



Uniformity Committee & Work Groups Report to the Multistate Tax Commission

Laurie McElhatton (California), Chair and Phil Skinner (Idaho), Vice Chair
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The following is a summary of the work of the committee and its work groups.

Meetings

Last year, the committee met as part of the MTC's annual, fall, and spring meetings to hear status reports and presentations. Between 125-150 people attended these meetings, in person or remotely.

Projects

The committee currently has three ongoing projects:

- State taxation of partnerships
- Sales taxation of digital products
- Review of receipts sourcing apportionment regulations

Work Groups

The committee established work groups to oversee these projects (see the project reports below). We are fortunate that the work groups have a number of regular state participants who contribute considerable time and expertise. The work groups help direct staff research, set up informal study groups, analyze proposals, make presentations, and review and discuss any findings and recommendations.

Project Web Pages

Each project has its own web page on the MTC's website. (See here: [Uniformity Projects](#).) Those project pages capture information from meetings and discussions, summarize issues under consideration, provide research and findings, and create a record of draft issue outlines, white papers, proposed models, and any comments from states and the public. We hope these web pages are also a good resource for those wanting to know more about the project or the related issues.

Process

The committee and its work groups conduct their business in public according to a process described here: [Uniformity Process and Handbook](#). The work groups hold regular calls and give periodic reports at committee meetings. Work groups and staff are continually reaching out to states and interested members of the public, including practitioners, taxpayers, and academics, to determine what questions and issues they have and to encourage them to give input into our process. At each meeting of the Uniformity and Executive Committees, the work groups give status reports and solicit direction about next steps and areas to focus on moving forward. We welcome any input or direction from the Commission on this process as well as the projects.

Educational & Policy Value

A significant portion of the activity of the committee and its work groups may also be educational or informational in nature. Participating states share their ideas or approaches, practitioners and members of the public give input, and Commission staff provide research and analysis. This is useful for the projects but can also provide value to states that are developing their policies. Over time, we believe this kind of educational/information sharing component of the committee's work significantly contributes to the development of uniform and compatible state tax approaches and increases the efficiency with which state revenue departments can address common issues.

Project Report – State Taxation of Partnerships

Laurie McElhatton (California), Chair

Information on this project can be found on the project webpage, here: [MTC Partnership Project Web Page](#).

The committee approved a project to address state taxation of partnership income in April 2021, recognizing that partnership income has become a much larger share of business income in recent decades. Because the committee had also drafted a model for states to use in assessing state tax on federal partnership adjustments under the new centralized audit regime, it was able to leverage that experience.

Scope

The scale of this project is much larger than the typical uniformity project. It is comparable to the work the Commission did in its early years to develop rules for sourcing and taxing corporate income. The work group prepared a comprehensive issue outline. See here: [Issue Outline](#). That outline is 75 pages long and each of about 10 major sections summarizes an area of focus that, in itself, could require a substantial amount of time and effort to develop a uniform positions or approaches.

Work Group

There are currently 25 states that have “regular participants” in the work group. Additional states follow the project and they, along with members of the public, can provide input.

Process and Past Work

Because the project scope is so large, and covers a number of significant issues, the work group has taken these issues, one-at-a-time, and developed draft white papers and models, including:

- A white paper and model on sourcing investment partnership income,
- A white paper and model on sourcing guaranteed payments, and
- A discussion draft for a white paper on sourcing income in complex structures.

The work group takes input on these white papers and models as they are being drafted. It has decided to defer finalizing the drafts until it can be confident that the approaches used for the different issues are compatible and can be applied consistently. Research and analysis of the complex partnership issues has been going on for the last year, with states giving input

Status

The white paper for sourcing income in complex structures is still being discussed and drafted. That white paper will include:

- Background information necessary for policymakers to understand the sourcing issues.
- Identification of sourcing issues that states may need to address in more detail.
- A summary of general sourcing rules and how they apply to partnership income.
- The use of “blended apportionment” and how and when that sourcing approach may be used.
- An Excel workbook for testing the approach to computing a partner’s share of partnership factors for blended apportionment.
- Examination of related issues including partner-partnership transactions, special allocations, and any necessary anti-abuse rules.

Next Steps

The work group expects that it will proceed with drafting the white paper on sourcing partnership income in complex structures and hopes to have a final draft in the coming year. Then the work group may decide to also draft model provisions for recommendation to the states.

Sales Taxation of Digital Products

Tim Jennrich (Washington), Chair and Mia Strong (Louisiana), Vice Chair

Information on this project can be found on the project webpage, here: [MTC Digital Products Web Page](#).

