

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE GILLETTE COMPANY & SUBSIDIARIES,

Plaintiffs and Appellants,

v.

CALIFORNIA FRANCHISE TAX BOARD, an
Agency of the State of California,

Defendant and Respondent.

Case No. S206587

SUPREME COURT
FILED

JUL 16 2013

Frank A. McGuire Clerk

Deputy

Consolidated with the following cases:

- 1) *The Procter & Gamble Manufacturing Co. v. Franchise Tax Board*, CGC-10-495912
- 2) *Kimberly-Clark Worldwide, Inc. & Subsidiaries et al. v. Franchise Tax Board*, CGC-10-495916
- 3) *Sigma-Aldrich, Inc. v. Franchise Tax Board*, CGC-10-496437
- 4) *RB Holdings (USA) Inc. v. Franchise Tax Board*, CGC-10-496438
- 5) *Jones Apparel Group v. Franchise Tax Board*, CGC-10-499083

First Appellate District, Division Four, Case No. A130803
San Francisco County Superior Court, Honorable Richard A. Kramer
Case No. CGC-10-495911 (and consolidated cases listed above)

PLAINTIFFS/APPELLANTS' MOTION FOR JUDICIAL NOTICE

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(USA) Inc., and Jones Apparel Group

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of the State of California:*

Please take notice that, pursuant to California Rules of Court 8.520 and 8.252 and California Evidence Code sections 452(c) & (h), and 459, Plaintiffs and Appellants The Gillette Company & Subsidiaries, *et al.*, hereby move this Court to take judicial notice for the purposes of this appeal, of the following true and correct documents, which are attached as Exhibits M through S to this Motion for Judicial Notice:

1. Memorandum prepared by John C. Doyle, Executive Director State of Alaska Legislative Affairs Agency, dated January 23, 1967. A true and correct copy of this document is attached as Ex. M; it is also available online (page 1) at <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lib/6700110MULTISTATE%20TAX%20COMPACT%20-%20MEMORANDUM%20AND%20LEGISLATION.pdf>.
2. Memorandum entitled Multistate Tax Compact prepared by the Council of State Governments, Washington Office, dated December 20, 1966. A true and correct copy of this document is attached as Ex. N; it is also available online (pages 2-4) at <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lib/6700110MULTISTATE%20TAX%20COMPACT%20-%20MEMORANDUM%20AND%20LEGISLATION.pdf>.
3. Multistate Tax Compact: Suggested Enabling Act, prepared by The Council of State Governments, dated December 20,

1966. A true and correct copy of this document is attached as Ex. O; it is also available online (pages 5-6) at <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lib/6700110MULTISTATE%20TAX%20COMPACT%20-%20MEMORANDUM%20AND%20LEGISLATION.pdf>.

4. Multistate Tax Compact (Final Complete Text), prepared by The Council of State Governments, dated December 20, 1966. A true and correct copy of this document is attached as Ex. P; it is also available online (pages 7-22) at <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lib/6700110MULTISTATE%20TAX%20COMPACT%20-%20MEMORANDUM%20AND%20LEGISLATION.pdf>.
5. Memorandum prepared by Charles F. Schwan, Jr., Secretary, Special Committee on Interstate Taxation, The Council of State Governments, dated January 20, 1967, regarding (1) Erratum Notice, and (2) Summary and Analysis of the Multistate Tax Compact. A true and correct copy of this document is attached as Ex. Q.
6. Erratum Notice prepared by Charles F. Schwan, Jr., Secretary, Special Committee on Interstate Taxation, The Council of State Governments, dated January 18, 1967. A true and correct copy of this document is attached as Ex. R.
7. Document entitled The Multistate Tax Compact -- Summary and Analysis, prepared by The Council of State Governments, dated January 20, 1967. A true and correct copy of this document is attached as Ex. S.

These documents are attached to this motion as required by Rule 8.252 of the California Rules of Court. These matters do not relate to proceedings occurring after the judgment that is the subject of this appeal.

The motion is based on the following memorandum.

MEMORANDUM

Under Evidence Code Section 459, subdivision (a), a reviewing court may take judicial notice of any matter specified in Evidence Code Section 452. Evidence Code Section 452 provides that judicial notice may be taken of “official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States,” and of “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evid. Code § 452(c) and (h). The documents described above and attached hereto fall into these categories; therefore, judicial notice is proper as to each of these documents. These documents were not submitted in the proceedings below because Plaintiffs have not have the opportunity to engage in discovery in this case, and Plaintiffs were unaware of these documents until recently.

