

Eleventh Annual Report



**Multistate
Tax Commission**

For the fiscal year of July 1, 1977-June 30, 1978

Alan N. Charnes, Colorado Director of Revenue, Chairman

Eugene F. Corrigan, Executive Director

Purpose of the Multistate Tax Commission:

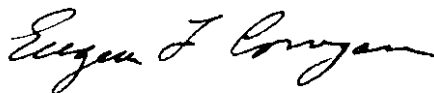
To bring even further uniformity and compatibility to the tax laws of the various states of this nation and their political subdivisions insofar as those laws affect multistate business, to give both business and the states a single place to which to take their tax problems, to study and make recommendations on a continuing basis with respect to all taxes affecting multistate businesses, to promote the adoption of statutes and rules establishing uniformity, and to assist in protecting the fiscal and political integrity of the states from federal confiscation.

May 1, 1979

To the Honorable Governors and State Legislators of Member
States of the Multistate Tax Commission:

I respectfully submit to you the eleventh annual report of the
Multistate Tax Commission. This report covers the fiscal year
beginning July 1, 1977 and ending June 30, 1978.

Respectfully submitted,

A handwritten signature in cursive script, reading "Eugene F. Corrigan".

Eugene F. Corrigan
Executive Director

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The Multistate Tax Commission: An Introduction

The Multistate Tax Commission is an organization of states committed to bringing order to state taxation of multistate business. The Commission exists for the benefit of both states and taxpayers.

States formed the Commission in 1967, when some corporate taxpayers were trying to persuade Congress to impose severe taxing power restrictions upon the states. In the view of these states, the proposed restrictions were one-sided and unfair, going beyond the resolution of actual problems and bestowing large and unwarranted exemptions upon the taxpayers involved. The Commission grew out of the conviction that, if the states were to oppose such legislation, they had an obligation to provide a constructive alternative.

The Problem

Corporations operating in many states pose a difficult tax enforcement problem, especially concerning corporate income taxes. The states' problem is determining what portion of the corporation's total income each state can tax. The problem involves both the ground rules for dividing the corporation's income among the states in which it operates, and the enforcement of these rules.

If the ground rules in the different states are not compatible, then substantial amounts of a corporation's tax base can "fall through

the cracks" and not be reported to any state. It is also possible that more than one state could claim the power to tax the same income. (Whether or not such a theoretical claim actually is asserted in practice is another question.) In either case, there will be unnecessary confusion for tax officials and taxpayers alike.

Similar problems exist, moreover, regarding other taxes, such as sales and use, franchise, and gross receipts taxes, affecting large corporations doing business in many states.

The second dimension of the problem is enforcement. Regardless of what a state's laws say on paper, ineffective or inconsistent enforcement can result in revenue loss to the state and confusion to taxpayers.

The Commission addresses both of these problems. In joining the Commission, the states adopt a model law for the division of corporate income among the states in which the corporation does business. In addition, the Commission gives the states an economical tool for dealing with the unique tax enforcement problems posed by multistate businesses.

The Joint Audit Program

The Commission's most prominent activity at this stage is its cooperative tax enforcement effort called the "Joint Audit Program." Through this program the member states

pool their resources for the largest and most difficult cases. MTC audit staff members perform audits of large multistate taxpayers, just as though they were part of the audit staffs of the member states. A single MTC audit takes the place of separate and duplicative audits by each of the member states. The fact that the MTC auditors are permanently located in Chicago and New York also eliminates the expenses incurred by in-state auditors performing out-of-state audits.

activities of the member states. Moreover, the states retain complete control of their enforcement efforts even when carried out through the joint program. Individual states decide whether or not to participate in each MTC audit, and they and they alone decide whether and how to act upon the audit results.

The joint audit program is not merely an effective way for the states to identify uncollected revenues. The broader purpose of the program is to promote compatibility of

“The Multistate Tax Commission is a common-sense way for the states to reduce overlapping corporate tax administration and to reduce also the complexities in their tax laws which are a burden for both business taxpayers and state enforcement officials alike. Simplicity in business taxation is good for business and good for the states.”

*Richard D. Lamm, Governor
State of Colorado*

Under the joint audit program, individual states gain the economy and efficiency of a cooperative enforcement effort at just a fraction of the program's cost. They learn of any inconsistent reporting to different states by multistate taxpayers. Perhaps most important, they gain a tool for making the theoretical compatibility of their tax laws work in practice on a case-by-case basis.

At the same time, corporate taxpayers gain the convenience of a single audit in place of the nuisance of separate audits by the various individual states. They gain the assurance that no participating state will claim more than its proper share of their tax base. Furthermore, they gain a forum through which to seek resolution of inconsistencies in the state tax rules to which they are subject.

The joint audit program has been a worthwhile investment for the participating states, returning over \$23 for each dollar the states have put into it, on top of the many other advantages which are not measurable in dollars. The program is merely a supplement to, and not a replacement for, the enforcement

state enforcement policies to the benefit of states and taxpayers alike. To this end the Commission is working with an advisory group of top tax officials from the affected corporate taxpayers to make certain that the technical rules and procedures of the joint audit program are fair from their standpoint. Ultimate decision on all policy matters remains, of course, with the member states.

The joint audit program includes the corporate income, sales and use, franchise, and gross receipts taxes levied by member states and affecting interstate commerce.

Litigation Program

Corporate tax enforcement programs can bear fruit only if the MTC and the individual states are able to defend the results of their audits against taxpayer challenges. Litigation in this area has been a major problem for the states. Corporate taxation is a complex legal specialty, and state assistant attorneys general, spread thin over many kinds of cases, often find themselves pitted against expert taxpayer attorneys with great resources and

years of experience in the particular question at issue.

For this reason, legal assistance has emerged as a key part of the MTC's cooperative program. MTC General Counsel William Dexter has over thirty years of experience in state corporate tax litigation, as an assistant attorney general in the states of Michigan and Washington. Mr. Dexter has been active in three main areas. First, he has defended the MTC's audit program against taxpayer challenges such as the U.S. Steel case. Second, he has helped individual states defend the results of MTC audits. And third, he has assisted states with their own corporate tax litigation in important cases having revenue implications for other states. On top of this, Mr. Dexter has provided both formal and informal training and guidance for the legal staffs of individual states.

The states have shown great enthusiasm for this legal assistance, and the MTC is exploring ways to meet their needs more adequately. The program has proven its value not only in protecting state revenues, but also, and more importantly, in promoting compatible interpretations of law in the courts of the different states.

A summary of the MTC's current litigation and legal assistance activities appears later in this report.

Other Activities

The audit and litigation programs are merely the most visible of the Commission's efforts for compatibility in and effective administration of state corporate tax laws affecting interstate commerce. Apart from the common-sense uniformity provided in the Compact itself, the Commission has adopted advisory positions on the following matters:

1. A uniform standard for determining when a business is subject to a state's sales and use tax laws.
2. Uniform regulations interpreting the provisions of the model law (UDITPA) for the division of a corporation's income among the states in which the business operates.
3. Uniform regulations for the division among the states of income of various

specialized industries to which the model law does not apply.

4. A uniform sales and use tax exemption certificate.

5. Uniform agreements for the exchange among the states of information relating to sales, use, and net income taxes.

Even though such recommendations are advisory only and are not legally binding, they have been adopted widely by both member and non-member states.

Despite this progress towards compatibility, there have been persistent efforts in Washington to impose unwarranted restrictions upon state taxing powers concerning large multistate corporations. MTC member states have continued to oppose such attempts, individually and through the Commission. The MTC has established a small Washington office to present the states' position on these issues.

Membership and Operation

States join the Commission through the enactment by their legislatures of the Multistate Tax Compact. The Compact includes a uniform law which makes available to business taxpayers an optional procedure for dividing their income tax base among the states in which they operate. The chief tax



MTC auditor Gordon La Rue



Top: Missouri auditor Jay Hartley during MTC-conducted training session. Center: MTC auditor Nancy Endres. Bottom: MTC auditor Robert Sciaraffa.

official of each state represents the state on the Commission. An Executive Committee, elected by the membership, oversees the Commission's activities. The Executive Director manages the Commission's day-to-day affairs.

