



MULTISTATE TAX COMMISSION

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## Report on Uniformity Developments

For the MTC Uniformity Committee July 2021



# MTC Uniformity Committee in the News

## Finnigan Combined Filing and P.L. 86-272 Projects –

- MTC Projects on P.L. 86-272, Finnigan Set for Final Adoption, Amy Hamilton, Tax Notes State, 4/26/21.
- “MTC Advances Combined Reporting, Online Biz Tax Projects,” Paul Williams, Law360 – State & Local, 4/29/21.
- “Income Tax Nexus Limitations in a Post-Wayfair World,” Joe Garrett, Amber Rutherford, Olivia Schulte and Sherfón Coles-Williams, Tax Notes State, 5/24/2021 (Viewpoint).
- “MTC Declares War on P.L. 86-272,” George S. Isaacson and Nathaniel A. Bessey, Tax Notes State, 7/19/2021.

# MTC Uniformity Committee in the News

## On Partnership Related Issues –

- “New MTC Project to Focus on Partnership Income Sourcing Issues,” Amy Hamilton, State Tax Today, 4/28/21.
- “Transfer Pricing, SALT Cap Emerge Within MTC Partnership Project,” Amy Hamilton, State Tax Today, 6/17/21.
- “The MTC Undertakes an Ambitious Study of Partnership Taxation, Kelvin M. Lawrence and Bruce P. Ely, Bloomberg Tax Insights, 6/23/21
- “Former IRS Chief Counsel Weighs In on SALT Cap Workarounds, Amy Hamilton, State Tax Today, 7/23/21.

# MTC Uniformity Committee in the News

## On Digital Products –

- “Tax Group to Launch Review of How States Handle Digital Taxation,” Tripp Baltz, Bloomberg Daily Tax Report: State, 4/28/21.
- “MTC to Begin Exploring Cryptocurrency Issues,” Amy Hamilton, State Tax Today, 5/24/2021.
- “State Taxes and the Digital Economy: NFTs and the MTC Project,” Amy Hamilton, State Tax Today, 6/22/2021.

# Status of Uniformity Proposals

## Combined Filing Alternative *Finnigan* Model

- What the proposal does:
  - Existing model uses the *Joyce* separate-entity approach to calculate the in-state share of unitary group income and excludes receipts of entities that lack separate-entity nexus from the apportionment factor.
  - Proposed alternative *Finnigan* model uses a single-entity approach and includes all receipts of the unitary group.
  - Also uses a federal consolidated-style approach to the calculation of the NOL carryover.
- Status:
  - On the Commission's agenda for August 4, 2021.

## Revisions to Statement on P.L. 86-272

- What the proposed revisions do:
  - Address sellers who perform activities with respect to customers and markets within a state through the Internet.
- Status:
  - On the Commission's agenda for August 4, 2021.

# Developments – Adopted Models

## Model for Reporting Federal Adjustments – Partnership Provisions

- The model sets out an approach for assessing state tax on federal partnership adjustments from federal audits or administrative adjustment requests.
- States that have adopted legislation in this area (and the approach generally taken):

Adopted - MTC Approach:	Pending - MTC Approach:	Other:
Georgia		Arizona
Kentucky		California
Indiana		Hawaii
Iowa		Maine
Massachusetts		Rhode Island
Minnesota		Vermont
Missouri		
Montana		
New Mexico		
Ohio		
Oregon		

# Developments – Adopted Models

## Market-Based Sourcing – Recent Adoptions (Year Applicable and MTC or Other Approach)

- New Jersey – 2019 (Other)
- Colorado – 2019 (MTC)
- Hawaii – 2020 (Other)
- North Carolina – 2020 (Other)
- New Mexico – 2020 (MTC)
- Vermont – 2020 (MTC)
- West Virginia – 2022 (MTC)

Now – 70%-plus of states with a corporate income tax use market-based sourcing.

States are continuing to issue regulations.

**NOTE:** The MTC video-taped training program for market-based sourcing should be available soon.

# Developments – Other

- Adopting sales thresholds and marketplace rules for sales tax collection:
  - Kansas
  - Missouri
  - Florida
- Maine adopted factor-presence nexus for corporate income tax.



# Big Picture – Long View

- July 1, 2021 - OECD & G-20 released their statement—“Base Erosion and Profit Shifting Project: Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy”
- OECD BEPS project – Pillar 1
  - Formulary apportionment
  - Sales factor – using market-based sourcing
  - Base – residual profit – determined on a worldwide basis
  - Factor-based nexus – dollar threshold based on sales
  - Single-entity filing approach
- So, approximately a century after the states figured it out—the international tax community is coming to the realization that specific sourcing on a geographic basis using separate entity filing does not work for modern unitary businesses.