Each of the documents in Exhibits M through S are relevant to this appeal in that they relate to the enactment, interpretation and application of the Multistate Tax Compact and Revenue & Taxation Code § 38006, the correct construal of which forms the basis of the dispute underlying this case.

Exhibit M is a cover memorandum prepared by the executive director of the State of Alaska Legislative Affairs Agency enclosing three documents prepared by The Council on State Governments. This memorandum may be noticed as an official act of the legislative department of a state of the United States. Evid. Code § 452(c).

Exhibits N through S are documents prepared by The Council of State Governments, the governmental agency that drafted the Multistate

Tax Compact. These documents include memoranda discussing the formation, purpose and terms of the Multistate Tax Compact, the suggested enabling act for the Multistate Tax Compact, the final complete text of the Multistate Tax Compact, and an erratum notice.

These documents prepared by The Council on State Governments are proper subjects of judicial notice as public records and official acts of the legislative departments of any state of the United States and/or official acts of a public agency. *See, e.g., Ordlock v. Franchise Tax Bd.*, 38 Cal. 4th 897, 912 (2006) (taking judicial notice of legislative history and materials related to a bill pending before the California Assembly); *White v. Davis*, 30 Cal. 4th 528, 543 (2003) (taking judicial notice of legislative history of Senate bill and dates of events during the legislative process); *Post v. Prati*, 90 Cal. App. 3d 626, 633-634 (1979) (legislative committee reports, hearing excerpts, and correspondence from the legislative analyst, a state agency and an individual legislator to the Governor deemed judicially noticeable “official acts”). The Council of State Governments is a non-profit organization that supports state governments, is funded by state governments and headed by a state governor. Therefore, documents produced by the Council on State Governments are proper subjects for judicial notice under California law. *In re Crockett*, 159 Cal. App. 4th 751, 762 n. 6 (2008) (taking judicial notice of actions of Council of State Governments); *People v. Brooks*, 189 Cal. App. 3d 866, 873-874 (1987) (referring to Council on State Governments legislative history to interpret the Interstate Agreement on Detainers).

In addition, the documents described above reflect facts that are not reasonably subject to dispute and are capable of immediate and accurate

determination.

For the reasons stated above, Plaintiffs respectfully requests that this Court take judicial notice of the foregoing documents pursuant to Evidence Code sections 452 and 459.

DATED: July 16, 2013

Respectfully submitted,

Silverstein & Pomerantz LLP

By  _____
Amy L. Silverstein

Attorneys for Plaintiffs and Appellants
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The Procter & Gamble Manufacturing
Co.
Kimberly-Clark Worldwide, Inc. &
Subsidiaries et al.
Sigma-Aldrich, Inc.
RB Holdings (USA) Inc.
Jones Apparel Group

[Proposed]

**ORDER TAKING JUDICIAL NOTICE OF
REGULATIONS AND LEGISLATIVE ACTIONS**

Good cause appearing, IT IS HEREBY ORDERED that the Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

1. Memorandum prepared by John C. Doyle, Executive Director State of Alaska Legislative Affairs Agency, dated January 23, 1967
2. Memorandum entitled Multistate Tax Compact prepared by the Council of State Governments, Washington Office, dated December 20, 1966.
3. Multistate Tax Compact: Suggested Enabling Act, prepared by The Council of State Governments, dated December 20, 1966.
4. Multistate Tax Compact (Final Complete Text), prepared by The Council of State Governments, dated December 20, 1966.
5. Memorandum prepared by Charles F. Schwan, Jr., Secretary, Special Committee on Interstate Taxation, The Council of State Governments, dated January 20, 1967.
6. Erratum Notice prepared by Charles F. Schwan, Jr., Secretary, Special Committee on Interstate Taxation, The Council of State Governments, dated January 18, 1967.

7. The Multistate Tax Compact -- Summary and Analysis, prepared by
The Council of State Governments, dated January 20, 1967.

Dated: _____

Chief Justice

FILE COPY

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

January 23, 1967

MEMORANDUM

SUBJECT: Multistate Tax Compact - Memorandum and Legislation

TO: Members of the House and Senate Finance Committees
Members of the Legislative Council 1967-68

The Legislative Council meeting on January 16, 1967 directed that materials on the Multistate Tax Compact be brought to the attention of incoming members of the Finance Committees and the Legislative Council.

