



Operations & Functions of the Multistate Tax
Commission – A National Perspective on State Taxation

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MTC Background & Programs





Multistate Tax Commission



- ❧ An intergovernmental state tax agency established in 1967 by states adopting the Multistate Tax Compact
 - ❧ A response by states to the Willis Commission report
 - ❧ Uniform Division of Income for Tax Purposes Act (UDITPA) adopted in Article IV of the Compact



Multistate Tax Commission,

cont.



- ❧ Established to preserve state tax authority against federal preemption through –
 - ❧ Facilitating the proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases;
 - ❧ Promoting uniformity or compatibility in significant components of tax systems;
 - ❧ Facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;
 - ❧ Avoiding duplicative taxation



Core Programs

☞ Joint Audit Program

- ☞ Operates under authority of the Multistate Tax Compact; auditors are agents of, and work at the direction of, participating states in conducting an audit (the Commission does not have assessment or collection authority)
- ☞ 25 states participate in the program (23 for income tax audits, 19 for sales & use tax audits, and 1 observing state)

☞ National Nexus Program

- ☞ Created to foster state tax compliance by business that is engaged in multi-jurisdictional commerce, and to promote cooperation and consistent state tax enforcement and administration of issues in the nexus area
- ☞ 37 states participate in the program
- ☞ Offers multi-state voluntary disclosure to help businesses and individuals settle nexus issues efficiently through a single point of contact and uniform process



Core Programs, cont.

☞ Uniformity

- ☞ The Commission promotes and maintains uniformity in state taxation of interstate business through uniformity projects under the direction of the Uniformity Committee
- ☞ The Uniformity Committee is composed of representatives from participating states
- ☞ The uniformity process is designed to maximize input from states and interested parties at nearly every stage



Other Support

☞ Legal Support

- ☞ Amicus briefs & case consultation
- ☞ Bi-annual Litigation Committee meetings
- ☞ State tax attorney teleconferences

☞ Training

- ☞ Schools and programs designed to increase the effectiveness and efficiency of state tax administration with courses that enhance knowledge and practical skills.

☞ Policy Research

- ☞ Staff economist provides technical support for uniformity projects
- ☞ Consultation with states on fiscal & legislative issues
- ☞ Support for addressing federal legislative activity

☞ Voluntary Alternative Dispute Resolution Program

- ☞ Resolve controversies of an interstate nature involving more than one state
- ☞ Mediation, Arbitration, or any Combination

MTC Uniformity Process & Efforts





Uniformity Process



1. Proposal initiated by or assigned to Uniformity Committee
2. Uniformity Committee develops proposal, with input from relevant interest groups
3. Uniformity Committee proposal considered by Executive Committee
4. Public Hearing
5. Hearing Officer Report considered by Executive Committee
6. Bylaw 7 Survey of Affected Commission States
7. Proposal Considered for Adoption by Commission at Annual Business Meeting
8. Adopted Proposal submitted to the States



Uniformity Committee



- ❧ The Uniformity Committee consists of representatives from all interested member states (not just compact states)
- ❧ The Uniformity Committee's goals are three-fold –
 - ❧ Simplicity, equity, and consistency
 - ❧ Greater voluntary compliance through taxpayer education and increased enforcement
 - ❧ Fostering greater communication among stakeholders
- ❧ To facilitate its work, the Uniformity Committee is divided into two working subcommittees
 - ❧ Subcommittee on Income and Franchise Taxes
 - ❧ Subcommittee on Sales and Use Taxes



Examples of MTC Model Laws



Exercise Jurisdiction

- Factor Presence Nexus

Tax Base

- Add-back
- Captive REITs
- Mobile Workforce
Withholding

Administrative

- Uniform Protest
- RAR Reporting

Apportionment:

- UDITPA Regulations
- Special Apportionment
 - Financial Institutions
 - Telecommunications
 - Airlines, etc.
- Combined Reporting

Sales and Use Tax

- Priority - Leasing;
Construction Inventory
- Models for
Telecommunications
Transaction Tax Centralized
Administration
- Models on the Tax Collection
Responsibilities of
Accommodations
Intermediaries



Current Uniformity Projects



- ❧ Recommended Amendments to Compact Art. IV (UDITPA)
 - ❧ Section 17
 - ❧ Section 1(g), Definition of “sales”
 - ❧ Section 1(a), Definition of “business income”
 - ❧ Section 9, Factor weighting
 - ❧ Section 18, Distortion relief
- ❧ Model Sales & Use Tax Notice and Reporting Statute (Colorado style)
- ❧ Model Associate Nexus Statute (New York style)



Current Uniformity Projects, Cont.



