NCSL Executive Committee Task Force on State and Local Taxation

*Multistate Tax Commission Update*

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• MTC – Structure and Governance Issues
• Impact of UDITPA Amendments
• Audits & Information Sharing
• The MTC’s historical failure to reset its organizational structure and governance has caused an eruption of “Gillette” style litigation.

• As a result of the Michigan Department of Treasury’s loss in *IBM v. Department of Treasury*, Michigan now owes tax refunds of over $1 billion plus interest to out-of-state corporate taxpayers.
• The MTC’s continued failure to address its organizational structure and governance while amending UDITPA raises new questions about the MTC’s operations and state involvement.
  • Are states required to adopt the new language?
  • If so, have states again given up sovereignty by being part of the Compact such that they cannot control their own state law?
  • If the amendments are binding on Compact member states, can taxpayers apply the revisions regardless of whether the states codify them?
  • Will the UDITPA amendments cause a second round of “Gillette” refund claims and litigation?
The MTC has indicated it would treat states that repealed and partially re-enacted the Compact as Compact members if the reenactment is in a “substantially similar form.”

- If states do not accept the UDITPA amendments, are their versions of the Compact not in a “substantially similar form”?
- Does this mean the states will no longer be Compact members if they do not amend their laws?

The Compact entered into force when enacted into law by seven states. Multistate Tax Compact, art. X, sec. 1.

- Does the Commission cease to exist if its membership drops below seven states (evaluated by the number of states that legislatively adopt the amendments)?
• The MTC may perform audits for and share information with party states that specifically provide for it by statute. Multistate Tax Compact, art. VIII, secs. 1, 2, 6.

• Questions are already being raised as to whether the MTC can legitimately conduct audits and share taxpayer information with non-party states.
  • See Michael Herbert et al., The MTC and Its Joint Audit Program State Not the Obvious, State Tax Notes (Jul. 28, 2014).

• Will failure to adopt the new UDITPA provisions exacerbate the questions regarding MTC authority to conduct audits and share taxpayer information?
Questions?