MULTISTATE TAX COMMISSION

Eighteenth Annual Report

1984 · 1985

For the fiscal year of
July 1, 1984 - June 30, 1985

Multistate Tax Commission

KENNETH J. KIRKLAND

November 30, 1985

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

The purpose of the Multistate Tax Commission is 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 under the federal Constitution.

I respectfully submit to you the Eighteenth Annual Report of the Multistate Tax Commission. This report covers the Commission's activities for the fiscal year beginning July 1, 1984 and ending June 30, 1985. It includes a report on receipts, expenditures and operations for that period from Rhode, Scripter and Associates, Certified Public Accounts in Boulder, Colorado.

Respectfully submitted

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The Multistate Tax Commission: An Introduction and Overview

The Multistate Tax Commission is an organization of states created for the purpose of bringing some order to the state taxation of multistate businesses. Recognizing both the confusion to taxpayers and the dangers of federal preemption created by the then-current plethora of state laws and practices, the Multistate Tax Compact was developed in 1966 as a means by which to develop alternative approaches. Activated in 1967, the Commission has nineteen members, including the District of Columbia; another ten states have been granted associate membership at their request.

The purposes of the Commission are stated in the Compact: to facilitate proper determination of state and local tax liability of multistate taxpayers, to promote uniformity or compatibility of tax systems, to facilitate taxpayer convenience and compliance, and to avoid duplicative taxation. The Commission acts as a resource to those ends through research and publication, seminars, litigation, and conduct of a joint audit program, and representation of member state interests in Washington, D.C.

States join the Commission by enacting the Multistate Tax Compact, which incorporates the Uniform Division of Income for Tax Purposes Act (UDITPA). This act provides ground rules for apportioning income of multistate businesses to all states in which the taxpayer does business. All business income is apportioned according to a formula which takes into account the in-state payroll, property, and sales of a corporation as fractions of its total payroll, property, and sales; these fractions are then averaged and the result is the percentage of a taxpayer's total income which is apportioned to that state for tax purposes. Non-business income (such as that from passive investments) is allocated to the state where the corporate domicile is located. This simple approach (though occasionally complex in application) was designed by the National Conference of Commissioners on Uniform State Laws to ensure that there would be no double taxation and no undertaxation of corporate income were all states to enact the law. To avoid double sales taxation, the Compact also includes a uniform credit provision to prevent a transaction from being taxed twice.

When a state joins the Commission, the director of its tax agency becomes that state's representative on the Commission. The full Commission meets annually, normally in July of each year; between meetings, the Commission's affairs are supervised by an Executive Committee consisting of the officers of the Commission (Chairman, Vice-Chairman, and Treasurer), and four members elected by the full Commission. Past Chairmen serve as ex officio members. The operations of the Commission are carried out by a staff headed by the Executive Director. The administrative and legal staffs are located at the headquarters office in Boulder, Colorado; the Commission also maintains audit offices in Chicago, Houston, and New York City, and has a representative in Washington, D.C. Commission operations are funded by administrative dues (apportioned according to tax revenues) and audit fees from the member states.

The Joint Audit Program

The Commission differs from other interstate and tax organizations in that it serves as an operating arm of member states through the joint audit program. Member states pool their resources to select candidates for corporate income, sales and use, franchise and gross receipts tax audits. The MTC audit staff carries out these audits just as though they were part of a state's own audit staff, forwarding their findings and recommendations to the member states for assessment and collection at the completion of the audit. A single MTC audit takes the place of separate and duplicative audits by member states, and provides obvious economies of scale to the states. At the same time, it relieves the taxpayer of the burden of multiple audits. The MTC provides businesses with a forum through which to seek resolution of inconsistencies in the state tax rules which become apparent during a joint audit.

Aside from its economies of scale and its financial benefits—in fiscal 1984-85 the member states received approximately $29 in suggested tax assessments for each dollar invested in the program—the audit program serves the Commission's goals in other ways as well. States learn of any inconsistent reporting to different states by multistate taxpayers. In cases in which settlements of disputes are negotiated, the states' bargaining power is improved by joining together; by the same token, corporate taxpayers sometimes find it less burdensome to negotiate with one representative than numerous individual state tax agencies. Finally, states gain a tool for determining how well the theoretical compatibility of their tax laws works on a day-to-day basis.

The program is a supplement to, and not a replacement for, the audit activities of the member states. But it can offer a significant addition for a smaller state, and provide useful support to a larger one. States maintain control of the program through selection of the audit candidates; they make the decision whether or not to participate in a given audit, and whether and how to act upon the audit results. The Audit Committee and its oversight subcommittee, consisting of the audit and compliance directors of member state tax agencies, guide the program and ensure that it is responsive to member state needs.

Legal Assistance

The taxation of interstate businesses is a complex legal specialty, and state assistant attorneys general, spread thin over many kinds of cases, face great difficulty keeping up with the myriad of developments within their own states as well as keeping track of how other states may have confronted similar issues. The MTC maintains a staff of three lawyers whose fulltime specialty is the state taxation of multistate business activity. The legal staff provides information in response to state requests, does research on multistate issues, acts as a legal resource for the audit program, and is generally available to assist states in any way possible. MTC legal personnel have been involved directly in cases ranging from district courts to the U.S. Supreme Court, occasionally with the MTC as a litigant, but more commonly with the MTC as an *amicus curiae*. Part of that assistance takes the form of seminars for both state officials and the general tax community. MTC legal staff also frequently participate as speakers and discussants in tax meetings nationally.

Uniformity

In order to relieve businesses of the problems of compliance with fifty-one different tax laws, the Commission is charged in the Compact with the promotion of uniformity or compatibility in tax laws. To achieve that end, the Commission has a Committee on Uniformity which studies problems and recommends possible solutions. One approach that the Commission has taken is to develop, through a formal hearing process, model uniform regulations for consideration and adoption by states. To date, the Commission has adopted model regulations interpreting the allocation and apportionment sections of the UDITPA provisions of the Compact; it has also adopted regulations for specialized industries to which the standard three-factor formula does not fairly apply. Regulations promulgated to date cover railroads, airlines, and contractors; the Commission has under study additional regulations covering sales tax recordkeeping requirements and trucking. In addition, the Commission has developed a uniform sales and use tax exemption certificate which is widely used. Finally, the Commission has promoted uniform agreements for the exchange of information among the states relating to sales and use and income taxes.

The pursuit of uniformity is important not only as a means of easing the burden of compliance on both taxpayers and administrators, but because it represents concrete evidence that the states, working together through the Commission, can develop solutions to these problems without federal

preemption. If the Federal Government were to begin to restrict the ability of the states to administer their own tax laws, it could set precedents for future interventions which would undermine the very nature of the federal system.

Federal Policy Issues

The Commission has always strongly opposed restrictive federal legislation in matters of state taxation; such intervention contravenes the very purpose of a federal system of government. Though the Commission is perhaps best known for its defense of the state right to use worldwide combination in the income tax area, it is important to note that this was so not only because many of the member states preferred that method, but also because all member states felt that the federal government should not, as a matter of principle, dictate to the states how they should exercise their constitutional right to tax. While several states have moved away from worldwide combination—partly as a result of their participation with the Commission in the President's Working Group on Unitary Taxation—the Commission remains firmly opposed to any federal restriction on worldwide combination, or on any other constitutional method of taxation which a state chooses to adopt.

To monitor federal developments and provide information on state views to Congress and the Executive Branch, the Commission is represented in Washington, D.C. by the firm of Rosapepe, Powers and Spanos.

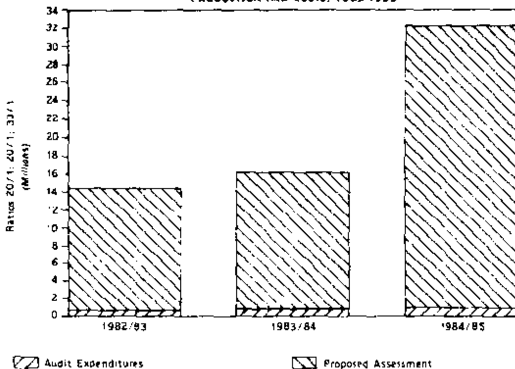
The Commission is not merely committed to opposition to federal restriction, however; by its actions in the joint audit program, the work of the Uniformity Committee, the development of model laws and regulations, and the work of its educational programs and publications, the Commission aims to demonstrate that it is possible to address the problems of multistate taxation in a cooperative manner and thereby alleviate some of the problems which gave rise to the requests for federal restriction in the first instance. John Shannon, the Executive Director of the U.S. Advisory Commission on Intergovernmental Relations, has referred to the 1980s as the age of "do-it-yourself federalism." It is a matter of considerable pride to the member states that, in founding and maintaining the Multistate Tax Commission through nearly two decades of existence, they have anticipated that spirit and exemplified the creative possibilities inherent in the American federal system.

Report of the Executive Director

Joint Audit Program

The Joint Audit Program underwent several changes this year. A new audit planning process and improved reporting to the member states significantly enhanced its value. A revised audit fee schedule adopted at the Annual Meeting puts the program on a firm financial footing, and—through a fee structure which aims more at flat fees for members—provides member states with a strong incentive for participation in all audits, since the cost remains the same regardless of the number of audits in which a state joins. The planning process and an enthusiastic commitment by the MTC auditors to the new process led to the cleaning up of a backlog of audits and the completion of 26 joint audits.