The Commission is funded entirely by the member states. Each state's contribution is determined according to a formula based on the state's tax revenues. The audit program is funded separately. Most states have gotten back from the joint audit program considerably more than they have contributed to it.

Currently, the Commission has 19 full members and 12 associate members. Full members vote, pay dues, and may participate in the joint audit program. Associate members join by request of their governor rather than by enactment of the Compact. They participate in MTC meetings but do not vote, pay dues, participate in the audit program or, in several instances, make the uniform law available to taxpayers.

Uniformity—What It Is and Isn't

The Commission is not a device for pressuring states into taxing corporations in exactly the same way. To the contrary, member states retain complete control over rates, deductions, credits and other provisions of their corporate tax laws. The Compact and the Commission merely give the states a way to resolve inconsistencies in the *ground rules* by which each state determines how much of the income of a multistate business should be attributed to it. In short, the Compact enables the states to divide the business' income in an equitable manner. How heavily each state taxes its share of this income remains completely up to the state.

The United States District Court for the Southern District of New York emphasized that "the Commission is vested with no taxing authority; the taxes which it administers are only those imposed by the respective states and subdivisions in accordance with state law . . . [t]he member states have ceded no sovereignty over tax matters to the Commission." (*U.S. Steel et al. vs. M.T.C. et al.*, 417 F. Supp. 795, emphasis supplied.)

U.S. Steel Case: An Invitation to State Cooperation

“The [formation of the] Multistate Tax Compact . . . symbolized the recognition that, as applied to multistate businesses, traditional state tax administration was inefficient and costly to both state and taxpayer.”

*United States Supreme Court,
in U.S. Steel v. Multistate Tax Commission*

On February 21st, 1978, the United States Supreme Court upheld the Constitutionality of the Multistate Tax Compact (*U.S. Steel et al. vs. M.T.C. et al.*, 434 US 452, 54 L. Ed. 2nd 682 (1978)). The major issue in this case was whether the Multistate Tax Compact fell within Article I, Section 10 (the “Compact Clause”) of the United States Constitution and therefore required Congressional consent. Until the U.S. Steel case, it was never clear precisely how far this clause extended, and the states did not know what agreements, compacts or other cooperative arrangements they could enter into with each other without obtaining the consent of Congress.

The U.S. Steel case established the law in this area and cleared the way for more cooperative state efforts to deal with their common problems.

Basically, the Court applied the test articulated in *Virginia vs. Tennessee*, 148 US 503 (1893), which is, “Does the compact or agreement in question enhance the political power of the states in a manner which encroaches upon the supremacy of the federal government?” The Court deemed it irrelevant that a compact or agreement such as the Multistate Tax Compact might enhance the ability of the states to deal with their common problems, as long as the powers they were exercising through the

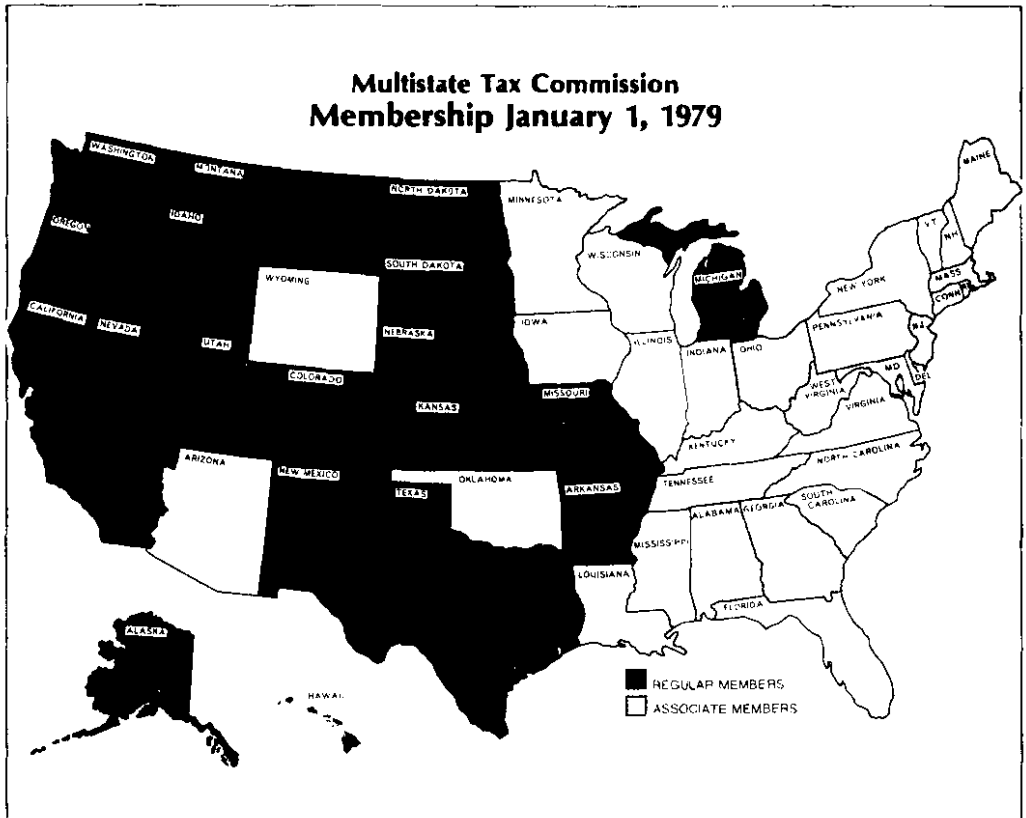
compact were those reserved to them in the Constitution. Thus, even though the Multistate Tax Compact enables the member states to enforce their corporate tax laws more effectively, the Compact itself is merely a way for them to cooperate in exercising powers which each of them already possesses. No encroachment upon federal powers or authority is involved, and hence Congressional consent is not necessary.

The Court specifically acknowledged that its decision was an affirmation of the ability of the states to devise innovative solutions within the federal system. Quoting *New York vs. O'Neill*, 359 US 1 (1959), the Court noted that:

The Constitution did not purport to

exhaust imagination and resourcefulness in devising fruitful interstate relationships. It is not to be construed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual States with a view of increasing harmony within the federalism created by the Constitution. (359 US 6)

Thus, the *U.S. Steel* case opens up unlimited possibilities for state cooperation in many fields, without federal interference or control. This case could prove to be one of the most significant involving federal-state relations which the United States Supreme Court has yet decided.



Litigation Program

The following is a status report on the MTC's litigation and legal assistance program. As mentioned above, the purpose of this program is both to protect state revenues and taxing authority, and more importantly, to encourage compatible interpretations of laws affecting multistate taxpayers in the courts of the different states.

A selected bibliography of published articles on MTC-related issues appears later in this report.

A. Litigation in Which the MTC Is Either Plaintiff or Defendant

Since the U.S. Supreme Court upheld the MTC and its joint audit program in the U.S. Steel case, most corporate taxpayers have been cooperating with MTC joint audits. This cooperation is a credit to these taxpayers, and many have acknowledged privately the merits of the program. Regrettably, a few corporate taxpayers have continued to resist joint audits through legal challenges. U.S. Steel, International Harvester, and Merck currently are the only taxpayers engaged in direct litigation with us. (Two other companies, Goodyear and Kraftco, are parties to this litigation but are not actively pressing it themselves.)

Of the three companies, only International Harvester continues to challenge the MTC's authority to audit them as an agent of

the member states. U.S. Steel is resisting the auditors' request to examine particular information essential to the audit. Merck also has been resisting the auditors' requests for information, but to a lesser degree than has U.S. Steel.

All of the above cases have concerned income tax audits. No sales and use tax audit dispute currently is in litigation. A few corporate taxpayers are being uncooperative regarding waivers of the statute of limitations. However, strong state support plus the MTC's increasing ability to perform audits quickly is reducing this problem substantially.

