

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.
 - See *Gillette Co. et al. v. Franchise Tax Bd.*, 209 Cal. App. 4th 938 (2012); *Int'l Bus. Mach. Corp. v. Mich. Dep't of Treasury*, No. 146440 (Mich. Jul. 14, 2014); *Anheuser-Busch, Inc. v. Mich. Dep't of Treasury*, No. 11-85-MT (Mich. Ct. Cl., Jun. 6, 2013); *Health Net, Inc. v. Dep't of Revenue*, No. TC 5127 (Or. T.C. 2014); *Graphic Packaging Corp. v. Combs*, District Court of Travis County, Tex., 353rd Judicial District, No. D-1-GN-12-003038.
- 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- The MTC has indicated it would treat states that repealed and partially re-enacted the Compact as Compact members if the reenactment is in a “substantially similar form.”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?

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