Moreover, this was the second year of an eight-year agreement negotiated with a large out-of-state retailer under which it agreed to collect and remit sales and use tax to member and non-member states. Finally, a settlement was reached with another large retailer and publisher which agreed to remit over $4 million in back sales and use taxes and further agreed to collect and remit sales and use tax in the future for member states in which certain nexus circumstances exist. All told, the joint audit program generated over $31 million in recommended assessments (including the collections described above) for the member states at cost of slightly over $1 million. As the following graph shows, audit production—in both raw numbers and as a ratio to costs—has improved significantly over the past three years. The states closely follow MTC recommendations in issuing assessments and generally collect most of the amount assessed.



This year also saw both the completion and revision of the income tax and sales tax audit manuals, which provide clear guidance to the tax policies of the member states and to the approach which MTC auditors will be using. As a service to taxpayers and the tax community, the MTC makes copies of them available for sale so that taxpayers and practitioners may have a reasonable expectation of what an MTC audit entails.

The program has also benefited from the presence of several new auditors. Some have brought to bear their experience as auditors for California, Indiana and Iowa, while others are former tax specialists for industry. The diversity of their backgrounds and experience should further strengthen the program in future years.

Litigation and Legal Assistance

For the second year in a row, the MTC is not involved directly in litigation. This has meant that the legal staff, which now numbers three, has been able to concentrate its efforts on educational activities, publishing articles to further the Commission's goals, providing direct assistance to state staffs, and improving the legal support and assistance to the audit program and the audit and uniformity committees.

While not directly involved as a litigant, the Commission did file a brief *amicus curiae* in the Oregon case of *Twentieth Century-Fox Films Corp. v. Department of Revenue*. The Oregon Supreme Court upheld the Department's right to apply a modified formula when the standard formula did not fairly represent the taxpayer's business activity in Oregon. An important aspect of the Court's opinion was its conclusion that rule-making regarding formula adjustments, at least with respect to non-mercantile, non-manufacturing industries, is permissible under UDITPA; and that the obtaining of uniform treatment of taxpayers in certain industries may suffer unless administrative rule-making is permitted. The Court concluded that "[p]romulgating rules in UDITPA jurisdictions, with the participation of MTC, is more likely to result in uniform treatment of taxpayers comparably situated . . .".

In addition to the normal staff work for the committees and the high volume of day-to-day responses to inquiries and requests for advice, the legal staff undertook several major projects this year. Alan Friedman, Deputy General Counsel for the Commission, in conjunction with representatives from California and Montana, selected two economists to serve as expert witnesses jointly for

several of the member states. Dr. Peggy Musgrave and Dr. Steven Scheffrin provided consultative services, expert testimony, and written materials in several areas relating to the unitary method and foreign taxes. Not only were the results useful and of a high quality, but the joint retention of witnesses proved cost-effective as well. Costs of the project were well under estimates, and states which contributed to the project ultimately had a portion of their contributions rebated.

Sandra McCray, Assistant General Counsel, undertook a long research project on sales and use taxation which resulted in a pair of law review articles which called into question the Supreme Court decision in *National Bellas Hess*; the articles support the Commission's belief that the time may be ripe for a review of the conclusion that out-of-state purely mail order retailers are not obligated to collect sales and use tax on their sales.

The legal staff has also been responsible for the production and revision of portions of the audit manuals, the development of a proposed regulation on allocation and apportionment of trucking industry income (including the conduct of a public hearing), and new research on the interstate taxation of banking and financial services. In addition, it has drafted and distributed to the states model legislation for those states which wish to consider moving from worldwide combination to a water's edge concept; companion legislation has also been prepared to assist those states which wish to move from separate entity accounting to the water's edge combination, and finally it has drafted proposed federal legislation to implement the Working Group's Domestic Disclosure Spreadsheet commitment.

Federal Policy Issues and State Responses

Income Tax

With the publication of the final report of the Working Group last summer, the center of activity regarding worldwide combination moved from the federal to the state level. Although both Senator Mathias and Senator Hawkins introduced legislation to restrict or forbid the use of worldwide combination by the states, as well as to restrict the taxation of dividends from foreign subsidiaries to U.S. parents, such legislation remained quiet for much of this last year. Instead, there was a flurry of activity in the states as virtually every worldwide state considered legislation to move to water's edge combination or even to separate accounting.

As this report went to press, Colorado and Oregon had passed legislation to move from worldwide to domestic combination, and Nebraska had passed legislation to clarify its domestic combination practice; Florida had repealed worldwide combination and replaced it with separate accounting; and the Massachusetts Supreme Court had held in the *Polaroid* decision that the Department of Revenue lacked explicit statutory authority to require worldwide combination. (Legislation pending in conference committee as of this writing would provide the Department with authority to apply domestic combination.) In addition, Utah had adopted a regulation which would apply domestic combination if appropriate federal assistance legislation (as described in the Working Group Report) were to be enacted. California, New Hampshire, and North Dakota all had the issue under study, and legislation had been considered in Idaho and Montana. (See the status sheet following on use of combination.)

Combination States

Worldwide	Domestic
Alaska	Arizona
California	Colorado
Idaho	Illinois
Montana	Kansas
New Hampshire	Kentucky
North Dakota	Maine
Utah*	Minnesota
	Nebraska
	New Mexico (Taxpayer's option)
	New York
	Oklahoma
	Oregon
	West Virginia (Taxpayer's option)

Note: In certain circumstances, it appears that Indiana may permit or require combination on a worldwide basis.

*Utah has adopted a regulation which would apply domestic combination if appropriate federal legislation were to be enacted.

This state activity, undertaken in good faith following the spirit of the Working Group, was not matched by an equivalent level of activity on the federal side. Of the proposed federal assistance activities, only IRS training in foreign tax issues was provided. In late summer the Treasury Depart-

ment did offer a draft of the domestic disclosure spreadsheet legislation for comment, but a revised version had not been introduced as of this writing, nor had there been any movement on other federal assistance activities. Instead, the Administration had issued a statement announcing that Treasury would be directed to draft legislation banning both worldwide combination and the inclusion of foreign dividends in the apportionable base.

At its Annual Meeting in July, the Commission had adopted a resolution noting in part that "the failure of the Treasury Department to implement to date commitments it made in the Working Group while the states have made dramatic progress to implement their commitments threatens to undermine constructive state efforts and the prospects for rapid resolution of continuing concerns of some foreign governments." The resolution went on to urge the President, the Treasury Department, and the Congress ". . .to oppose proposals to restrict state taxation of multinational corporations through legislation, treaty, judicial action, or otherwise."

The Commission continues to strongly oppose any such proposals, and this most recent action only underscores the Commission's concerns that the willingness of states to act has not been matched by an equal commitment on the part of the federal government; there are hopeful signs that the Congress will not act precipitately in this matter, but rather will weigh the issue more carefully than certain elements of the Administration appear to have done.

Sales Tax

The Commission continues to pursue action designed to stem the revenue losses to states which result from the failure of large mail order retailers to collect and remit sales and use taxes. In the last two years, two Commission audits have brought two large retailers into compliance through agreements negotiated on behalf of member states. But the Commission recognizes that audits alone will not solve the problem. Accordingly, the Commission changed its stance on sales tax collection duties in 1984 and, at its Annual Meeting this year, endorsed Congressional legislation aimed at overturning the *Bellas Hess* decision. Such legislation was endorsed by the Advisory Commission on Intergovernmental Relations at its September meeting as the most equitable resolution to this problem.

The Commission also passed a resolution creating a joint action committee to work with the National Administration of Tax Administrators on issues of mutual interest; and it endorsed the draft legislation prepared by the NATA and plans to cooperate with them in urging Congressional passage of such legislation. At the same time, the Commission continues to pursue audit activity in this area, striving for improved compliance through negotiated agreements where possible. Recognizing that even Congressional legislation may be subject to litigation on due process grounds, the Commission is also prepared to initiate a test case if necessary in order to uphold such legislation.

Property Tax

At its 1985 meeting, the Commission endorsed in principle a pilot project aimed at multistate cooperation in property taxation. As a first step, the Commission conducted a seminar on litigation involving railroad valuation and assessment at Phoenix, Arizona, in September; forty-seven people representing thirteen member states and eleven non-member states attended. A steering committee is now exploring other areas of joint action, including possible multistate property tax audits, joint assessment and appraisal activities, and mutual support of litigation and of legal education. At the same time, the Commission has firmly opposed federal preemption or restriction in this area; the most recent attempts have been in proposed legislation to restrict property taxation of natural gas pipelines and to provide federal preemption in the taxation of interstate trucks.

Membership

The Commission now has nineteen members, including the District of Columbia. Nebraska and West Virginia both voted to withdraw by repealing the Compact this year. The Commission continues to receive inquiries about membership from a number of states, however, and is optimistic that total membership will gradually increase.