1. **International Harvester and U.S. Steel Cases** (Boise, Idaho) (MTC et al. v. International Harvester et al., U.S. District Court for Idaho, case #1-76-182)

These are actually part of the same case begun in Boise, Idaho in 1975. After the District Court in New York upheld the Commission in the U.S. Steel case, the Commission tried to begin audits of 10 corporate taxpayers. The taxpayers resisted. The federal court in Boise supported the Commission, but in effect stayed its order pending the outcome of U.S. Steel's appeal to the U.S. Supreme Court. Of the original defendants in this case, two are no longer on the MTC's audit list. Four are cooperating with MTC auditors, and two others are expected to abide by pertinent orders issued by the

court concerning other defendants.

On the other hand, International Harvester is seeking to appeal the Court's October 3, 1978, order requiring it to submit to the audit; and U.S. Steel is seeking to postpone the audit indefinitely. At this writing, the MTC is seeking an order upon U.S. Steel to show cause why it should not be held in contempt of court and fined heavily.

2. **Merck (Oregon)** (MTC et al. v. Merck, Oregon Tax Court #1295, February 27, 1979)

B. Recent Litigation in Which the MTC Has Been a Participant But Not a Plaintiff or Defendant

1. **ASARCO (Idaho)** (ASARCO vs. Idaho, S.C. Docket #12198, March 12, 1979)

In this case (as in the Montana ASARCO case in which the MTC participated last year) the taxpayer sought, in effect, to attribute

"The Idaho State Tax Commission has found the MTC to be a most helpfully in litigating Idaho tax cases. Bill Dexter, the MTC's General Counsel, possesses a wealth of knowledge and experience which would not otherwise be available to our state. In particular, the Multistate Tax Commission's amicus curiae brief to the Idaho Supreme Court in ASARCO v. The Idaho State Tax Commission contributed significantly to the state's victory in that case."

*Theodore V. Spangler, Jr.
Deputy Attorney General
State of Idaho*

After much of this audit had been completed, Merck refused to allow the auditors to examine corporate minutes or to interview key personnel. After a hearing, the Oregon Tax Court granted the Commission's request that it compel Merck to submit to the auditor's requests. Merck has indicated that it will petition for a rehearing.

3. **Completed Sales and Use Tax Cases** (Tacoma, Washington) (MTC et al. v. American Can, U.S. District Court for Western District of Washington, Docket #C75-164T) (MTC et al. v. International Business Machines et al., U.S. District Court for the Western District of Washington, Docket #C76-186T) These two suits in the federal district court in Washington involved the MTC's attempt to enforce compliance with sales and use tax audits. On July 20, 1978, the court issued an order upon the various defendants in the two suits to submit to audits. The order has become final. Of those companies involved, four are now cooperating with our audit and six others have been dropped from the audit list.

much of its net income to states in which this income was not taxable. (Technically, the issues were unitary apportionment and business vs. non-business income.) Early in 1978 MTC General Counsel Dexter and Idaho Assistant Attorney General Theodore Spangler argued this case before the Idaho Supreme Court. The Court upheld Idaho concerning most of the income in question.

2. **Montgomery Ward (Arkansas)** (Montgomery Ward v. Heath, S.C. Docket #78-35, 1978)

This case concerns Arkansas' effort to require Montgomery Ward to report to Arkansas certain income which otherwise would be reported to no state. The MTC filed an amicus brief supporting Arkansas' position. A decision is pending.

3. **Japan Line (California)** (Japan Line Ltd. v. County of Los Angeles, Supreme Court of the United States, October Term 1977, No. 77-1378)

This appeal to the U.S. Supreme Court from the California Supreme Court involved whether Los Angeles County could impose its

property tax on a fairly-apportioned, non-discriminatory basis to cargo containers used in international commerce. The law is clear that the tax is proper with respect to interstate commerce (*Ott v. Mississippi Barge Lines*, 336 U.S. 169 (1948) and *Standard Oil Co. v. Peck*, 342 U.S. 382 (1952)). The taxpayer argued that the commerce clause of the federal Constitution means something different for foreign commerce than it does for domestic commerce, and that the law should be construed as to foreign commerce on the basis of international custom. The MTC filed an amicus brief supporting Los Angeles County because of the possible impact of the case upon state efforts to enforce their income taxes effectively upon multinational corporations.

Shortly before this report went to press, the Supreme Court reversed the California Supreme Court and held the Los Angeles County property tax to be in violation of the Commerce Clause. The Court acknowledged that the tax was perfectly acceptable as applied to interstate commerce, but since the cargo containers were used in international commerce the Court raised other considerations which it deemed controlling in this case.

There are important differences between the issues involved in this case and the income tax enforcement issues with which the Commission is concerned. At this writing, the impact of the Japan Line decision on state tax policies is uncertain.

4. **ARCO** (Colorado) (*ARCO v. State of Colorado et al.*, Docket #27913, 1978)

At issue was whether gains from the disposition of large blocks of going business assets constituted business income subject to apportionment among the states in which ARCO operates.

The assets in question were primarily operating assets acquired in ARCO's merger with Sinclair. MTC General Counsel participated in argument before the Colorado Supreme Court. A decision is pending.

5. **KRAFTCO** (Colorado) (*Kraftco v. Charnes*, Civil Docket #C-62518)

In this lower court case, Kraftco sought to overturn an assessment which was issued on

an estimated basis after the company refused to submit to an MTC audit. Kraftco's argument was basically that it had never refused the audit; but that it merely had not submitted to the audit. MTC staff members Fred Cappetta and Gene Corrigan testified on behalf of the State of Colorado. The court upheld the assessment.

6. **Scott & Williams Inc.** (New Hampshire) (*Scott & Williams v. Board of Taxation*, Docket #78-27, 1978)

This case concerns the jurisdictional standard for determining whether and under what rules sales should be "thrown back" to the state from which shipped when the destination of the sales is in a foreign country. The taxpayer contended for the "internationally accepted" permanent establishment rule while the state argued for the P.L. 86-272 rule. MTC General Counsel Dexter filed an amicus brief and participated in argument on behalf of the State of New Hampshire before that state's Supreme Court. A decision is pending.

7. **U.S. Tobacco** (Pennsylvania) (*Commonwealth vs. U.S. Tobacco*, S.C. Docket #771870)

The Pennsylvania Supreme Court upheld the taxpayer's contention that its salesmen's activities in the state were not such as to subject the taxpayer to the income tax jurisdiction of Pennsylvania. The MTC filed a brief with the U.S. Supreme Court requesting that Court to accept the State of Pennsylvania's appeal from that decision. The U.S. Supreme Court rejected the appeal.

Litigation in Which the MTC Is Not a Party but in Which the MTC's Chief Counsel Is Representing the State as Counsel

Becker Industries Corp. (Idaho) (*Becker Industries v. Idaho State Tax Commission*, Idaho District Court of Ada County, #61916)

The taxpayer here contends that Idaho cannot apply worldwide unitary apportionment to it. MTC General Counsel is conducting the litigation on behalf of Idaho.

"The stated purposes of this Compact are to promote uniformity among state tax systems, ease taxpayer compliance and minimize the risk of duplicative taxation of the multistate taxpayer."

*United States District Court,
Southern District of New York
in U.S. Steel v. Multistate Tax Commission*

"In reviewing the events of 1978, I am sure we all agree that the highlights were the favorable United States Supreme Court decision rendered February 21, 1978, in the protracted *U.S. Steel, et al. v. Multistate Tax Commission* litigation and having Article 9(4) reserved by the U.S. Senate from the US-UK Tax Convention. I wish to personally commend the staff of the Commission for its dedication and the quality of the support provided during this difficult period."

*Martin Huff
Executive Officer
California Franchise Tax Board*

"Mr. Dexter's assistance was invaluable not only because he had discussed [our] case at length and we therefore had the benefit of his expertise, but because the mere appearance of the Commission before the Court added credibility to our arguments."

*Wilbur A. Glahn, III
Assistant Attorney General
State of New Hampshire*

"The Multistate Tax Commission is actively bringing a value system of uniformity and fairness into the administration of state taxation in America. It is working against a concerted effort to create a system of tax preference and exemption. It deserves broad support from the American public."