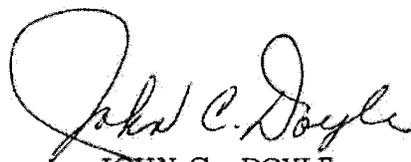
Attached you will find the following materials concerned with the compact:

Memorandum on the Multistate Tax Compact - Council of
State Governments

Suggested Enabling Act

Text of the Multistate Tax Compact

Additional copies of the materials will be available in this office in case there is a requirement for more copies.



JOHN C. DOYLE
Executive Director

Attachments

Memorandum
MULTISTATE TAX COMPACT

For almost a year a Multistate Tax Compact has been in the process of development under the auspices of the Council of State Governments, with the cooperation of the National Association of Tax Administrators, the National Association of Attorneys General and the National Legislative Conference. The compact is now ready for consideration by the 1967 sessions of state legislatures.

The basic objective of the compact is to provide solutions and additional facilities for dealing with a number of tax problems of multistate businesses, notably the ones identified by the Willis Subcommittee of the House Committee on the Judiciary.* Perhaps even more important in the long run, the compact would provide mechanisms for dealing with multistate tax problems on a continuing basis and for solving future problems, as well as those presently known to exist. Like the bills in the 89th Congress bearing Congressman Willis's name, the compact deals most immediately with income, capital stock, gross receipts, sales and use taxation. Also the compact is designed to provide for study, recommendatory and certain service features that could be applied to other state and local taxes as well.

One of the principal measures for improvements - i.e. simplification of taxpayer compliance and elimination of the possibility of double taxation - in the income tax field is the Uniform Division of Income for Tax Purposes Act, which has already been adopted in 14 of the 38 income tax states. The compact would permit any multistate taxpayer, at his option, to employ the Uniform Act for allocations and apportionments involving party states of their subdivisions. Each party state could retain its existing division of income provisions but it would be required to make the Uniform Act available to any taxpayer wishing to use it. Consequently, any taxpayer could obtain the benefits of multi-jurisdictional uniformity whenever he might want it.

While the availability of the Uniform Act should prevent disputes or minimize their number, the compact also provides for an arbitration procedure for the settlement of such disputes as may remain. This would also be at the option of the taxpayer, who could pursue a judicial remedy if he chose.

The compact further aids uniformity by providing for the making of advisory administrative rules and regulations applicable to any uniform provisions of statutory law.

A number of reforms already adopted widely would be made universal among the party states by the compact. For example, credits for sales taxes paid to other jurisdictions, provision for a small taxpayer to elect to pay a tax on gross sales in lieu of net income and relief of vendors from collection of sales or use taxes upon good faith acceptance of an exemption certificate would be assured.

* Special Subcommittee on State Taxation of Interstate Commerce

The matter of efficiency of audits, with concomitant convenience to taxpayers, long has been a subject of interest. The compact would make single audits possible on a multistate basis, in those states choosing to become parties to a cooperative audit article.

While many of the compact's provisions would be self executing, some would require the conduct of research, informational and implementing activities. For these purposes, the compact would establish a Multistate Tax Commission composed of representatives of the party states having responsibility in multistate tax matters. Although an interstate administrative agency would be new in the tax field, there are already a number of interstate administrative agencies, some with many years of successful operation. The Port of New York Authority which now operates and manages a billion and a half dollars worth of transportation and related public works is the oldest example. It is now forty-five years old. Multistate commissions with large numbers of member states are to be found in the fields of education, natural resource development and management, and pollution control. Several compacts have a membership of all or almost all the states. These include the Interstate Compact for the Supervision of Parolees and Probationers, the Interstate Compact on Juveniles, and the Interstate Compact on Mental Health. Accordingly, there would be a considerable body of experience for a Multistate Tax Compact and its Commission to draw upon.

The compact approach offers a number of advantages in addition to removing any possible validity for federal legislation restricting state and local taxing jurisdiction. In effect the latter declares the solution of multistate tax problems to be hopeless and seeks to minimize their impact by curtailing state and local taxation. While those taxpayers so situated as to secure preferential treatment from such a system might be glad for the windfall, the consequences for their non-exempt competitors and state and local revenues could be disastrous. These portions of the business community, including utilities of all types, retailers, vendors of items such as beverages, gasoline, tobacco and other products, and intrastate businesses of all sorts also will be faced with the likelihood of increased tax burdens in order to make up the revenue losses resulting from federally required preferential exemptions.