Publications

The Commission published three issues of the *MTC Review* this year. Beginning with the August, 1985 issue, it intends to move to a quarterly publication schedule. A subscription charge will shortly be imposed for non-governmental recipients of the *Review*. The income should offset the printing and postage charges to some extent; at the same time, we anticipate that a quarterly publication will be more attractive to potential subscribers and more helpful to other readers of the *Review* as well.

A revised Legislative Handbook was prepared for distribution as a resource to members and potential members; it provides a wide range of information and reprints in the multistate taxation field. The Commission is also preparing a revision of the handbook on unitary apportionment to incorporate the most recent court decisions and other relevant materials.

Uniformity

Following a hearing held on November 13, 1984, the Executive Committee tentatively approved a regulation on allocation and apportionment for the trucking industry. However, the Commission voted in the 1985 Annual Meeting to defer action on the regulation pending the outcome of the work by the Working Group on Truck Taxation sponsored by the National Governors Association. One task of this group was to develop uniform procedures for registration, fuel taxation, and third structure taxation (other than corporate income taxation) for adoption by the states. The Commission took this action in recognition of the fact that mileage recordkeeping would be different for registration, fuel use tax, and income tax apportionment under the current system. By deferring action, the Commission hopes that uniformity will be served not only in the income tax area but in all areas of taxation and that the burden of compliance on the trucking industry will be substantially reduced.

In other areas, the Uniformity Committee has recommended a regulation on sales and use tax recordkeeping. It has under study possible regulations for telecommunications and the broadcast industry. It is also considering uniform definitions of software for sales tax purposes, is studying the issues of dock sales and the role of intangibles in the property factor, and is considering additional areas in which the states might usefully develop procedural uniformity. Finally, the Committee is working with member states to develop a statement of current practices under P.L. 86-272.

Personnel

A combination of expansion, retirements, and turnover resulted in a number of changes in MTC staff this year. In the Boulder Office, Kenneth J. Kirkland was appointed Executive Director of the Commission in February; Eugene Corrigan became General Counsel, a position which he already held on an acting basis; Ginger Cash-Truschke, who as Executive Secretary and Comptroller had served the Commission longer than any other employee save one, left in November; Connie Fuerst assumed her position and Betty DeBruyn joined the Commission staff. New auditors joining the Commission this year include: Morris Gladstein, Alan Hild, Michael Hnath, and Frank Kuehn in New York; and Joselito Vitug in Chicago.

Staff Members

Executive Director

Kenneth J. Kirkland was appointed Executive Director of the Multistate Tax Commission in February, 1985. Previously, he had been a staff member at the National Conference of State Legislatures, serving most recently as Director of Fiscal Affairs; had been an analyst for the Oklahoma State Legislature; and had been a faculty member at the University of Oklahoma and at Adrian College (Michigan). He is a graduate of Stanford University and holds an M.A. from the University of Oregon and a Ph.D. from the University of Michigan.

General Counsel

Eugene F. Corrigan became the Commission's General Counsel in February, 1985 after having served for sixteen years as its Executive Director. His prior experience included three years as a Sears, Roebuck tax attorney and ten years with the Illinois Department of Revenue, in the Chicago office of which he last served as Chief Counsel. During the mid-sixties, he was also a partner in the Chicago law firm of Stradford, Lafontant, Fisher and Corrigan. He is a graduate of Princeton University and of John Marshall Law School of Chicago. He is the Immediate Past Chairman of the Urban State and Local Government Law Section of the American Bar Association.

Deputy General Counsel

Alan H. Friedman's legal experience, over some fifteen years has included positions as Legal Counsel with the U.S. Justice Department, the U.S. Senate, and the Colorado Attorney General's office. As First Assistant Attorney General, he supervised the legal representation of Colorado's Governor, Secretary of State, Treasurer and, finally, Department of Revenue where he last served as Deputy Director. He is a graduate of the University of California at Berkeley and of Boalt Hall Law School at that University.

Assistant General Counsel

Sandra B. McCray has had extensive and varied legal and administrative experience in the office of the Colorado Attorney General. There she has served: as prosecutor in consumer protection, medical malpractice and insurance fraud cases; as Administrator of the Consumer Credit Code; as Chief of the Financial Institutions Section; and as First Assistant Attorney General in charge of the Regulatory Law Section. A Phi Beta Kappa graduate of UCLA and a graduate of the University of Colorado Law School, she holds a Master's Degree in Taxation from Georgetown University.

Of Counsel

William D. Dexter has served the MTC in an Of Counsel capacity since July 1983 when he retired as General Counsel, a post which he had held for eight years. During those years, he conducted major litigation on behalf of the Commission and of states in various courts throughout the land. In U.S. Supreme Court practice: in 1978 he argued and won the case of *MTC adv. U.S. Steel*; in 1980 he participated in the preparation and argument of the *Mobil* case; and in 1983 and 1984, he represented Hawaii in two cases. A prolific writer and a dedicated advocate of the interests of the states, he began his legal career with the Michigan Treasury Department in the late 1940s and was in charge of all Revenue litigation for many years there as an Assistant Attorney General. He served as an Assistant Attorney General for the Washington Department of Revenue from 1969 until he became the MTC General Counsel in 1975. While he is, we believe, the nation's leading expert on unitary apportionment, his expertise spans the field of state taxation of interstate commerce.

Program Coordinator

Clela A. Rorex joined the MTC in 1981. She holds a Bachelor of Arts Degree and a Master's Degree in Public Administration from the University of Colorado. Her previous experience includes service as: the publicly elected Clerk and Recorder of Boulder County; acting general manager of the Colorado Music Festival; business manager for the Sacramento Civic Theatre; insurance and financial counselor; manager of the Visiting Scientists Program of the Joint Institute for Laboratory Astrophysics at the University of Colorado; and management representative at the U.S. Naval Exchange at Guantanamo Bay. She also wrote and published the first edition of the *Colorado Legislative Almanac*.

Audit Managers

Chicago: Eugene J. Dowd joined the Multistate Tax Commission in 1974 after performing and supervising income tax audits of large multinational corporations in the Chicago office of the California Franchise Tax Board for thirteen years. Previously he had served as budget accountant and as the staff internal auditor of the Armour Research Foundation.

Houston: Robert Milligan was a corporate accountant for nearly ten years. He was the Tax Manager of two different corporations prior to joining the Michigan Department of Revenue as an auditor in 1961. There, he audited for Income, Sales and Use, Franchise, Intangibles, Business Activities and other taxes until 1977, when he joined the staff of MTC.

New York: Arthur Schwartz is a graduate of New York University and has a Master's Degree from City University of New York. His audit experience includes five years with Certified Public Accounting firms, three on corporate internal audit staffs, twenty-three with the California Franchise Tax Board and, in the early 1970s, a seventeen-month period with the MTC. He was managing audits of major corporations for California when he rejoined the MTC in March, 1984.

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*Executive Secretary of the Board of Equalization represents California in MTC fiscal years beginning in odd-numbered calendar years, and the Executive Officer of the Franchise Tax Board represents California in MTC fiscal years beginning in even-numbered calendar years.
**MTC Chairman 1979-1980
***MTC Chairman 1980-1981
****MTC Chairman 1984-1985
*****MTC Chairman 1982-1984

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*The Commission has made provisions for associate membership in bylaw 13, 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 enacted the Compact. This serves two purposes: (1) it permits and encourages states that feel that 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 willing 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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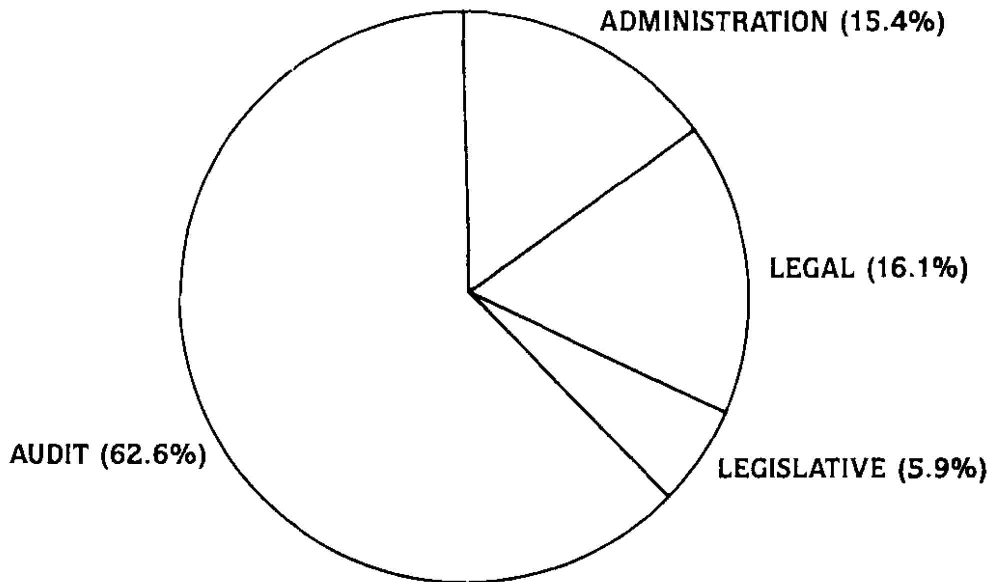
MTC EXPENSES

1984/1985



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Executive Committee
Multistate Tax Commission
Boulder, Colorado

We have examined the balance sheet of Multistate Tax Commission as of June 30, 1985 and 1984, and the related statements of revenue and expenses, changes in fund balance and changes in financial position for the years then ended. Our examinations were 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, 1985 and 1984, and the results of its operations, changes in fund balance, and changes in financial position for the years then ended in conformity with generally accepted accounting principles applied on a consistent basis.