*Theodore W. de Looze
Chief Tax Counsel
Department of Justice
State of Oregon*

Executive Director's Report

by Eugene F. Corrigan

The past year has been one of progress and change for the Commission. Early in 1978 the U.S. Supreme Court upheld the validity of the Multistate Tax Compact in the U.S. Steel case. Later in the year the U.S. Senate rejected the threatened invasion of state taxing powers embodied in Article IX(4) of the then-proposed United Kingdom Tax Treaty. These victories both strengthened the MTC and posed new challenges.

The Supreme Court victory in the U.S. Steel litigation freed the audit program from the legal impediment under which it had been operating for several years. As a result, the MTC had to bring the program quickly up to peak efficiency so that it could fill the needs of the member states. This meant not only completing more audits for more states, but also preparing the audit reports in such a way as to meet the requirements of the individual states.

To this end, the new position of national audit manager was established. This position has been filled by Storm A. Allman. Mr. Allman immediately addressed himself to producing an income tax audit manual based upon the procedures generally used by Commission auditors. Subsequent meet-

ings with state audit personnel and with a newly-formed Technical Advisory Committee of the Tax Executives Institute (an organization of top level corporate tax personnel) have refined the procedures and requirements in the completed manual. Although the manual is meant only to establish guidelines for the auditors, it does help each taxpayer to know generally how its audit will be performed and what information will be required. Upon request, the manual is now furnished to each taxpayer before its audit begins.

A sales and use tax audit manual is also being developed; and corporate advice will again be sought to eliminate any unnecessary burden on taxpayers and to take advantage of all available opportunities to increase audit efficiency. We expect that this sales and use tax manual will be completed by the end of the fiscal year.

In addition to developing uniform audit procedures, Mr. Allman has introduced management concepts which will improve both the quality and the productivity of the audit program in the coming years.

The audit program has proved highly productive for the participating states during the

past year. Twelve corporate audits were completed, with an average of close to ten states participating in each audit. Over 450 tax years were included.

The return to the participating states was over twenty-six dollars for each dollar the states put into the program. This return should increase as the audit program develops. However, the MTC is seeking to put less emphasis on the dollar return of the audit program, and to stress its value in promoting efficiency and convenience for both member states and corporate taxpayers.

The Commission currently is planning to perform more audits in the immediate vicinity of its two audit offices in Chicago and New York, thereby increasing its coverage while taking advantage of the economies of auditing locally. Currently, however, audits are in process on several of the corporations which had been plaintiffs or intervenors in the U.S. Steel case, even though these taxpayers are not based close to our audit offices. Several of those audits are proceeding on a relatively congenial basis. A majority of them should be completed by the end of the 1978 /1979 fiscal year.

New micro-data processing technology offers unexplored opportunities to state and MTC tax auditors. Storm Allman currently is investigating a number of data processing possibilities which could cut

greatly the time and expense necessary for field audits of corporate taxpayers.

Presently, MTC auditors work out of offices in New York and Chicago. The growing importance of West Coast firms is creating a need for more audit capacity in that region. The member states are asking the MTC to establish an audit office there, and this will be done as soon as the budget permits.

As important as its own audit program are the MTC's efforts to foster improved corporate tax enforcement among its member states. These efforts will continue during calendar 1979. An income tax audit seminar will take place in Denver in May. A sales and use tax audit seminar may follow later in the year. A litigation seminar is planned for August for attorneys who litigate tax matters for their states. A seminar for state legislators is also in the planning stage. And the Commission will co-sponsor a forestry taxation seminar which will be held in Cambridge, Massachusetts in December.

The Multistate Tax Compact was originally developed in 1966 to provide an alternative to then-pending federal legislation which would have greatly impaired the ability of the states to apply their tax laws effectively to businesses operating in many states. Although federal legislative proposals



MTC Executive Director Eugene Corrigan (left), and MTC Chairman (and Colorado Revenue Director) Alan Charnes.

have been unsuccessful, they continue to arise in Congress. Bills introduced by Senator Charles Mathias of Maryland have been the main threat along these lines in recent years. Those bills have purported to be a response to lack of uniformity among state tax statutes and procedures. Yet, the bills have contained virtually no provisions which



MTC National Audit Manager Storm Allman

would increase uniformity in those areas. Rather, they would simply create exemptions for many large multistate and multinational enterprises which have demonstrated no entitlement to such preferential treatment.

In 1978 the major federal threat to the states in this area was a provision in a tax treaty with the United Kingdom. The provision, Article IX(4), would have limited greatly the ability of the states to enforce effectively their tax laws concerning multinational corporations. On its face, the provision would have applied only to the U.S. subsidiaries of parent corporations based in the U.K. However, had Article IX(4) been approved, future treaties with other nations would have followed suit. Eventually U.S.-based companies would have demanded from Congress equal exemption from state tax practices.

The use of the obscure tax treaty process to impose restrictions upon state taxing powers

was virtually without precedent. Making matters worse, the Treasury had not consulted with the states before negotiating away their taxing powers; nor did it even extend to the states the simple courtesy of directly informing them afterwards. Instead, state officials stumbled upon Article IX(4) in a routine Treasury press release.

The states reacted vigorously to this new Executive Branch incursion upon their powers. The MTC joined with other organizations and individual state officials to impress upon the Senate that the secret treaty process is a totally unacceptable means for resolving disputes within the federal system. After a long uphill battle, led by Senators Frank Church of Idaho and Ted Stevens of Alaska, the Senate excised Article IX(4) from the treaty, signalling a victory for the integrity of the federal system and against secretly-negotiated preferential tax treatment.

That victory may have set the stage for a new dialogue between corporate taxpayers and the states. There now seems to be a greater willingness on the part of some corporate tax managers to accept uniformity as a proper response to non-uniformity. This appears also to be true of state tax administrators who have not always supported the concept of uniformity.

Therefore, the Multistate Tax Commission currently is exploring the possibility of finding some agreement between states and corporate businesses regarding the problems which arise when the tax laws and procedures of different states do not mesh with each other. The Commission participated in one such effort in 1969 and 1970, but that effort failed. A renewed effort now might be productive. The Commission is concerned that no opportunity be lost to produce an amicable resolution to the controversy between corporate business and the states which has continued for some twenty years. Against its wishes, the Multistate Tax Commission has found itself at the center of that dispute for some ten of those years. It would be appropriate if the Commission were to be the instrument through which accord could be reached. The benefits could be great for everyone.

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"The member states have ceded no sovereignty over tax matters to the Commission."

*United States District Court
Southern District of New York
in U.S. Steel v.
Multistate Tax Commission*



Ginger Hudson, assistant to MTC National Audit Manager

The Multistate Tax Commission: Retrospect and Prospect

by George Kinnear

Remarks delivered at the eleventh annual meeting of the Multistate Tax Commission, Denver, Colorado, June 7, 1978.

(Editors Note: Mr. Kinnear was the first Chairman of the Multistate Tax Commission after its founding in 1967, and was also co-founder and co-chairman of the Ad Hoc Committee. Consisting of equal numbers of state officials and corporate tax representatives, the Ad Hoc Committee worked for over a year to try to resolve the controversy between the two groups regarding how a corporation's income should be divided among the different states in which it operates.

These edited remarks, reproduced here largely as they were spoken, offer a founder's view of the potential and promise of the MTC.)

The Multistate Tax Compact offers the most exciting promise for progress in the field of taxation. Its possibilities for good are unlimited. It is not a new mechanism for dominating the states, but rather an association to stimulate action, state by state, by providing the necessary information which is not now available regarding many important problems, and by providing a vehicle for cooperative state action. At the time

of its formation the MTC published a statement that, "the Multistate Tax Compact is a disciplined attack upon the entire problem of multistate business taxation. The Compact provides a definitive and effective answer for both government and business."

The filing of the U.S. Steel case in 1972 created a threat to the existence of the Commission. As a practical matter, it blocked states from joining as regular members. It lost us the support of many friends and supporters in the business community who adopted a "wait and see" attitude. In general, it seriously hampered the activities of the Commission.