The serious implications of federal intervention in this area are further emphasized by the current proposals, because they would adopt a double standard for federal and state governments. While assuming the propriety of the federal government's use of tax policy to implement economic policies, the Willis bills would prohibit the states from utilizing tax policy to encourage industrial development programs best suited to their own particular resources and needs. These bills would thereby prevent states from stimulating economic growth and creating new job opportunities for their citizens.

A free competitive economy operating within our traditional framework of a viable federal-state system of government cannot effectively survive the centralized, monolithic control over the entire economy and the preferential jurisdictional immunities necessarily involved in this type of federal intervention

in state and local tax policies. Such federal legislation does not meet the needs of state governments or of the vast majority of taxpayers. In fact it would be inimical to them. On the other hand, the Multistate Tax Compact proposes to tackle the real problems of assuring equitable treatment of taxpayers, facilitating compliance and providing methods of avoiding or settling multistate tax disputes.

Council of State Governments
Washington Office
December 20, 1966

MULTISTATE TAX COMPACT: SUGGESTED ENABLING ACT

1 Section 1. The "Multistate Tax Compact" is hereby enacted into law
2 and entered into with all jurisdictions legally joining therein, in the
3 form substantially as follows:

(INSERT EXACT TEXT OF THE MULTISTATE TAX COMPACT)

1 Section 2. [Use this Section to implement Article III 2. If both the
2 State and subdivisions levy income taxes on businesses, appropriate provi-
3 sion should be made to assure that both are covered. If neither the State
4 nor any of its subdivisions presently levy business income taxes, this Sec-
5 tion can be omitted.]

1 Section 3. [The Governor [[with the consent of the Senate]] shall
2 appoint the member of the Multistate Tax Commission to represent this State,
3 from among the persons made eligible by Article VI 1 (a) of the compact.]
4 [The head of the [[insert name of appropriate state tax agency]] shall rep-
5 resent this State on the Multistate Tax Commission.]

1 Section 4. The member representing this State on the Multistate Tax
2 Commission may be represented thereon by an alternate designated by him.
3 Any such alternate shall be a principal deputy or assistant of the member
4 of the Commission in the agency which the member heads.

1 Section 5. [Use this Section to provide for other counsel as allowed
2 by Article VI 1 (a), if such other counsel is desired.]

1 Section 6. [The Governor, after consultation with representatives of
2 local governments, shall appoint [[three]] persons who are representative
3 of subdivisions affected or likely to be affected by the Multistate Tax
4 Compact.] [The Governor shall appoint [[three]] persons who are represent-
5 ative of subdivisions affected or likely to be affected by the Multistate
6 Tax Compact, from among persons nominated by [[specify recognized state-
7 wide organizations of local governments.]] The member of the Commission
8 representing this State, and any alternate designated by him, shall consult
9 regularly with these appointees, in accordance with Article VI 1 (b) of the
10 compact.

1 Section 7. [There is hereby established the Multistate Tax Compact
2 Advisory Committee composed of the member of the Multistate Tax Commission
3 representing this State, any alternate designated by him, the Attorney
4 General or his designee, and two members of the Senate, appointed by the

5 [[presiding officer]] thereof and two members of the [[Assembly]], appointed
6 by the Speaker thereof. The Chairman shall be the member of the Commission
7 representing this State. The Committee shall meet on the call of its Chair-
8 man or at the request of a majority of its members, but in any event it shall
9 meet not less than three times in each year. The Committee may consider any
10 and all matters relating to recommendations of the Multistate Tax Commission
11 and the activities of the members in representing this State thereon.]

1 Section 8. [Article VIII of the Multistate Tax Compact relating to in-
2 teraudits shall be in force in and with respect to this State.]

1 Section 9. There is hereby appropriated the sum of \$_____ to the Mul-
2 tistate Tax Commission [for the 19__ fiscal year] [for the biennium
3 19__-19__].

1 Section 10. [Insert Effective Date.]

The Council of State Governments
December 20, 1966

FINAL COMPLETE TEXT
December 20, 1966

MULTISTATE TAX COMPACT

The Council of State Governments
1755 Massachusetts Avenue, N. W.
Washington, D. C. 20036

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MULTISTATE TAX COMPACT

Article I. Purposes.