Rhode, Scripter & Associates

October 8, 1985

MULTISTATE TAX COMMISSION

BALANCE SHEET
June 30, 1985 and 1984

ASSETS

	1985	1984
CURRENT ASSETS		
Cash (including certificates of deposit of $304,000 and $391,000 in 1985 and 1984 respectively)	$ 351,434	$ 400,999
Accounts receivable--members	89,045	75,492
Accounts receivable--other	83,280	62,437
Other current assets	---	1,012
TOTAL CURRENT ASSETS	523,759	539,940
PROPERTY AND EQUIPMENT--Notes 1 and 3		
Office furniture and equipment	235,491	186,553
Leasehold improvements	2,235	2,064
	237,726	188,617
Less: Accumulated depreciation and amortization	91,286	87,738
TOTAL PROPERTY AND EQUIPMENT	146,440	100,879
OTHER ASSETS		
Expense account advances	3,700	6,000
Deposits	2,696	1,696
Prepaid pension costs--Note 2	69,098	69,098
TOTAL OTHER ASSETS	75,494	76,794
TOTAL ASSETS	$ 745,693	$ 717,613

Exhibit A

LIABILITIES AND FUND BALANCE

	1985	1984
CURRENT LIABILITIES		
Accounts payable	$ 44,147	$ 19,532
Accrued vacation pay	81,499	68,109
Payroll taxes payable	12,778	10,903
Deferred assessments and audit reimbursements	5,656	---
Current portion of long-term debt	9,013	6,543
TOTAL CURRENT LIABILITIES	153,093	105,087
LONG-TERM DEBT		
Note payable--Note 3	58,210	29,577
Less: Current portion	9,013	6,543
TOTAL LONG-TERM DEBT	49,197	23,034
FUND BALANCE--Exhibit C		
Unappropriated fund balance	525,402	572,404
Appropriated fund balance--Note 6	18,001	17,088
TOTAL FUND BALANCE	543,403	589,492
TOTAL LIABILITIES AND FUND BALANCE	$ 745,693	$ 717,613

Exhibit B

MULTISTATE TAX COMMISSION

STATEMENT OF REVENUE AND EXPENSES
For the years ended June 30, 1985 and 1984

	1985	1984
REVENUE		
Assessments	$1,469,216	$1,380,411
Interest	53,467	55,220
Other revenue:		
Legal administrative	25,000	63,150
Miscellaneous	---	130
Gain on sale of property and equipment	2,395	469
Publications--net	913	3,397
TOTAL REVENUE	1,550,991	1,502,777
EXPENSES		
Accounting	8,000	7,500
Bonds and insurance	4,989	4,951
Conferences	(1,291)	8,542
Consulting fees	134,331	163,109
Depreciation and amortization	41,900	32,982
Employee group insurance	75,017	61,247
Interest expense	2,530	3,120
Legal and legal support	7,613	10,000
Miscellaneous expense	11,892	9,457
Office supplies	11,359	9,609
Pension plan and retirement provision	145,046	73,012
Postage	10,411	9,284
Printing and duplicating	21,559	13,930
Publications	9,188	8,123
Rent	82,827	61,750
Repairs and maintenance	5,953	4,256
Salaries	935,678	713,872
Telephone	27,464	25,254
Travel	61,378	68,512
Utilities	1,236	1,669
TOTAL EXPENSES	1,597,080	1,290,179
EXCESS (DEFICIENCY) OF REVENUE OVER EXPENSES	$ (46,089)	$ 212,598

Exhibit C

MULTISTATE TAX COMMISSION

STATEMENT OF CHANGES IN FUND BALANCE
For the years ended June 30, 1985 and 1984

	Unappropriated Fund Balance		Appropriated Fund Balance	
	1985	1984	1985	1984
FUND BALANCE--Beginning of year	$572,404	$363,203	$17,088	$13,691
Excess (deficiency) of revenue over expenses--Exhibit B	(47,002)	209,201	913	3,397
FUND BALANCE--End of year	$525,402	$572,404	$18,001	$17,088

Exhibit D

MULTISTATE TAX COMMISSION

STATEMENT OF CHANGES IN FINANCIAL POSITION
For the years ended June 30, 1985 and 1984

	1985	1984
WORKING CAPITAL PROVIDED BY:		
Operations:		
Excess (deficiency) of revenue over expenses	$ (46,089)	$ 212,598
Add: Charges not requiring the use of working capital:		
Depreciation and amortization	41,900	32,982
Gain on sale of property and equipment	(2,395)	(469)
Working Capital Provided By (Used In) Operations	(6,584)	245,111
Proceeds from issuance of long-term debt	58,210	---
Decrease in expense account advances	2,300	---
Proceeds from sale of property and equipment	23,962	4,106
TOTAL PROVIDED	77,888	249,217
WORKING CAPITAL APPLIED TO:		
Purchase of property and equipment	109,028	39,193
Increase in expense account advances	---	1,200
Increase in deposits	1,000	---
Increase in prepaid pension costs	---	36,770
Payment and reclassification of long-term debt	32,047	6,543
TOTAL APPLIED	142,075	83,706
INCREASE (DECREASE) IN WORKING CAPITAL	$ (64,187)	$ 165,511
CHANGES IN WORKING CAPITAL COMPONENTS		
Increase (decrease) in current assets:		
Cash	$ (49,565)	$ 71,300
Accounts receivable--members	13,553	56,984
Accounts receivabe--other	20,843	44,941
Other current assets	(1,012)	870
	(16,181)	174,095
Decrease (increase) in current liabilities:		
Accounts payable	(24,615)	(1,256)
Accrued vacation pay	(13,390)	(4,786)
Payroll taxes payable	(1,875)	(1,951)
Deferred assessments and audit reinbursements	(5,656)	---
Current portion of long-term debt	(2,470)	(591)
	(48,006)	(8,584)
INCREASE (DECREASE) IN WORKING CAPITAL	$ (64,187)	$ 165,511

MULTISTATE TAX COMMISSION

NOTES TO FINANCIAL STATEMENTS
June 30, 1985

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 multistate business.

Method of Accounting

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

Reclassifications

Certain reclassifications have been made to 1984 balances to conform to the 1985 financial statement presentations.

Property and Equipment

All property and equipment is stated at cost and depreciated using straight-line and accelerated methods over the estimated useful lives of the assets which range from 3 to 8 years.

NOTE 2 - PENSION PLAN

The Commission has a defined benefit pension plan covering substantially all of its employees. The total pension expense for the years ended June 30, 1985 and 1984 was $145,046 and $73,012, respectively. The Commission's policy is to fund pension costs as accrued. The actuarial value of assets as of June 30, 1985 exceeded the actuarial accrued liability using the entry age normal assumption by $370,893. The Commission plans to amortize the overfunded amount and reduce their future contributions to the plan, accordingly.

MULTISTATE TAX COMMISSION

NOTES TO FINANCIAL STATEMENTS (Continued)
June 30, 1985

NOTE 3 - NOTE PAYABLE

Note payable at June 30, 1985 was as follows:

	Current	Long-Term	Total
Manufacturer--7.9% installment note, collateralized by related equipment, payable in monthly installments of $1,177.47, including interest, with final payment due July, 1990.	$ 9,013	$ 49,197	$ 58,210

The minimum scheduled note payments remaining at June 30, 1985 are as follows:

Fiscal Year Ended	
June 30, 1986	$ 12,951
1987	14,130
1988	14,130
1989	14,130
1990	14,130
Subsequent years	1,177
Total Note Payments	70,648
Interest included in payments	(12,438)
TOTAL	$ 58,210

NOTE 4 - COMMITMENTS

The Commission rents its primary office facilities in Boulder, Colorado, and other office facilities in New York and Illinois under lease agreements with terms expiring on various dates through September 30, 1991. These leases provide for the following minimum annual rentals exclusive of utility charges and certain escalation charges:

Fiscal Year Ended	Minimum Annual Rental
June 30, 1986	$ 68,476
June 30, 1987	48,955
June 30, 1988	49,724
June 30, 1989	49,724
June 30, 1990	49,724
Subsequent years	62,156
TOTAL	$328,759

The leases include certain escalation charges based on various factors including wage index, utility, operating and property tax increases from a base year.

NOTES TO FINANCIAL STATEMENTS (Continued)
June 30, 1985

NOTE 5 - 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 6 - APPROPRIATED FUND BALANCE

In 1981, the Executive Committee of the Multistate Tax Commission established a revolving fund financed through the net income from publications and seminars to be used to promote additional seminars and publications of additional works. Net income from publications and seminars was $913 and $3,397 in 1985 and 1984, respectively.

Appendix A

Agreement on Exchange of Information Income Tax

In the interest of furthering the mutual interests of the undersigned states represented by the undersigned officials through benefits which can be derived from the exchange of information among said states, each of said officials does hereby enter into the following Agreement for the exchange of information with every other undersigned official.