This was a serious threat. As you know, those who have been opposed to the Commission made strong efforts during the extensive period of 1972 to 1978 to blow the MTC out of the water by campaigning to pull states out of the Compact. They tried in my state, Washington, but were unsuccessful.

It is imperative, in my opinion, that the Commission at once develop a formal program to enlarge its regular membership. You certainly need to gain support from several more major industrial states, and to have a stronger geographic

spread of member states. For the Commission to achieve the national stature and quality of work that I conceive for it, we must have at least three quarters of the states contributing to and participating in its activities.

We all know that there are problems in the taxation of multistate businesses and that new ones will constantly arise. I am convinced that Washington, D.C., cannot solve these problems without doing violence to our federal system and

through which to consider these new problems efficiently.

I believe that it is a significant advance in state tax administration to provide for business a single place to which it may bring its tax problems or recommendations arising out of multistate operations. Taxpayers never came to me in Washington to discuss their tax problems in other states. Why would such a conversation with any one administrator offer hope to the business taxpayer of

“Voluntary state cooperation is far better than arbitrary interference from Washington. The Multistate Tax Commission really works for its member states.”

Arthur Link, Governor
State of North Dakota

without creating new problems for our economic system. The tragedy is that, unless the states move to solve these problems independently and cooperatively, the federal government will act and then it will be too late.

A Columbia Law Review study, published in 1975, states this problem well, I believe: “An MTC independent of constant Congressional supervision is preferable for purposes of federalism. Although the problems of state taxation of interstate commerce are numerous, they should be handled by the states. Encroachment by the federal government is not a serious problem, as the history of unpassed Congressional bills demonstrates. The real problem is to avoid forcing Congress to assume a responsibility that the states have neglected—the responsibility of gearing state systems to be collectively fair to the myriad interstate enterprises.”

In addition to gaining the support of more states, the MTC must also regain and expand the support of the business sector if the Commission is to be effective as a national organization.

Multistate business activities are certainly going to increase and will undoubtedly change. The technological, transportation, and communication revolutions will inevitably alter many business practices. This will cause new and presently unforseen problems. Along with this will come intensified demands for uniformity, simplicity, and equity in taxation. The Commission provides a medium

solutions prior to the creation of the Multistate Tax Commission? The Commission gives a multistate business an opportunity to deal with the states through one agency instead of through as many as fifty. Without this agency, it is virtually impossible for any company to work toward achieving uniformity in either laws or regulations by chasing around from state capital to state capital and inevitably having to backtrack as a result of variations in individual conferences.

More important, perhaps, than all other points, is this one: The Commission has available the best tax minds in a growing majority of states. It also has available as consultants a number of the best tax authorities in the country outside of government. I firmly believe there is not the slightest reason why this organization cannot create for itself a stature and reputation that in its special field could compare with an organization such as the Brookings Institution.

The abilities that the Commission will command will be an invaluable supplement to the skills and knowledge of each of the states, particularly those with limited research personnel and facilities. This will provide a major force for improved state tax administration across the nation at a very nominal cost to each state. This alone constitutes a most valuable contribution to good government, and unquestionably to states and taxpayers alike.

I am not suggesting that the MTC, wilfully or

otherwise, become a 4th level of government, or that it should or might take away some degree of state sovereignty. The Compact is not written that way; and you have taken administrative actions which have provided further protection.

All too many state tax administrators do not take a large view of their leadership assignment. Too many simply tend the machinery of their own assigned task. They may do their job very well indeed, but they are not pursuing a vision of what is needed and of what can be accomplished.

Measuring the dimensions of the governmental predicament which confronts the people of this country requires that we face up to a basic development of recent years. We are dealing with a reallocation of governmental power that is quickening and will soon change the entire character of our Constitutional structure.

A generation ago, during the height of the New Deal, a group of farsighted individuals realized that, if the states were to remain strong partners in the federal system despite the great growth of federal activity, they would have to learn to cooperate among themselves. Out of their efforts came a number of institutions for interstate collaboration, generally grouped around the Council of State Governments and a number of associations of state officials.

Like its precursor, federalism-without-Washington also involves equality. Every state is equally represented in those activities in which it is a

partner and shares equally in policy-making for the entire partnership. In an age that seeks to increase democratic participation to minimize coercion in human affairs, such expressions of the federal principle are fully consonant with the most current political ideas.

At the same time it is precisely this voluntarism and equality-among-states that make federalism-without-Washington so fraught with difficulties. True voluntarism requires that agreement must be obtained among all partners if the partnership as a whole is to act.

The attempt to get all or any number close to 50 states to agree on common policy is bound to be a difficult one without outside pressure. I have suggested that you might utilize a regional approach, at first, within the MTC organization and administration. Regional scope does tend to ease attempts toward interstate collaboration. Various programs of interstate sharing provide potential for cooperation without pressure from Washington, D.C.: the sharing of facilities, the sharing of personnel, the sharing of administration, the development of common laws or standards, the development of common policies. Elements of each are to be found within the framework of the MTC.

There is no reason why the use of federalism-without-Washington is not fully as appropriate for developing common nationwide standards as is the use of the power of Washington.



Idaho audit supervisor Frank Medlin



State audit chiefs review MTC audit manual. From top: George Weber, Oregon; Horace Gailey, Utah; Ted Middle, Colorado; and Paul Erskine, California.

Conclusion

We have read much in recent years of the rapidity with which our economy and our society are changing. We need the capacity to recognize our problems, to understand their shifting characteristics, to be ready to discover new solutions, and to put them into effect.

We must consciously give up the "short term" answers, or recognize them as such, and seek through broader knowledge the long range programs essential to match the needs of the hour.

The continuing vitality of state and local government affords the most solid evidence that our federal system is still an asset and not a liability. It requires tolerance of diversity and is not easy to operate. But it does permit a broad degree of flexibility which makes it adaptable to crises. Here is where we come in!

Tax administrators are an integral part of the leadership of state government, of a vital portion of our system of federalism. We dare not be satisfied with merely minding the store, tending the machinery of our department. We must not contribute to the public inertia that is prevalent in history.

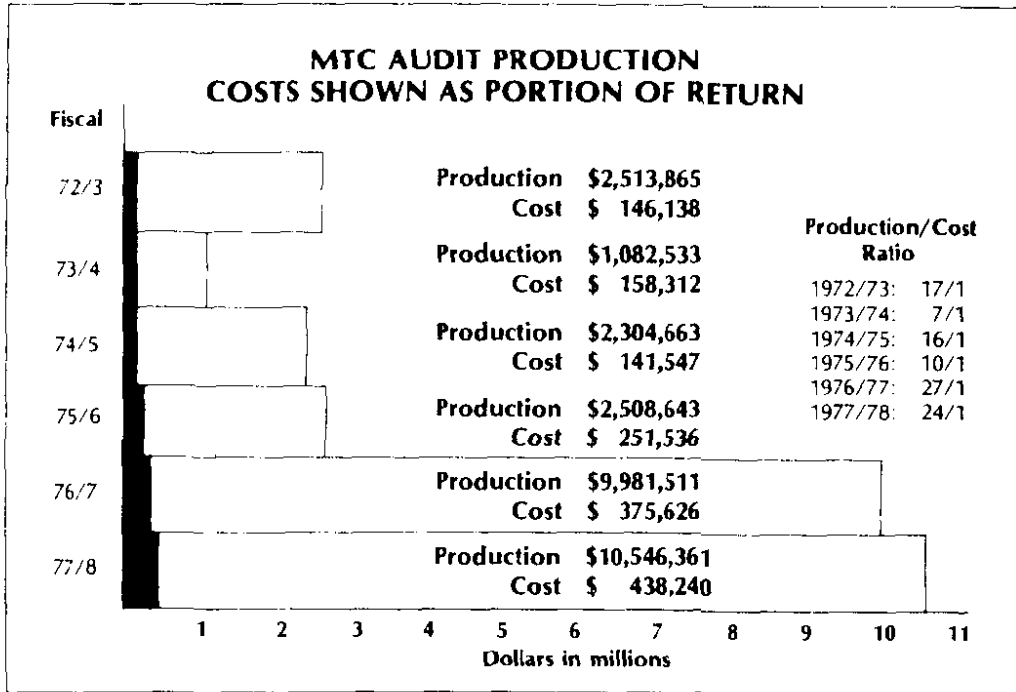
Each of us has a primary responsibility to his own state, but no one of us can afford to be narrow in his vision of this obligation.