- ❧ Model Statutes for Telecommunications Transaction Tax Centralized Administration
- ❧ Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries
- ❧ Proposed Statute Regarding Partnership or Pass-Through Entity Income that is Ultimately Realized by an Entity that is not Subject to Income Tax
- ❧ Amendments to Model Financial Institutions Apportionment Rule

Litigation





Gillette Co. et al. v. Franchise Tax Board

- ❧ Currently before the California Court of Appeal, First Appellate Division
- ❧ The Court issued a decision in July holding that the apportionment election provision in Article III of the Multistate Tax Compact is a mandatory provision of the Compact and that, unless California repeals the Compact in its entirety, multistate taxpayers have the right to the Article III election
- ❧ In August, the Court, on its own motion, ordered a rehearing and vacated its decision and opinion; the Franchise Tax Board had also petitioned for rehearing [and Gillette had written to request modification of the decision]
- ❧ Prior to the decision, the California legislature prospectively withdrew from the Multistate Tax Compact



IBM v. Dep't of Treasury



- ❧ Currently before the Michigan Court of Appeals
- ❧ The issue in the case is whether Michigan must recognize the Multistate Tax Compact Article III election for purposes of its Single Business Tax
- ❧ Michigan won its motion for summary judgment at the Michigan Court of Claims



Direct Marketing Association, Inc. v. Brohl

- ❧ Currently before the United States Tenth Circuit Court of Appeals
- ❧ The issue is whether the commerce clause, which prohibits a state from requiring use tax collection by remote sellers with no physical presence, also prohibits a state from requiring consumer notices and certain reports from these same remote sellers
- ❧ The Federal District Court of the Western District of Colorado, on cross motions for summary judgment, enjoined Colorado from enforcing its notice and reporting requirements



Performance Marketing Association, Inc. v. Hamer

- ❧ Currently before the Illinois Supreme Court
- ❧ The issue is whether Illinois's statute, which is modeled after New York's so-called "Amazon" statute, violates the dormant commerce clause and the Internet Tax Freedom Act



In Re *BarnesandNoble.Com*



- ❧ Currently before the New Mexico Supreme Court
- ❧ Issue is whether Barnes and Noble stores in New Mexico create nexus for its online affiliate, BarnesandNoble.Com LLC
- ❧ Who has the burden of proof regarding nexus is an important consideration in the case.



Harris Corporation and Consolidated Subsidiaries v. Arizona Dep't of Revenue



- ❧ Along with *First Data Corporation et al. v. Arizona Dep't of Revenue*
- ❧ In both *Harris* and *First Data*, Arizona is litigating its position that the UDITPA definition of “business income” includes a functional test in addition to the transactional test, and that the functional test does not include a business liquidation exception
- ❧ In *First Data*, these issues are arising in the typical context of a combined report. But in *Harris*, the issues are arising in the context of a consolidated return, which raises the question of whether, and if so how, a unitary/business income analysis applies in the context of a taxpayer’s election to file a consolidated return



*Home Depot USA, Inc. and Affiliates v.
Arizona Dep't of Revenue*



- ❧ Before the Arizona Court of Appeals on a Tax Court decision favorable to the state
- ❧ The issue is whether Home Depot is engaged in a unitary business with its trademark holding company subsidiary, Homer; Home Depot did not include Homer in its combined report
- ❧ The Tax Court decision takes the position that Home Depot's goodwill cannot be separated from the operations of the business itself even through a trademark assignment



In the Matter of the Appeal of Cessna Employee Credit Union



- ❧ Kansas Department of Revenue filed a petition seeking Kansas Supreme Court review of an unfavorable Kansas Court of Appeals decision
- ❧ Case is an important one for several states because it interprets language in the Streamlined Sales and Use Tax Agreement
- ❧ Issue is whether the sales tax base includes the travel expenses and taxes paid on a contract for purchase of computer upgrades (tangibles and services) which called for payment of time and materials and reimbursement of travel expenses for seller's employee to perform the services.

Federal Legislation





Federal Legislation



- ❧ The Commission opposes any federal legislation that encroaches on states' sovereign tax authority as established in our system of federalism.
- ❧ We do recognize, however, that Congress has a constitutional duty to regulate interstate commerce.
- ❧ Thus, in addressing any federal legislation, we seek to help Congress maintain the careful balance implicated by states' sovereignty and federal responsibility.