The undersigned hereby mutually agree to exchange information, to the full extent permitted by their respective laws, in accordance with the terms and limitations below:

1. For the purposes of this Agreement, income tax means a tax imposed on or measured by net income, including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
2. This agreement shall be applicable with respect to:
   a. The inspection of income tax returns of any taxpayer; and
   b. The furnishing of an abstract of the return of income of any taxpayer; and
   c. The furnishing of any information concerning any items contained in any return of income of any taxpayer; and
   d. The furnishing of any information disclosed by the report of any investigation of the income or return of income of any taxpayer, exclusive of any information obtained through an agreement between any of the undersigned states and the Internal Revenue Service.
3. For purposes of this Agreement, taxpayer includes any individual, corporation, partnership or fiduciary subject to an income tax or required to file an income tax return.
4. This Agreement is not limited to a specific period of time or to returns, documents or information relating to any specific years or periods; and it will be considered to be in effect until revoked.
5. Additions and changes, including definitions, in the provisions of this Agreement, may be made by mutual consent of the proper officials of the undersigned states, and shall become an attachment to this Agreement.
6. No information obtained pursuant to this Agreement shall be disclosed to any person not authorized by the laws of the undersigned states.
7. The information obtained pursuant to this Agreement shall be used only for the purpose of administration of the income tax laws of the undersigned states.
8. This written Agreement shall not become effective between any two states until the authorized officials for both such states have signed it in the space provided below.
9. This written Agreement is not intended to revoke or supersede any other similar agreement that may have been previously entered into between any two or more of the states represented below.
10. The undersigned agree to inform each other of the current statutory provisions of their respective states concerning the confidentiality of the material exchanged and the penalties for unlawful disclosure thereof.
11. Any of the undersigned state officials may, at their discretion, refuse to furnish information disclosed in the report of any investigation while such investigation is still in progress or during such time as litigation is contemplated or in process, if the official of the state making the investigation deems it in the best interests of his state for such information to be withheld pending determination of litigation.
12. Each of the undersigned state officials hereby affirms that he is the proper official charged with the administration of the income tax laws of his state.

Signatory States

Alaska	Illinois	Montana
Arkansas	Indiana	Nebraska
California	Kansas	North Carolina
Colorado	Louisiana	North Dakota
Florida	Michigan	Oregon
Hawaii	Minnesota	Pennsylvania
Idaho	Missouri	Utah

Appendix B

Agreement on Exchange of Information Sales and Use Tax

In the interest of furthering the mutual interests of the undersigned states represented by the undersigned officials through benefits which can be derived from the exchange of information among said states, each of said officials does hereby enter into the following Agreement for the exchange of information with every other undersigned official.

The undersigned hereby mutually agree to exchange information, to the full extent permitted by their respective laws, in accordance with the terms and limitations below:

1. For the purposes of the Agreement, sales tax includes general excise and/or gross receipt taxes and means a tax imposed on a sale or exchange of personal property and/or services, as well as on gross receipts from trade or business; and use tax means a tax other than ad valorem tax, on the privilege of storing, using or consuming personal property and/or services.
2. This Agreement shall be applicable with respect to:
   a. The inspection of sales and use tax returns of any taxpayer; and
   b. The furnishing of an abstract or the exchange of computer information regarding the sales or use tax return of any taxpayer; and
   c. The furnishing of any information concerning any items contained in any sales or use tax return of any taxpayer; and
   d. The furnishing of any information disclosed by the report of any investigation of the sales or use tax return of any taxpayer.
3. For purposes of this Agreement, "taxpayer" includes any individual, corportion, partnership, organization, association, fiduciary, person or other entity, subject to payment or collection and remittance of sales or use tax or required to file a sales or use tax return.
4. This Agreement is not limited to a specific period of time or to returns, documents or information relating to any specific years or periods; and it will be considered to be in effect until revoked by one of the parties, however, the withdrawal of one party hereto shall not affect the Agreements among the remaining parties.
5. Additions and changes, including definitions, in the provisions of this Agreement, may be made by mutual consent of the proper officials of the undersigned states, and shall become an attachment to this Agreement.
6. No information obtained pursuant to this Agreement shall be disclosed to any person not authorized to receive such information by the laws of the undersigned states
7. The information obtained pursuant to this Agreement shall be used only for the purpose of administration, and enforcement of the sales and use tax laws of the undersigned states.
8. This written Agreement shall not become effective between any two states until the authorized officials for both such states have signed it in the space provided below.
9. This written Agreement is not intended to revoke or supersede any other similar agreement that may have been previously entered into between any two or more of the states represented below.
10. The undersigned agree to inform each other of the current statutory provisions of their respective states concerning the confidentiality of the material exchanged and the penalties for unlawful disclosure thereof.
11. Any of the undersigned state officials may, at their discretion, refuse to furnish information disclosed in the report of any investigation while such investigation is still in progress or during such time as litigation is contemplated or in process, if the official of the state making the investigation deems it in the best interests of his state for such information to be withheld pending final determinaton of litigation.
12. Each of the undersigned state officials hereby affirms that he is the proper official charged with the administration of the sales and use tax laws of his state.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original Agreement.

Signatory States

Arkansas	Louisiana	North Dakota
California	Massachusetts	Pennsylvania
Colorado	Michigan	South Dakota
Georgia	Minnesota	Tennessee
Idaho	Mississippi	Texas
Indiana	Missouri	Utah
Iowa	Montana	Washington
Kansas	Nebraska	Wyoming

Appendix C

Multistate Tax Commission

Construction Contractor Regulation

Adopted July 10, 1980

Reg. IV.18.(d). *Special Regulation: Construction Contractors.* The following special rules are established in respect to the apportionment of income of long-term construction contractors:

(1) *In General.* When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contacts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, the amount of business income derived from such long-term contracts from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income" under Article IV.1 and Reg. IV.1 thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of Article IV.5 to .8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) *Business and Nonbusiness Income.* For definitions, rules and examples for determining business and nonbusiness income see Reg. IV.1.

(3) *Methods of Accounting and Year of Inclusion.* For general rules of accounting, definitions and methods of accounting for long-term construction contracts see [each state adopting this Regulation should insert here reference to its laws and regulations relating in general to accounting methods of reporting income from long-term contracts. This Regulation assumes that the law of the adopting states permits the taxpayer to elect either the percentage of completion or completed contract method. If not, the Regulation will have to be modified to conform to an adopting state's accounting method for long-term construction contracts.]

(4) *Apportionment of Business Income.*

(i) *In General.* Business income is apportioned to this state by a three-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

(ii) *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract, is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income years exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and suppiies on hand at the beginning and end of the income year for use in each such contract.

Example: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for $9,000,000. The contract allowed three years for completion, and as of the end of the second income year the taxpayer's books of account, kept on the accrual method, disclosed the following:

	Receipts	Expenditures
End of 1st income year	$2,500,000	$2,400,000
End of 2nd income year	4,500,000	4,100,000
Totals	$7,000,000	$6,500,000

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was 30% completed at the end of the first income year and 80% completed at the end of the second income year. The amount to be included as business income for the first income year is $300,000 (30% of $9,000,000 or $2,700,000 less expenditures of $2,400,000 equals $300,000). The amount to be included as business income for the second income year is $400,000 (50% of $9,000,000 or $4,500,000 less expenditures of $4,100,000 equals $400,000).

(iii) *Completed Contract Method.* Under this method of accounting business income derived

from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract (see subdivision (5) of this regulation). Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three-factor formula of property, payroll and sales.

(iv) *Property Factor.* In general the numerator and denominator of the property factor shall be determined as set forth in Article IV.10 to .12, inclusive, and Reg. IV.10 to .12, inclusive. However, the following special rules are also applicable:

(A) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent such costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

Example 1: Taxpayer commences a long-term construction project in this state as of the beginning of a given year. By the end of its second income year its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction costs	0	$1,000,000		
Progress billings		600,000		
Balance 12/31–(1/1)		$ 400,000	$ 400,000	
Construction Costs—Total from beginning of project				$5,000,000
Progress billings—Total from beginning of project				4,000,000
Balance 12/31				1,000,000
Balance beginning of Year				400,000
Total				$1,400,000
Average (1/2)—Value used in property factor				$ 700,000

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see Article IV.12 and Reg. IV.12.

Example 2: Same facts as in example 1, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

(B) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

(C) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see paragraph 5).

(v) *Payroll Factor.* In general the numerator and denominator of the payroll factor shall be determined as set forth in Article IV.13 and .14 and Reg. IV.13 and .14. However, the following special rules are also applicable:

(A) Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(B) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state where the services are performed.

Example: A taxpayer engaged in a long-term contract in state X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Article IV.14 and Reg. IV.14 thereunder, the compensation is assigned to the numerator of state X.

(C) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see paragraph 5).

(vi) *Sales Factor.* In general the numerator and denominator of the sales factor shall be determined as set forth in Article IV.15 to .17, inclusive, and Reg. IV.15 to .17, inclusive. However, the following special rules are also applicable:

(A) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the income year bears to the total of construction costs for the entire project during the income year or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

Example 1: A construction project was undertaken in this state by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three income years that the contract was in progress.