The committee approved a project to draft a white paper on sales taxation of digital products in August, 2022, based on an outline drafted by staff from stakeholder interviews and input from the states.

Scope

Like the project on taxation of partnerships, the scale of this digital project is also large. The various issues that will be covered are captured in the project's white paper outline. That outline is available as a document, but it is also set out as a series of online web pages for the different subject areas, with information and materials posted by subject. See [Online White Paper Outline](#).

Work Group

The work group has regular participants from 21 states and is coordinating its efforts with Streamlined and providing information to other interested groups including the Federation of Tax Administrators the National Council of State Legislatures. There are also a number of practitioners and taxpayer representatives who are following the work group's discussions and providing information and input.

Process and Past Work

The work group has considered and discussed various critical issues in the project outline including the extent to which states currently tax digital products and the approaches they use, the implications of the federal Internet Tax Freedom Act, and whether business inputs should be exempted from tax.

Recently, the work group established two informal study groups. These study groups are smaller and hold informal discussions which focus in more detail on particular questions or issues. Materials used by the study groups are posted on the project webpage and any reports are reviewed and considered by the work group as part of its process.

- **Bundling Study Group** - The first study group was made up of state participants who agreed to apply the Streamlined bundling rules to particular examples of transactions involving digital and other products or services. They discussed their results and then provided a list of considerations for inclusion in the work group's white paper, giving a summary to Streamlined for its use as well.
- **Definitions Study Group** - The second study group is in the process of considering a proposal for a broad definition of digital products that states might use and is evaluating that proposal as well as other possible approaches. That study group will make a report to the work group for its review and consideration.

Next Steps

In the coming months, the work group expects to hear specific recommendations from the definitions study group and will consider those recommendations. The work group has also begun to review issues involved in sourcing digital products. It has reviewed the sourcing rules used under the Streamlined agreement and will consider the rules used in the Mobile Telecommunications Sourcing Act and the Digital Goods and Services Tax Act legislation. It will also consider the experience of states using so-called multiple-points-of-use certificates for sales of products used in multiple states.

Remaining issues in the white paper outline include exemptions and exclusions, which will likely be considered by the work group after it receives the report from the definitions study group. Also, the outline includes a section on alternative taxes. While these taxes are not the focus of the project, several stakeholders commented on the taxes used by certain states, which may provide some additional information for the work group to consider.

The work group expects it will have the major sections of the white paper drafted in the coming year.

Model Receipts Sourcing Regulation Review

Katie Frank (California), Chair

Information on this project can be found on the project page, here: [MTC Regulation Review Project](#)

In August, 2022, the 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.

Scope

One significant state tax trend in recent years has been the gradual adoption of market-based sourcing for sales of services and intangibles, as well as the change from using three-factor apportionment formulas to single-sales-factor formulas. So the rules for determining the sales located in a particular state are more important than ever. The goal of this project is to identify updates, corrections, or conforming changes, and to consider issues that may not be sufficiently addressed by existing model regulations.

Work Group

This work group membership varies depending on the particular issue being addressed. The work group also seeks the input of industry representatives and practitioners.

Process and Past Work

The project began by focusing on special industry apportionment rules, all of which were drafted prior to the Commission's adoption of a model market-based sourcing statute and general sourcing regulations. The work group reviewed the treatment of trucking and railroad receipts and, on the subject of the trucking rule, was divided. It asked the committee for guidance and the committee decided not to alter the mileage approach.

The work group then considered other special industry rules and MTC staff drafted briefing books on two rules, suggesting possible updates:

- Sourcing of Airline Receipts – Since the Special Industry Rule for Airlines was adopted four decades ago, Airlines have come to receive various substantial streams of revenue there are not expressly addressed by the Rule. Examples include code-Share or related receipts, which are received for transportation sold by one airline and provided by another, and receipts from the sale of “miles” or “points,” which can then be awarded by the purchaser-business to its customers and redeemed for flights. In general, states have not explicitly addressed the sourcing of these receipts.
- Sourcing of Broadcast Receipts – The MTC has a model special industry rule, most recently updated in 1996, which addresses the sourcing of receipts of television and radio broadcasters. The MTC model general allocation and apportionment regulations also address similar issues—using a market, or audience, approach. The 1996 special industry receipts sourcing rules may need to be clarified and potentially updated, or could simply be eliminated, given that the general rules now apply.

Next Steps

Based on the guidance of the committee, the work group is now considering changes to the special industry rule for airlines which would update that rule and address code-share receipts and miles/points.

The Uniformity Committee and the work groups are fortunate to have the participation of so many state members with a wide range of experience and expertise and to be able to interact with industry and practitioners to obtain information on these important issues.