Inequitable or inadequate tax policies in a few states can cause loss of public confidence in all state governments. Modern communication facilities will see to that.

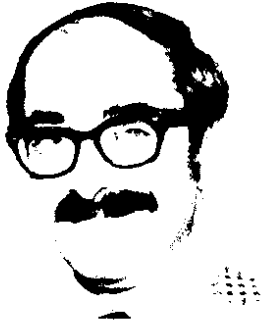
Each of us must understand and be concerned about the economic impact of our state tax policies within and without the state. Our economy has become regional and national, and each state government must accept responsibility for the impact of its decisions beyond its borders.

Finally, we must resist the overt pressures to subordinate states to a position of agencies of the federal government, and we must realize that no state can stand against this pressure alone.

With the Constitutional challenge removed, the MTC now stands as a viable and flexible vehicle of state government, capable of developing solutions for each of these significant problems. It is a reality, a fact; and, with your determination and commitment, it can develop as both a protection for and an advancement of the position of the states in the federal system.



Multistate Tax Commission Officers



Alan N. Charnes
Chairman

Executive Director
Department of Revenue, Colorado



Gerald N. Goldberg
Vice Chairman

Director
Department of Revenue, Missouri



Roy Nickson
Treasurer

Executive Director
Department of Taxation, Nevada

The three officers are also members of the Executive Committee. Terms of the above officers and committee members end June 30, 1979.

Executive Committee Members



Kenneth Cory

State Controller, California



Bob Bullock

Comptroller of Public Accounts, Texas



Jenkin L. Palmer

Commissioner, State Tax Commission,
Idaho



Mary L. Craig

Director of Revenue, Montana

**Ex Officio Member
of Executive
Committee
Former Commission
Chairman**



Byron L. Dorgan

Tax Commissioner, North Dakota

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Tax Administrators Associate Member States

The Commission has made provision for associate membership by Section 13 of its bylaws, as follows:

13. Associate Membership

(a) Associate membership in the Compact may be granted, by a majority vote of the Commission members, to those States which have not effectively enacted the Compact but which have, through legislative enactment, made effective adoption of the Compact dependent upon a subsequent condition or have, through their Governor or through a statutorily established State agency, requested associate membership.

(b) Representatives of such associate members shall not be entitled to vote or to hold a Commission office, but shall otherwise have all the rights of Commission members.

Associate membership is extended especially for states that wish to assist or participate in the discussions and activities of the Commission, even though they have not yet enacted the Compact. This serves two important purposes: (1) it permits and encourages states that feel they lack knowledge about the Commission to become familiar with it through meeting with the members, and (2) it gives the Commission an opportunity to seek the active participation and additional influence of states which are eager to assist in a joint effort in the field of taxation while they consider or work for enactment of the Compact to become full members.

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* MTC Chairman, July 1, 1974-June 30, 1975

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Executive Director

Eugene F. Corrigan became the Commission's first staff member in 1969, after resigning his position as chief counsel of the Illinois Department of Revenue's Chicago office. His prior experience included three years as a Sears, Roebuck tax attorney and ten years with the Illinois Department of Revenue. During the mid-sixties, he was also a partner in the Chicago law firm of Stradford, Lafontant, Fisher & Corrigan. He is a graduate of Princeton University and of John Marshall Law School of Chicago. He offices at the Commission's headquarters in Boulder, Colorado.

Deputy Executive Director

Jonathan Rowe has been working on tax policy issues for seven years. A native of Massachusetts, he is a graduate of Harvard College and of the University of Pennsyl-

vania Law School. In 1971, he joined the Public Citizen Tax Reform Research Group. He continued there until 1976, when he became a revenue and budget advisor to Marion Barry, now Mayor of the District of Columbia. He joined the MTC in 1977. As Deputy Executive Director, he presents Commission positions to and maintains liaison with government officials, the press, interested organizations and the various states. He is the joint author of *Tax Politics*, an analysis of the nation's tax system; and is author and editor of other tax-related articles and publications.

Chief Counsel

William D. Dexter has been an active barrister in state revenue matters since 1949, when he became an assistant attorney general in Michigan's Treasury Department. He won many important cases there, including the *Armco* and *Cleveland Cliffs* cases, and

rose to Chief Attorney for Tax Matters. During those years, his wife studied medicine and, after 17 years in general practice, became a psychiatrist. In 1971, they moved to Olympia, Washington, where she started her psychiatric practice and where he became an assistant attorney general for tax matters assigned to the Department of Revenue. In 1975 he joined the Multistate Tax Commission. As Chief Counsel, his first assignment was to expedite the then-languishing case of *U.S. Steel, et al. v. Multistate Tax Commission, et al.* He pursued that case to early fruition in the U.S. Supreme Court. Meanwhile, he won the *Hertz* case in the Washington Supreme Court. He has participated in innumerable other cases on behalf of the Commission and states: (1) via briefs *amici curiae* in the U.S. Supreme Court, and in the Supreme Courts of Colorado, Idaho, Illinois, Louisiana, Michigan, Missouri, Oregon, Washington, Arkansas, and New Hampshire; (2) in oral arguments in all of these states except Arkansas; and (3) in cases before federal courts in Idaho, New York, North Dakota, Washington, and the 6th, 8th and 9th Circuit Courts of Appeal. He has been of counsel to numerous state legal staffs in regard to a variety of state and local tax matters. His articles have appeared in the *Vanderbilt Law Review*, *The Urban Lawyer* (an American Bar Association publication), *Tax Notes* magazine, and in various other publications. He is a leading state government barrister conducting litigation on behalf of uniformity in the application of state taxes to interstate business. The Commission makes his services available to the states in matters which involve interstate tax disputes.

National Audit Manager

Storm Allman joined the Multistate Tax Commission staff in mid-1978. He is a graduate of the University of Wisconsin (B.S.) and of the University of Southern California from which he earned another B.S. and two M.B.A.'s (with majors in quantitative analysis, finance and taxation). His background includes experience as a Senior Accountant

(Gallenkamp Stores), Acquisitions Manager (Whittaker Corporation), Materials Manager (A Walter Kidde subsidiary), EDP Consultant (Paramount Studios), Audit Manager (Alexander Grant & Co.) and Corporate Controller (Standy Corporation). His assignment is to apply advanced management concepts and controls to maximize the efficiency of the Commission's audit program.

Midwest Regional Audit Manager

Fred Cappetta has been with the Commission for seven years. His prior experience included three years with the California Board of Equalization and seventeen with the California Franchise Tax Board, all in Chicago. Most of his career has been devoted to resolving complicated tax issues between California or the MTC and the top management of very large taxpayers. A graduate of Roosevelt University, he has for years been a featured lecturer at the annual Tax Executives Institute seminars at both Michigan State University and Indiana University; and he has been a frequent lecturer and instructor at workshops and training programs among the various states. In 1974 he made the first state income tax presentation ever delivered as a part of New York University's annual Institute on Federal Taxation.

Eastern Regional Audit Manager

Morton Kotkin was appointed Eastern Regional Manager effective November 14, 1978. Prior to this appointment, he served with the Commission as a Senior Auditor for four years. Before joining the MTC in 1974, he had been an auditor and field audit supervisor with the New York office of the California State Board of Equalization for 12 years, performing and supervising sales, use, property and cigarette tax audits of California's largest out-of-state taxpayers. A native of Brooklyn, New York, he graduated from New York University in 1961 with a Bachelor of Science Degree in Accounting.

