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

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MTC Background & Programs
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
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
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
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

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