	1st Year	2nd Year	3rd Year
Gross Receipts	$1,000,000	$4,000,000	$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three years are the amounts shown.

Example 2: A taxpayer contracts to build a dam on a river at a point which lies half within this state and half within state X. During the taxpayer's first income year construction costs in this state were $2,000,000. Total construction costs for the project during the income year were $3,000,000. Gross receipts (progress billings) for the year were $2,400,000. Accordingly, gross receipts of

1,600,000 $\left(\frac{\$2,000,000}{\$3,000,000} = 66\frac{2}{3}\% \times \$2,400,000\right)$

are included in the numerator of the sales factor.

(B) *If the percentage of completion method is used,* the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

Example: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30% completed. The bid price for the project was $9,000,000 and it had received $2,500,000 for progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is $2,700,000 (30% of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(C) *If the completed contract method of accounting is used,* the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

Example 1: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project) it had billed, and accrued on its books, a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken and $3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the sales factor for the current income year is $3,000,000.

Example 2: Same facts as in example 1 except the taxpayer keeps its books on the cash basis and, as of the end of its current income year had received only $2,500,000 of the $3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is $2,500,000.

(D) *The sales factor*, except as noted above in subparagraphs (B) and (C), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(vii) *Apportionment Percentage.* The total of the property, payroll and sales percentage is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to this state.

(5) *Completed Contract Method—Special Computation.* The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state, plus other business income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to this state is the measure of tax for the income year.

The amount of income (or loss) from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows:

(i) In the income year in which the contract is completed, the income (or loss) therefrom is determined.

(ii) The income (or loss) determined at "i" is apportioned to this state by the following method.

(A) A fraction is determined for each year the contact was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress and the denominator is the total of all such construction costs for the project.

(B) Each percentage determined in "A" is multiplied by the apportionment formula percentage for that particular year as determined in subdivision (4)(vii) of this regulation.

(C) The percentages determined at "B" for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at "(i)" is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within this state.

Example 1: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in state X and Contract N in state Y. In addition, it has other business income (less expenses) during the income year 1972 from interest, rents and short-term contracts amounting to $500,000, and nonbusiness income allocable to this state of $8,000. During 1972 it completed Contract M in state X at a profit of $900,000. Contracts L and N in this state and state Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in subdivision (4)(vii) of this regulation and the percentages of contract costs as determined in subparagraph (ii) above for each year Contract M in state X was in progress are as follows:

	1970	1971	1972
Apportionment percentages	30%	20%	40%
Percentages of construction costs of Contract M each year to total construction costs—(100%)	20%	50%	30%

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	$252,000
Total business income derived from sources within this state	452,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	$460,000

*Income from Contract M apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	30%	20%	40%	
Percent of Contruction Costs	20%	50%	30%	100%
Product	6.00%	10.00%	12.00%	28%

28% of $9,000 = $252,000

Example 2: Same facts as in example 1 except thatContract L was started in 1972 in this state, the first year the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1972.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	108,000
Total business income derived from sources within this state	$308,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	$316,000

*Income from Contract M apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	0	0	40%	
Percent of Construction Costs	20%	50%	30%	100%
Product	0	0	12.0%	12.0%

12% of 900,000 = $108,000

Note: Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972.

Example 3: Same facts as in example 1 except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state (see *Article IV.2 and .3 and* Regulation IV.2.(b)(1) and .3. Contracts M and N in states X and Y were started in 1972 and are incomplete.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract L*	738,000
Total business income derived from sources within this state	$938,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	$946,000

*Income from Contract L apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	100%	100%	40%	
Percentage of Construction Costs	20%	50%	30%	100%
Product	20%	50%	12%	82%

82% of $900,000 = $738,000

(6) *Computation for Year of Withdrawal, Dissolution or Cessation of Business—Completed Contract Method.* Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in subparagraph (5)(ii) of this Regulation shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

Example: A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in this state was started in 1971 and completed at a profit of $900,000 on 12/16/73. The taxpayer withdrew on 12/31/73. Contract M in state X was started in 1972 and was incomplete on 12/31/73. The apportionment percentages of the taxpayer as determined at subdivision (4) of this Regulation, and percentages of construction costs are determined in subdivision (5)(ii) of this Regulation for each year Contract M in state X was in progress are as follows:

	1971	1972	1973	Total
Apportionment percentage	30%	20%	40%	
Percentages of Construction Costs:				
Contract L, this state	20%	50%	30%	100%
Contract M, state X	0	10%	25%	35%

The corporation had other business income (net of expenses) of $500,000 during 1972 and $300,000 during 1973. The gross contract price of Contract M (state X) was $1,000,000 and it was estimated to be 35% completed on 12/31/73. Total expenditures to date for Contract M (state X) were $300,000 for the period ended 12/31/73.

The measure of tax for the taxable year ended 12/31/73 is computed as follows:

	Taxable Year 1973	
	Income Year 1972	Income Year 1973
Business income	$500,000	$300,000
Apportionment percentage to this state	20%	40%
Amount apportioned to this state	$100,000	$120,000
Add: Income from contracts:		
*L (this state)		252,000
**M (state X)		6,000
Total business income derived from sources within this state	$100,000	$378,000

*Income from Contract L apportioned to this state:

	1970	1971	1972	Total
Apportionment percentages	30%	20%	40%	
Percentage of construction costs	20%	50%	30%	100%
Product	6.0%	10.0%	12.0%	28%

28% of $900,000 = $252,000

**Income from Contract M apportioned to this state:

	1971	1972	1973	Total
Apportionment percentages	0	20%	40%	
Percentage of construction costs	0	10%	25%	35%
Product	0	2.0%	10%	12.0%

12.0% of $50,000 = $6,000

Computation of apportionable income from Contract M based on percentage of completion method:

Total Contract Price	$1,000,000
Estimated to be 30% completed	$ 350,000
Less: Total expenditures to date	300,000
Apportionable income	$ 50,000

Appendix D

Multitate Tax Commission Railroad Regulation

Adopted July 16, 1981

Regulation IV.18.(f). *Special Rules: Railroads.* The following special rules are established in respect to railroads:

(1) *In General.* Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under Article IV.1. and Regulation IV.1. thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Article IV.5. to .8., inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) *Business and Nonbusiness Income.* For definitions, rules and examples for determining business and nonbusiness income, see Regulation IV.1.

(3) *Apportionment of Business Income..*

(i) *In General.* The property factor shall be determined in accordance with Regulation IV.10. to .12., inclusive, the payroll factor in accordance with Regulation IV.13., and the sales factor in accordance with Regulation IV.14. to .17., inclusive, except as modified in this regulation.

(ii) *The Property Factor.*

A. *Property Valuation.* Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11. and Regulation IV.11. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

B. *General Definitions.* The following definitions are applicable to the numerator and denominator of the property factor:

1. "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer (Regulation IV.11.(a).).

2. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

3. The "value" of owned real and tangible personal property shall mean its original cost. (See Article IV.11. and Regulation IV.11.(a).).

4. "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the [insert here the appropriate title of the administrative agency] may require the averaging of monthly values during the income year or such averaging as is necessary to effect properly the average value of the railroad's property. (See Article IV.12. and Regulation IV.12.)

5. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11. and Regulation IV.11.(b).)

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

8. A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

9. A "car-mile" is a movement of a unit of car equipment a distance of one mile.

C. *The Denominator and Numerator of the Property Factor.* The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with Article IV.10. to .12., inclusive, and Regulation IV.10. to .12., inclusive.

Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

(iii) *The Payroll Factor.* The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. (See Articles IV.13. and 14. and Regulations IV.13. and .14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Article IV.13. and .14. and Regulations IV.13. and .14.

With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

(iv) *The Sales (Revenue) Factor.*

A. *In General.* All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See Article IV.1. and Regulation IV.1.)

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with Article IV.15. to .17. and Regulation IV.15. to .17.

B. *Numerator of Sales (Revenue) Factor from Freight, Mail and Express.* The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

1. All receipts from shipments which both originate and terminate within this state; and

2. That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bear to the total miles traveled by such movement or shipment from point of origin to destination.

C. *Numerator of Sales (Revenue) Factor from Passengers.* The numerator of the sales (revenue) factor shall include:

1. All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and

2. That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

Appendix E

Multitate Tax Commission

Airline Regulation

Adopted July 14, 1983

Regulation IV.18.(e). *Special Rules: Airlines.* The following special rules are established with respect to airlines:

(1) *In General.* Where an airline has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Article IV. of the Multistate Tax Compact except as modified by this regulation.

(2) *Apportionment of Business Income.*

(i) *General Definitions.* The following definitions are applicable to the terms used in the apportionment factor descriptions.

A. "Value" of owned real and tangible personal property shall mean its original cost. (See Article IV.11. and Regulation IV.11.(a).)

B. "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

C. "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. (See Regulation IV.11(a).)

D. "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income year, but the [insert here the appropriate title of the administrative agency] may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (See Article IV.12. and Regulation IV.12.)

E. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11. and Regulation IV.11.(b).)

