program and the U.S. Steel litigation

Discourages states from joining the MTC's efforts

Gillette litigation

Drains resources

The promotion of uniformity works best through the promotion of principles and common roots for state tax laws

Allows for states to enact tax laws suited for their jurisdiction

Also provides some degree of predictability to taxpayers

E.g. Combined reporting, UDITPA

Federal landscape

Congressional action to impose uniformity on state taxation of interstate commerce

Mobil Workforce Act

Internet Tax Freedom Act

Worldwide Combined Reporting?

Supreme Court

Dormant Commerce Clause

Pike Balancing

QUESTIONS & DISCUSSION

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