Business Activity Tax Simplification Act

- ❧ BATSA is an “anti-jobs” bill
- ❧ BATSA would hurt small business
- ❧ BATSA would upset well-established legal and policy principles
- ❧ BATSA would unnecessarily intrude upon state taxing authority, flouting the Tenth Amendment
- ❧ BATSA would blur the bright line rule
- ❧ BATSA would strip states of needed revenue -- scored by CBO as the largest unfunded mandate upon the states
- ❧ There is an alternative -- The Factor Presence Nexus standard adopted by the MTC



Mobile Workforce State Income Tax Simplification Act

- ❧ Limits state taxation of the wages or other remuneration of any employee who performs duties in more than one state to: (1) the state of the employee's residence; and (2) the state in which the employee is present and performing employment duties for more than 30 days.
- ❧ Exempts from the definition of “employee” for purposes of this Act a professional athlete or entertainer or certain public figures
- ❧ The MTC adopted a uniformity recommendation for the states on this in 2011, but it uses a 20-day threshold.



Main Street Fairness Act



- ❧ Formerly introduced as the Sales Tax Fairness and Simplification Act
- ❧ Would allow states and local jurisdictions to require remote sellers (entities with no nexus or physical presence) to collect sales and use taxes provided they have met the minimum simplification requirements set forth in the Act.
- ❧ It does not take away any existing state and local tax revenue currently collected, and would significantly enhance tax collections by state and local governments.
- ❧ Contentious Issues Remain: Compensation, Small Business Exception, Communications Taxes, Controversy Jurisdiction
- ❧ Also, now have Marketplace Fairness Act & Marketplace Equity Act



Marketplace Fairness Act & Marketplace Equity Act

- ❧ Alternatives to the Main Street Fairness Act
- ❧ Both bills would allow states to collect sales and use taxes in one of two ways: states can collect under the Streamlined Sales and Use Tax Agreement (SSUTA) or they can adopt minimum simplification requirements specified in the bills
- ❧ Main Street Fairness Act only provides this authorization to SSUTA states
- ❧ Marketplace Fairness Act differs from Marketplace Equity Act in the number of simplification steps and other details, such as small business exemption



Industry-Specific State Tax Preemptions are Unnecessary

- ☞ Increasingly, industries that have been unsuccessful in reducing their state taxes through litigation or state legislation have turned to Congress for redress by seeking to preempt state tax authority in their specific area of business, even when that business is thriving --
 - ☞ Direct Broadcast Satellites (H.R. 1804)
 - ☞ Automobile Rentals (H.R. 2469)
 - ☞ Hotel Intermediaries (S. 1934)
 - ☞ Digital goods (H.R. 1860/S. 971)
 - ☞ Cell Phones (H.R. 1002/S. 543)
 - ☞ Natural Gas Pipelines (H.R. 4847)



Digital Goods and Services Tax Fairness Act of 2011

- ❧ Prohibits a state or local jurisdiction from imposing “multiple or discriminatory” taxes on or with respect to the sale or use of digital goods or services delivered or transferred electronically to a customer
- ❧ The bill would prohibit states from interpreting their laws to apply even-handedly to digital products, even when the products are simply the digital equivalent of other taxable electronic and tangible products
- ❧ Grants jurisdiction to federal district courts to prevent a violation of this Act, without regard to the amount in controversy or the citizenship of the parties
- ❧ Federalism is best maintained through Congress prompting the states and industry to address areas of concern, and then giving them reasonable time to work out a solution while refraining from pre-empting the states in tax matters traditionally managed by the states



Looking for More?

Information on the Commission and its activities can always be found at www.mtc.gov –

The screenshot shows the MTC website interface. At the top, there is a navigation bar with 'Home' and 'Site Map' links. Below this is a search bar and a list of menu items including 'Member States', 'Programs & Committees', 'Multistate Tax Compact', 'Bylaws', 'Policy Statements & Resolutions', 'Officers & Executive Committee', 'Public Participation Policy', 'Annual Report', 'Employment Opportunities', 'Contact Us', 'Adopted Recommendations', and 'State Tax Amnesties'. A central banner features a group photo of MTC members and a 'Welcome' message. Below the banner, there is a featured article titled '45th Annual Conference & Committee Meetings' held in Grand Rapids, Michigan, from July 29 to August 2, 2012. The main content area includes several articles: 'State Fiscal Conditions' discussing the current fiscal state of governments, 'MTC Files Brief in Gillette' regarding the California Franchise Tax Board case, and 'Spangler Offers Perspectives On Four Decades With Idaho, MTC' featuring an interview with Ted Spangler. On the right side, there is a 'Welcome' message and an 'Upcoming Events' section listing various meetings and conferences, such as the 'Financial Institutions Work Group' meeting in June 2012 and the '45th Annual Conference & Committee Meetings' in August 2012. At the bottom left, there is a 'Multi-state Voluntary Disclosure Program' link and a 'Download the Uniform Sales and Use Tax Certificate' link. A calendar widget is also visible in the bottom left corner.