F. "Net annual rental rate" means the annual rental rate paid by the taxpayer.

G. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

H. "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

I. "Revenue service" means the use of aircraft ready for flight for the production of revenue.

J. "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

K. "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(ii) *Property Factor*

A. *Property valuation.* Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11. and Regulation IV.11. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

B. *The denominator and numerator of the property factor.* The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal proprty owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with Article IV.10. to .12., inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(iii) *The Payroll Factor.* The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (See Articles IV.13. and .14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in Articles IV.13. and .14. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such

employees shall be included in the ratio that departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(iv) *Sales (Transportation Revenue) Factor.* The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. (See Article IV.1. and Regulation IV.1.) Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result *of the following calculation:*

The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to this state.

(3) *Records.* The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the respective state taxing authorities or their agents.

Airline Regulation Examples

Example 1: Assume the followng facts for an airline for the tax year:

1. It has ten 747s ready for flight and in revenue service at an average per unit cost of $40,000,000 for nine (9) of the aircraft. It rents the remaining 747 from another airline for $9,000,000 per year. At eight times rents, the latter is valued at $72,000,000 for apportionment purposes. Total 747 valuation is, therefore, $432,000,000 for property factor denominator purposes.
2. It has twenty 727s ready for flight and in revenue service at an average per unit cost of $20,000,000. Total 727 valuation is, therefore, $400,000,000 for property factor denominator purposes.
3. It has nonflight tangible property (n.t.p.) valued at original cost of $200,000,000.
4. It has the following annual payroll:

Flight personnel	$ 60,000,000
Nonflight personnel	40,000,000
Total	$100,000,000

5. From its operations, it has total receipts of $50,000,000, business net income of $1,000,000 and no nonbusiness income.
6. It has the following within State X:
   a. 10% of its 747 flight departures (.10 × 432,000,000 = $43,200,000);
   b. (20% of its 727 flight departures .20 × 400,000,000 = $80,000,000);
   c. 5% of its nonflight tangible property (n.t.p.) (.05 × 200,000,000 = $10,000,000); and
   d. 15% of its nonflight personnel payroll (.15 × 40,000,000 = $6,000,000).
7. State X has a corporate tax rate of 10%.

The airline's tax liability to State X would be determined as follows:

Property Factor:

$$\frac{43{,}200{,}000\ (747s) + 80{,}000{,}000\ (727s) + 10{,}000{,}000\ (n.t.p.)}{432{,}000{,}000\ (747s) + 400{,}000{,}000\ (727s) + 200{,}000{,}000} = \frac{133{,}200{,}000}{1{,}032{,}000{,}000} = 12.9\%$$

Sales Factor:

$$\frac{43{,}200{,}000\ (747s) + 80{,}000{,}000\ (727s)}{432{,}000{,}000\ (747s) + 400{,}000{,}000\ (727s)} = \frac{123{,}200{,}000}{832{,}000{,}000} = 14.8\%$$

Payroll Factor:

$$\frac{6{,}000{,}000\ (nonflight) + 8{,}880{,}000\ (.148 \times 60{,}000{,}000)\ (flight)}{100{,}000{,}000} = \frac{14{,}880{,}000}{100{,}000{,}000} = 14.88\%$$

Average Ratio:

(property, payroll and sales factors) =

$$\frac{.129 + .148 + .1488}{3} = \frac{42.156}{3} = 14.219$$

Taxable Income in State X:

.14219 × 1,000,000 = $142,190

Tax Liability to State X:

.10 × $142,190 = $14,219.00

Example 2: Same facts except that paragraphs 6 and 7 are changed to read:

6. It has the following within State Y:
   a. 6% of its 747 flight departures (.06 × 432,000,000 = $25,920,000)
   b. 31% of its 727 flight departures (.31 × 400,000,000 = $124,000,000)
   c. 3% of its nonflight tangible property ($6,000,000)
   d. 7% of its nonflight personnel payroll (.07 × 40,000,000 = $2,800,000)
7. State Y has a corporate tax rate of 6½%.

The airline's tax liability to State Y would be determined as follows:

Property Factor:

$$\frac{25{,}920{,}000\ (747s) + 124{,}000{,}000\ (727s) + 6{,}000{,}000\ (n.t.p.)}{432{,}000{,}000\ (747s) + 400{,}000{,}000\ (727s) + 200{,}000{,}000} = \frac{155{,}920{,}000}{1{,}032{,}000{,}000} = 15.1085\%$$

Sales Factor:

$$\frac{25{,}920{,}000\ (747s) + 124{,}000{,}000\ (727s)}{432{,}000{,}000\ (747s) + 400{,}000{,}000\ (727s)} = \frac{149{,}920{,}000}{832{,}000{,}000} = 18.0192\%$$

Payroll Factor:

$$\frac{2{,}800{,}000\ (nonflight) + 10{,}811{,}400\ (.18019 \times 60{,}000{,}000)\ (flight)}{40{,}000{,}000 + 60{,}000{,}000} = \frac{13{,}611{,}400}{100{,}000{,}000} = 13.6114\%$$

Average Ratio:

(property, payroll and sales factors) =

$$\frac{15.108 + 18.019 + 15.0114}{3} = \frac{46{,}7391}{3} = 15.5797\%$$

Taxable Income in State Y:

.155797 × 1,000,000 = $155,797

Tax Liability to State Y:

.065 × $155,797 = $10,127

Update on Adoption of MTC Regulations
(Survey)

State	Allocation & Apportionment Formally	Allocation & Apportionment Informally	Railroad Formally	Railroad Informally	Airline Formally	Airline Informally	Contractor Formally	Contractor Informally	Notes
Alabama	No	No	No	No	No	No	No	No	
Alaska	Yes		No	No	No	No	No	No	
Arizona	*	No	*	No	*	No	*	No	*In process of adopting mod. versions.
Arkansas	Partially		No	No	No	No	No	No	
California	Yes	No	No	Yes*	No	No	Yes	No	*Intend to adopt formally soon.
Colorado	Yes	No	Yes	No	No	No	Yes*	No	*Substantially same.
Connecticut	No	No	No	No	No	No	No	No	
Delaware	No	No	No	No	No	No	No	No	
District of Columbia	No	Partially	No	No	No	No	No	No	
Florida	No	Yes*	No	No	No	No	No	No	*But double weights the sales factor.
Georgia	No	No	No	No	No	No	No	No	
Hawaii	*	*	No	No	No	No	*	*	*Pub. hrg. held 12/12/83; no action yet.
Idaho	Yes	No	Yes	No	Yes	No	Yes	No	
Illinois	Partially	No	No	No	No	No	No	No	
Indiana	No Response		No Response		No Response		No Response		
Iowa	No	No	No	No	No	No	No	No	
Kansas	Yes	No	No	No	No	No	No	No	
Kentucky	No	No	No	No	No	No	No	No	
Louisiana	No	No	No	No	No	No	No	No	
Maine	No	No	No	No	No	No	No	No	
Maryland	No	No	No	No	No	No	No	No	
Massachusetts	No*	No	No	No	No	No	No	No	*Adoption proposed.
Michigan	No	Yes	No	No	No	No	No	No	
Minnesota	No*	Yes	No*	Yes	No	No	No*	Yes	*Adoption of mod. version in process.
Mississippi	No	No	No	No	No	No	No	No	
Missouri	No	Yes	No	No	No	Yes	No	Yes	
Montana	Yes	No	No	Yes	No	Yes	No	Yes	
Nebraska	Yes	No	No	No	Yes	No	No	No	
New Hampshire	No	Yes	No	No	No	No	No	No	
New Jersey	No	No	No	No	No	No	No	No	
New Mexico	Yes	No	No	Yes	No	Yes	No	Yes	
New York	No	No	No	No	No	No	No	No	
North Carolina	No	No	No	No	No	No	No	No	
North Dakota	Yes	No	Yes	No	Yes	No	No	Yes	
Ohio	No	No	No	No	No	No	No	No	
Oklahoma	No	No	No	No	No	No	No	No	
Oregon	Yes	No	Yes	No	Yes	No	Yes	No	
Pennsylvania	No	No	No	No	No	No	No	No	
Rhode Island	No	No	No	No	No	No	No	No	
South Carolina	No	No	No	No	No	No	No	No	
Tennessee	No	No	No	No	No	No	No	No	
Utah	Yes	No	No	No	No	No*	Yes	No	*Submitted for approval.
Vermont	No	No	No	No	No	No	No	No	
Virginia	Partially	No	No	No	No	No	No	No	
West Virginia	No	No	No	No	No	No	No	No	
Wisconsin	No	No	No	No	No	No	No	No	

NOTE: Nevada, South Dakota, Texas, Washington and Wyoming do not have a corporate income tax. Michigan has a single business tax which uses a formula that only partially takes income into account.