Appendix A

APPORTIONMENT OF 1978-79 BUDGET

State	1974-75 #Revenues under Compact	% to Total	*Appor- tioned Share of 10%	*Appor- tioned Share of 90%	Total Share of 1978-79 Budget
Alaska	\$ 115,423,200	.6810	\$1,305.26	\$1,519.99	\$ 2,825.25
Arkansas	391,660,885	2.3108	1,305.26	5,157.71	6,462.97
California	7,190,203,000	42.4230	1,305.26	94,688.14	95,993.40
Colorado	562,259,995	3.3174	1,305.26	7,404.44	8,709.70
Hawaii	440,141,865	2.5969	1,305.26	5,796.28	7,101.54
Idaho	224,582,934	1.3251	1,305.26	2,957.62	4,262.88
Kansas	516,786,161	3.0491	1,305.26	6,805.59	8,110.85
Michigan	2,359,747,563	13.9228	1,305.26	31,075.69	32,380.95
Missouri	784,333,283	4.6277	1,305.27	10,329.03	11,634.30
Montana	110,701,206	.6531	1,305.27	1,457.72	2,762.99
Nebraska	247,501,000	1.4603	1,305.27	3,259.39	4,564.66
Nevada	100,543,821	.5932	1,305.27	1,324.02	2,629.29
New Mexico	329,996,000	1.9471	1,305.27	4,345.93	5,651.20
North Dakota	162,503,754	.9588	1,305.27	2,140.04	3,445.31
Oregon	529,652,000	3.1250	1,305.26	6,975.00	8,280.26
South Dakota	77,116,673	.4550	1,305.26	1,015.55	2,320.81
Texas	1,629,203,866	9.6125	1,305.26	21,455.10	22,760.36
Utah	318,965,184	1.8819	1,305.26	4,200.40	5,505.66
Washington	857,499,000	5.0593	1,305.26	11,292.36	12,597.62
	\$16,948,821,390	100.0000	\$24,800.00	\$223,200.00	\$248,000.00

For fiscal year ending June 30, 1975

* 10% in equal shares; 90% on the basis of tax revenues

Appendix B

PROGRESS IN UNIFORMITY THROUGH ADOPTION OF THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT AMONG THE STATES

Alabama (1)	Indiana (2)	New Mexico
Alaska	Kansas	North Carolina
Arkansas	Kentucky	North Dakota
California	Maine	Oklahoma (7)
Colorado (2)	Massachusetts (4)(5)	Oregon
District of Columbia	Michigan	Pennsylvania
Florida (4)	Missouri (2)	South Carolina
Hawaii (2)	Montana (2)	Tennessee
Idaho	Nebraska (2)	Utah (2)
Illinois	New Hampshire (6)	Virginia

Georgia is sometimes considered to be a UDITPA state; but its payroll and sales factors are substantially different.

West Virginia has adopted UDITPA but eliminated the sales factor.

NOTES:

- (1) Alabama's corporate income tax statute is vague on how the state is to determine what portion of a corporation's income is to be attributed to the state for tax purposes. On September 6, 1967, the Alabama Legislature enacted the Multistate Tax Compact, which includes UDITPA, subject to congressional enactment of a Multistate Tax Compact Bill. On September 12, 1967, the Alabama Department of Revenue promulgated regulations which adopt the UDITPA provisions as the basis on which to determine the amount of a corporation's income which is attributable to a state.
- (2) This state adopted UDITPA by enacting the Multistate Tax Compact.
- (3) Florida enacted the Multistate Tax Compact in 1969. When it enacted its corporate income tax in 1971, it deleted UDITPA from its statutes. Yet its corporate income tax statute is substantially in accord with UDITPA.
- (4) Both Florida and Massachusetts now double-weight the sales factor in the formula. Thus the weights of the factors are: sales 50%, property 25%, and payroll 25%. This constitutes a serious divergence from the uniform laws which jeopardizes uniformity.
- (5) Massachusetts is included as a UDITPA state because it closely follows the UDITPA apportionment formula. Massachusetts adopted the 3-factor formula in 1920 and UDITPA codified that formula. However, rather than source, UDITPA adopted destination for sales, subject to the condition that the seller be subject to the jurisdiction of the destination state. In 1946, Massachusetts changed to destination basis, but subject to the current modification that no-nexus sales are Massachusetts sales if they are not sold by third state based salesmen. Unlike UDITPA, all income, including intangible income, is put into the Massachusetts tax base with the sole exclusion of dividends received from corporations, but not trusts or DISCS, in which the receiving corporation owns more than 15% of the voting stock.
- (6) New Hampshire is included here as a UDITPA state even though its property factor is somewhat different.
- (7) Although Oklahoma has not technically adopted UDITPA, its law appears to be sufficiently close to enable Oklahoma to be considered a UDITPA state.

Appendix C

SALES AND USE TAX JURISDICTION LIMITATION STATEMENT

The following is the Sales and Use Tax Jurisdiction Limitation Statement with which all states, to the best of our knowledge, comply:

SALES AND USE TAX JURISDICTION STANDARD

A vendor is required to pay or collect and remit the tax imposed by this Act if within this state he directly or by any agent or other representatives:

1. Has or utilizes an office, distribution house, sales house, warehouse, service enterprise or other place of business; or
2. Maintains a stock of goods; or
3. Regularly solicits orders whether or not such orders are accepted in this state, unless the activity in this state consists solely of advertising or of solicitation by direct mail; or
4. Regularly engages in the delivery of property in this state other than by common carrier or U. S. mail; or
5. Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

This state does not seek to impose use tax collection requirements on any retailer over whom the above standard does not confer jurisdiction in this state.

Appendix D

UNIFORM SALES & USE TAX CERTIFICATE FORM

**SALES AND USE TAX CERTIFICATE
MULTI-JURISDICTION**

(See reverse side for instructions)

Issued to: Address:

I certify that: Name of Firm (Buyer)

Street Address or P. O. Box No.

City State Zip Code

engaged as a registered:

Wholesaler
 Retailer
 Manufacturer
 Lessor (See note on reverse side)
 Other (Specify)

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale resale, ingredients or components of a new product to be resold, leased or rented in the normal course of our business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
City or State	State Registration or ID No.	City or State	State Registration or ID No.
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
City or State	State Registration or ID No.	City or State	State Registration or ID No.
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
City or State	State Registration or ID No.	City or State	State Registration or ID No.
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

I further certify that if any property so purchased tax free is used or consumed by the firm as to make it subject to a Sales or Use Tax we will pay the tax due direct to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

General description of products to be purchased from the seller:

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

Authorized Signature (Owner, Partner or Corporate Officer) Title Date

Reverse Side

TO OUR CUSTOMERS

In order to comply with the majority of state and local sales tax law requirements, it is necessary that we have in our files a properly executed exemption certificate from all of our customers who claim sales tax exemption. If we do not have this certificate, we are obligated to collect the tax for the state in which the property is delivered.

If you are entitled to sales tax exemption, please complete this certificate and send it to us at your earliest convenience. If you purchase tax free for a reason for which this form does not provide, please send us your special certificate or statement.

This form of certificate has been determined to be acceptable to the following states:

Alabama	Maine	Rhode Island
Alaska	Massachusetts	South Carolina
Arizona	Maryland	South Dakota
Arkansas	Michigan	Tennessee
Colorado	Minnesota	Texas
Connecticut	Missouri	Utah
District of Columbia	Nebraska	Vermont
Delaware	Nevada	Washington
Florida	New Mexico	Wisconsin
Illinois	North Dakota	West Virginia
Iowa	Oklahoma	Wyoming
Kansas	Pennsylvania	

NOTE: Arizona law provides that a seller will be held liable for sales tax due on any sales with respect to which an exemption certificate is found to be invalid, for whatever reason.

Illinois, Iowa, and South Dakota do not have an exemption on sales of property for subsequent lease or rental.

CAUTION TO SELLER In order for this certificate to be accepted in good faith by the seller, the seller must exercise care that the property being sold is of a type normally sold wholesale, resold, leased, rented, or utilized as an ingredient or component part of a product manufactured by the buyer in the usual course of his business. A seller failing to exercise due care could be held liable for the sales tax due in some states or cities.

Misuse of this certificate by the seller, lessor, buyer, lessee, or the representative thereof may be punishable by fine, imprisonment or loss of right to issue certificates in some states or cities.