- 1 The purposes of this compact are to:
2 1. Facilitate proper determination of State and local tax lia-
3 bility of multistate taxpayers, including the equitable apportionment
4 of tax bases and settlement of apportionment disputes.
5 2. Promote uniformity or compatibility in significant components
6 of tax systems.
7 3. Facilitate taxpayer convenience and compliance in the filing
8 of tax returns and in other phases of tax administration.
9 4. Avoid duplicative taxation.

Article II. Definitions.

- 1 As used in this compact:
2 1. "State" means a State of the United States, the District of
3 Columbia, the Commonwealth of Puerto Rico, or any Territory or Posses-
4 sion of the United States.
5 2. "Subdivision" means any governmental unit or special district
6 of a State.
7 3. "Taxpayer" means any corporation, partnership, firm, associa-
8 tion, governmental unit or agency or person acting as a business entity
9 in more than one State.
10 4. "Income tax" means a tax imposed on or measured by net income
11 including any tax imposed on or measured by an amount arrived at by de-
12 ducting expenses from gross income, one or more forms of which expenses
13 are not specifically and directly related to particular transactions.
14 5. "Capital stock tax" means a tax measured in any way by the
15 capital of a corporation considered in its entirety.
16 6. "Gross receipts tax" means a tax, other than a sales tax,
17 which is imposed on or measured by the gross volume of business, in
18 terms of gross receipts or in other terms, and in the determination of
19 which no deduction is allowed which would constitute the tax an income
20 tax.

21 7. "Sales tax" means a tax imposed with respect to the transfer
22 for a consideration of ownership, possession or custody of tangible
23 personal property or the rendering of services measured by the price
24 of the tangible personal property transferred or services rendered and
25 which is required by State or local law to be separately stated from
26 the sales price by the seller, or which is customarily separately stated
27 from the sales price, but does not include a tax imposed exclusively on
28 the sale of a specifically identified commodity or article or class of
29 commodities or articles.

30 8. "Use tax" means a nonrecurring tax, other than a sales tax,
31 which (a) is imposed on or with respect to the exercise or enjoyment of
32 any right or power over tangible personal property incident to the owner-
33 ship, possession or custody of that property or the leasing of that
34 property from another including any consumption, keeping, retention, or
35 other use of tangible personal property and (b) is complementary to a
36 sales tax.

37 9. "Tax" means an income tax, capital stock tax, gross receipts
38 tax, sales tax, use tax, and any other tax which has a multistate impact,
39 except that the provisions of Articles III, IV and V of this compact
40 shall apply only to the taxes specifically designated therein and the
41 provisions of Article IX of this compact shall apply only in respect to
42 determinations pursuant to Article IV.

Article III. Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

1 1. Any taxpayer subject to an income tax whose income is subject
2 to apportionment and allocation for tax purposes pursuant to the laws
3 of a party State or pursuant to the laws of subdivisions in two or more
4 party States may elect to apportion and allocate his income in the man-
5 ner provided by the laws of such State or by the laws of such States
6 and subdivisions without reference to this compact, or may elect to ap-
7 portion and allocate in accordance with Article IV. This election for
8 any tax year may be made in all party States or subdivisions thereof or
9 in any one or more of the party States or subdivisions thereof without
10 reference to the election made in the others. For the purposes of this
11 paragraph, taxes imposed by subdivisions shall be considered separately
12 from State taxes and the apportionment and allocation also may be applied
13 to the entire tax base. In no instance wherein Article IV is employed
14 for all subdivisions of a State may the sum of all apportionments and
15 allocations to subdivisions within a State be greater than the apportion-
16 ment and allocation that would be assignable to that State if the appor-
17 tionment or allocation were being made with respect to a State income
18 tax.

Taxpayer Option, Short Form.

19 2. Each party State or any subdivision thereof which imposes an
20 income tax shall provide by law that any taxpayer required to file a
21 return, whose only activities within the taxing jurisdiction consist of
22 sales and do not include owning or renting real estate or tangible per-
23 sonal property, and whose dollar volume of gross sales made during the

24 tax year within the State or subdivision, as the case may be, is not
25 in excess of \$100,000 may elect to report and pay any tax due on the
26 basis of a percentage of such volume, and shall adopt rates which shall
27 produce a tax which reasonably approximates the tax otherwise due. The
28 Multistate Tax Commission, not more than once in five years, may adjust
29 the \$100,000 figure in order to reflect such changes as may occur in
30 the real value of the dollar, and such adjusted figure, upon adoption
31 by the Commission, shall replace the \$100,000 figure specifically pro-
32 vided herein. Each party State and subdivision thereof may make the
33 same election available to taxpayers additional to those specified in
34 this paragraph.