Appendix G

Multitate Tax Compact Enactments

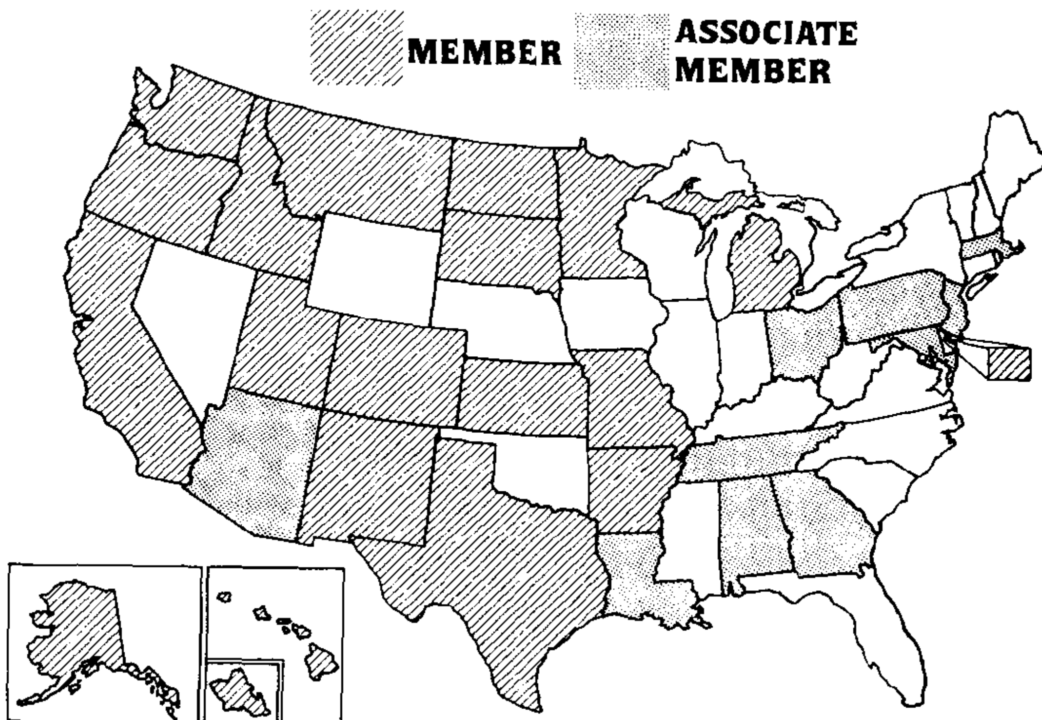
Member States	Effective Date	Withdrawal Date
Alaska	July 1, 1970	
Arkansas	January 1, 1968	
California	January 1, 1976	
Colorado	July 1, 1968	
District of Columbia	July 1, 1980	
Florida	August 4, 1967	June 30, 1976
Hawaii	May 7, 1968	
Idaho	April 10, 1968	
Illinois	August 4, 1967	August 29, 1975
Indiana	July 1, 1971	June 30, 1977
Kansas	August 4, 1967	
Michigan	July 1, 1970	
Minnesota	July 1, 1982	
Missouri	October 13, 1967	
Montana	July 1, 1969	
Nebraska	October 23, 1967	June 30, 1985
Nevada	August 4, 1967	June 30, 1981
New Mexico	August 4, 1967	
North Dakota	July 1, 1969	
Oregon	September 13, 1967	
South Dakota	July 1, 1976	
Texas	August 4, 1967	
Utah	May 13, 1969	
Washington	August 4, 1967	
West Virginia	July 1, 1980	June 30, 1985
Wyoming	January 24, 1969	May 27, 1977

Associate Member States	Effective Date	Withdrawal Date
Alabama*	October 17, 1967	
Alaska	June 7, 1968	To Full Member
Arizona	June 7, 1968	
Arkansas	October 17, 1967	To Full Member
California	January 23, 1968	To Full Member
Colorado	January 23, 1968	To Full Member
Georgia	June 11, 1971	
Hawaii	January 23, 1968	To Full Member
Idaho	October 17, 1967	To Full Member
Indiana	January 23, 1968	To Full Member
Louisiana	October 27, 1969	
Maryland	July 27, 1970	
Massachusetts	January 23, 1968	
Michigan	November 19, 1968	To Full Member
Minnesota	January 26, 1971	To Full Member
Montana	January 23, 1968	To Full Member

Associate Member States

(continued)	Effective Date	Withdrawal Date
New Jersey	October 14, 1970	
New York	October 27, 1969	March 9, 1971
North Dakota	January 23, 1968	To Full Member
Ohio	June 11, 1971	
Oklahoma	June 25, 1964	March 1, 1977
Pennsylvania	January 23, 1968	
South Dakota	October 27, 1969	To Full Member
Tennessee	June 20, 1969	
Utah	January 23, 1968	To Full Member
Virginia	October 27, 1969	FY 75/76
West Virginia	June 7, 1968	To Full Member
Wyoming	October 17, 1967	To Full Member

*Compact enacted in Alabama but not effective unless and until the U.S. Congress enacts legislation specifically giving its consent for the States to enter into this Compact.



Appendix H

Uniform Division of Income for Tax Purposes Act (UDITPA) States[1]

Alabama[2]	Georgia[7]	Maine	New Mexico	South Carolina
Alaska[3]	Hawaii[4]	Massachusetts[10]	North Carolina	Tennessee
Arizona	Idaho	Minnesota[4,11]	North Dakota	Utah[4]
California	Illinois	Missouri[4,12]	Oklahoma[15]	Virginia
Colorado[4,5]	Indiana[4,8]	Montana[4]	Oregon	West Virginia[16]
District of Columbia	Kansas	Nebraska[4,13]	Pennsylvania	Wisconsin
Florida[6]	Kentucky[9]	New Hampshire[14]		

1. Some states have formally adopted UDITPA in full or in substantially complete form. Others have adopted statutory provisions in such a way as to accomplish substantially the same effect as formal adoption, e.g., Oklahoma, West Virginia and Wisconsin. At least one state, Alabama, has accomplished the same result via regulation.

2. 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 consent bill. On September 12, 1967, the Alabama Department of Revenue promulgated regulations which adopt the UDITPA provisions as the basis upon which to determine the amount of a corporation's income which is attributable to the state.

3. Alaska applies special formulas to taxpayers engaged in the transportation of oil or gas by pipeline in Alaska and/or the production of oil or gas from a lease of property within Alaska.

4. This state adopted UDITPA by enacting the Multistate Tax Compact.

5. Colorado gives the taxpayer the option to use an alternative two-factor sales and property formula.

6. 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. Florida gives 50% weight to the sales factor.

7. Georgia's payroll and sales factors differ from those in UDITPA, but only slightly.

8. Indiana retained UDITPA when it withdrew from the Compact.

9. Kentucky gives 50% weight to the sales factor for tax years which begin after July 31, 1985.

10. Massachusetts is included as a UDITPA state because is closely follows the UDITPA apportionment formula. Massachusetts adopted the three-factor formula in 1920, and UDITPA codified that formula in 1957. However, UDITPA adopted destination (rather than source as used in Massachusetts) for sales, conditioned upon the seller's being subject to the taxing jurisdiction of the destination state. In 1966, Massachusetts changed to the destination basis, but subject to the current modification that no-nexus sales are Massachusetts sales if they are not sold by salesmen based in a third state. Unlike UDITPA, all income including intangible income, is included in the apportionable income 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. Massachusetts gives 50% weight to sales on a destination-only basis.

11. Minnesota gives the taxpayer the option to use an alternative three-factor formula which gives 70% weight to sales on a destination-only basis.

12. Missouri gives the taxpayer the option of using an alternative single-factor formula in which 50% of sales are attributed on a destination basis and 50% on an origin basis.

13. Nebraska retained UDITPA after withdrawing from the Compact.

14. New Hampshire's property factor differs somewhat from UDITPA.

15. Oklahoma attributes income from oil, gas and lease operations on a "direct" basis.

16. West Virginia gives 50% weight to the sales factor.

Appendix I

Sales and Use Tax Exemption Certificate

SALES AND USE TAX CERTIFICATE
MULTI-JURISDICTION

(See reverse side for instructions)

Issued to (Seller)	Address

I certify that

Name of Firm (Buyer)		
Street Address or P O Box No		
City	State	Zip Code

is 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:

Description of Business:

City or State	State Registration or ID No	City or State	State Registration or ID No
City or State	State Registration or ID No.	City or State	State Registration or ID No.
City or State	State Registration or ID No.	City or State	State Registration or ID No.

I further certify that if any property purchased tax free is used or consumed by the firm so 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)

TO OUR CUSTOMERS:

In order to comply with the majority of state and local sales tax law requirements, we must 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 obliged to collect the tax for the state in which the property is delivered.

If you are entitled to sales tax exemption, please complete the 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	Illinois**	Nebraska	Tennessee
Alaska	Iowa**	Nevada	Texas
Arizona*	Kansas	New Mexico	Utah
Arkansas	Maine**	North Dakota	Vermont
Colorado	Maryland	Oklahoma*	Washington
Connecticut	Massachusetts	Pennsylvania	West Virginia
District of Columbia	Michigan	Rhode Island	Wisconsin***
Georgia	Minnesota	South Carolina	Wyoming
Idaho	Missouri	South Dakota	

*The Arizona and Oklahoma laws provide 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 Maine do not have an exemption on sales of property for subsequent lease or rental.

***Wisconsin allows this certificate to be used to claim a resale exemption only when the item will be resold in the same form. Wisconsin does not permit this certificate to be used to claim any other type of exemption.

CAUTION TO SELLER:

In order for the 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.