Appendix E

Report of Certified Public Accountants

R
S
A
RHODE,
SCRIPPER
&
ASSOCIATES

EASTPARK OFFICE CENTER
1690 THIRTY-EIGHTH STREET
BOULDER, COLORADO 80301
(303) 444-0471

Ronald H. Rhode, CPA
Larry L. Scripper, CPA
Michael D. Weatherwax, CPA

A. W. Schone, CPA, Retired

CERTIFIED PUBLIC ACCOUNTANTS

Multistate Tax Commission
Boulder, Colorado

We have examined the balance sheet of Multistate Tax Commission at June 30, 1978 and the related statements of changes in fund balance, revenue, and incurred expense and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of Multistate Tax Commission at June 30, 1978 and the results of its operations, changes in fund balance, and changes in financial position for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Rhode, Scripper & Associates

Rhode, Scripper & Associates
Certified Public Accountants

July 24, 1978

MULTISTATE TAX COMMISSION

BALANCE SHEET

June 30, 1978

ASSETS

CURRENT ASSETS		
Cash		\$ 34,423
Certificates of deposit		130,000
Insurance refund receivable		1,496
Assessments and audit reimbursements receivable		50,660
Prepaid insurance		<u>936</u>
TOTAL CURRENT ASSETS		217,515
PROPERTY AND EQUIPMENT		
Office furniture and equipment	\$ 32,522	
Less accumulated depreciation	<u>18,791</u>	\$ 13,731
Leasehold improvements	1,885	
Less accumulated amortization	<u>1,013</u>	<u>872</u>
TOTAL PROPERTY AND EQUIPMENT		14,603
OTHER ASSETS		
Expense account advances	4,500	
Deposits	1,621	
Prepaid and unamortized past service pension costs		<u>9,119</u>
TOTAL OTHER ASSETS		<u>15,240</u>
TOTAL ASSETS		<u>\$247,358</u>

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES		
Accounts payable		\$ 10,857
Payroll taxes payable		9,280
Accrued retirement provision		4,149
Assessments and audit reimbursements collected in advance		<u>64,393</u>
TOTAL LIABILITIES		88,679
FUND BALANCE--Exhibit B		
Reserve for employees' retirement	\$ ---	
Unappropriated fund balance		<u>158,679</u>
TOTAL FUND BALANCE		<u>158,679</u>
TOTAL LIABILITIES AND FUND BALANCE		<u>\$247,358</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION

STATEMENT OF REVENUE AND INCURRED EXPENSE

For the year ended June 30, 1978

REVENUE	
Assessments	\$618,850
Interest	12,149
Other revenue	<u>3,000</u>
TOTAL REVENUE	633,999

INCURRED EXPENSE	
Salaries	\$405,651
Insurance--employees	25,381
Pension plan and retirement provision	68,241
Travel--staff	75,450
Travel--other	5,770
Insurance--general	1,143
Rent	36,051
Office supplies	3,897
Postage	4,063
Printing	17,578
Telephone	20,347
Publications	3,522
Conferences, committee meetings and hearings	1,806
Accounting	4,676
Legal and actuary fees	31,084
Depreciation and amortization	3,609
Miscellaneous expense	<u>2,735</u>
TOTAL INCURRED EXPENSE	<u>711,004</u>
EXCESS OF INCURRED EXPENSE OVER REVENUE	<u>\$(77,005)</u>

MULTISTATE TAX COMMISSION

STATEMENT OF CHANGES IN FUND BALANCE

For the year ended June 30, 1978

	Reserve for Employees' Retirement	Unappropriated Fund Balance	Total Fund Balance
BALANCE--June 30, 1977	\$ 15,877	\$ 219,807	\$235,684
Funds transfer	(15,877)	15,877	---
Excess of incurred expense over revenue--Exhibit C	---	(77,005)	(77,005)
BALANCE--June 30, 1978	<u>\$ ---</u>	<u>\$ 158,679</u>	<u>\$158,679</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION

STATEMENT OF CHANGES IN FINANCIAL POSITION
For the year ended June 30, 1978

SOURCES OF WORKING CAPITAL

From Operations:

Excess of revenue over incurred expenses--Exhibit C	\$(77,005)
Add charges to operations not requiring the use of working capital:	
Depreciation and amortization	3,609
Pension plan past service costs paid in prior years and expensed currently	<u>1,409</u>
Total Provided by Operations	<u>(71,987)</u>

TOTAL SOURCES OF WORKING CAPITAL (71,987)

USES OF WORKING CAPITAL

Purchase of office equipment and leasehold improvements	3,506
Expense account advances	<u>600</u>

TOTAL USES OF WORKING CAPITAL 4,106

NET DECREASE IN WORKING CAPITAL (76,093)

Working Capital--June 30, 1977 204,929

WORKING CAPITAL--June 30, 1978 \$128,836

CHANGES IN COMPONENTS OF WORKING CAPITAL--INCREASE (DECREASE)

Current Assets:

Cash	\$ 34,398
Certificates of deposit	(20,000)
Insurance refund receivable	1,496
Assessments and audit reimbursements receivable	(30,838)
Prepaid expense	936

Current Liabilities:

Operating account overdraft	2,434
Accounts payable	(2,945)
Payroll taxes payable	(2,575)
Accrued retirement provision	5,394
Assessments and audit reimbursements collected in advance	<u>(64,393)</u>

NET DECREASE IN WORKING CAPITAL \$(76,093)

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION
NOTES TO FINANCIAL STATEMENTS
June 30, 1978

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Multistate Tax Commission was organized in 1967. It was established under the Multistate Tax Compact which, by its terms, became effective August 4, 1967. The basic objective of the "Compact" and, accordingly, the Commission is to provide solutions and additional facilities for dealing with state taxing problems related to multi-state business.

The following accounting policies, together with those disclosed elsewhere in the financial statements, represent the significant accounting policies followed in presenting the accompanying financial statements.

(a) Method of Accounting

The Commission uses the accrual method of accounting whereby assessment revenue is recognized in the fiscal year of assessment. Contributions by states for specified purposes are recognized as income during the year of receipt. Other earned revenue is recognized as it is earned. Expenses are recognized as they are incurred.

(b) Property and Equipment

All property and equipment is recorded at cost. Depreciation is provided for on the straight-line basis over the estimated useful lives of the assets. Amortization of leasehold improvements is provided for on the straight-line basis over the term of the lease.

NOTE 2 - INCOME TAXES

In the opinion of legal counsel, the Commission is exempt from Federal income tax as well as from other Federal taxes as an organization of a group of States or as an instrumentality of those States. Therefore, no provision has been made in the financial statements for Federal income taxes.

NOTE 3 - PENSION PLAN

The Commission has a defined benefit pension plan covering substantially all of its employees. The total pension expense for the year was \$68,241, which includes amortization of prior service costs over 10 years. The Commission's policy is to fund pension cost accrued. The actuarially computed value of vested benefits as of June 30, 1978, is fully funded.

The Commission also accrues 16.7% of the gross salaries of the personnel on leave of absence from State taxing authorities and makes contributions to their respective plans, if employment with the Commission is terminated and the employee returns to State employment before the expiration of the leave of absence. The current year's accrual and corresponding expense attributable to State employees on leave of absence amounted to \$2,344, which is included in the total pension expense aforementioned.

Actuarially determined normal pension plan costs for the year ending June 30, 1979 are \$57,338 based upon covered payroll at June 30, 1978.

NOTE 4 -- COMMITMENTS

The Commission rents its primary office facilities in Boulder, Colorado, and secondary office facilities in New York, Illinois, Washington, D.C., and Washington State, under lease agreements with terms expiring on various dates through January 1, 1982. These leases provide for the following minimum annual rentals exclusive of utility charges:

<u>Fiscal Year Ended</u>	<u>Minimum Annual Rental</u>
June 30, 1979	\$18,273
June 30, 1980	16,651
June 30, 1981	7,528
June 30, 1982	<u>6,157</u>
	<u>\$48,609</u>

Rental expense including utilities for the fiscal year ended June 30, 1978 amounted to an aggregate of \$36,051.