Coverage.

35 3. Nothing in this Article relates to the reporting or payment
36 of any tax other than an income tax.

Article IV. Division of Income.

1 1. As used in this Article, unless the context otherwise
2 requires:

3 (a) "Business income" means income arising from transactions
4 and activity in the regular course of the taxpayer's trade or business
5 and includes income from tangible and intangible property if the acqui-
6 sition, management, and disposition of the property constitute integral
7 parts of the taxpayer's regular trade or business operations.

8 (b) "Commercial domicile" means the principal place from
9 which the trade or business of the taxpayer is directed or managed.

10 (c) "Compensation" means wages, salaries, commissions and
11 any other form of remuneration paid to employees for personal services.

12 (d) "Financial organization" means any bank, trust company,
13 savings bank, industrial bank, land bank, safe deposit company, private
14 banker, savings and loan association, credit union, cooperative bank,
15 small loan company, sales finance company, investment company, or any
16 type of insurance company.

17 (e) "Nonbusiness income" means all income other than business
18 income.

19 (f) "Public utility" means any business entity (1) which owns or
20 operates any plant, equipment, property, franchise, or license for the
21 transmission of communications, transportation of goods or persons, except
22 by pipe line, or the production, transmission, sale, delivery, or furnish-
23 ing of electricity, water or steam; and (2) whose rates of charges for
24 goods or services have been established or approved by a Federal, State or
25 local government or governmental agency.

26 (g) "Sales" means all gross receipts of the taxpayer not
27 allocated under paragraphs of this Article.

28 (h) "State" means any State of the United States, the Dis-
29 trict of Columbia, the Commonwealth of Puerto Rico, any Territory or
30 Possession of the United States, and any foreign country or political
31 subdivision thereof.

32 (i) "This State" means the State in which the relevant tax
33 return is filed or, in the case of application of this Article to the
34 apportionment and allocation of income for local tax purposes, the sub-
35 division or local taxing district in which the relevant tax return is
36 filed.

37 2. Any taxpayer having income from business activity which is
38 taxable both within and without this State, other than activity as a
39 financial organization or public utility or the rendering of purely
40 personal services by an individual, shall allocate and apportion his
41 net income as provided in this Article. If a taxpayer has income from
42 business activity as a public utility but derives the greater percentage
43 of his income from activities subject to this Article, the taxpayer may
44 elect to allocate and apportion his entire net income as provided in
45 this Article.

46 3. For purposes of allocation and apportionment of income under
47 this Article, a taxpayer is taxable in another State if (1) in that
48 State he is subject to a net income tax, a franchise tax measured by
49 net income, a franchise tax for the privilege of doing business, or a
50 corporate stock tax, or (2) that State has jurisdiction to subject the
51 taxpayer to a net income tax regardless of whether, in fact, the State
52 does or does not.

53 4. Rents and royalties from real or tangible personal property,
54 capital gains, interest, dividends or patent or copyright royalties, to
55 the extent that they constitute nonbusiness income, shall be allocated
56 as provided in paragraphs 5 through 8 of this Article.

57 5. (a) Net rents and royalties from real property located in
58 this State are allocable to this State.

59 (b) Net rents and royalties from tangible personal property
60 are allocable to this State: (1) if and to the extent that the property is
61 utilized in this State, or (2) in their entirety if the taxpayer's com-
62 mercial domicile is in this State and the taxpayer is not organized
63 under the laws of or taxable in the State in which the property is
64 utilized.

65 (c) The extent of utilization of tangible personal property
66 in a State is determined by multiplying the rents and royalties by a
67 fraction, the numerator of which is the number of days of physical lo-
68 cation of the property in the State during the rental or royalty period
69 in the taxable year and the denominator of which is the number of days
70 of physical location of the property everywhere during all rental
71 or royalty periods in the taxable year. If the physical location of the
72 property during the rental or royalty period is unknown or unascertain-
73 able by the taxpayer, tangible personal property is utilized in the
74 State in which the property was located at the time the rental or royalty
75 payer obtained possession.

76 6. (a) Capital gains and losses from sales of real property lo-
77 cated in this State are allocable to this State.

78 (b) Capital gains and losses from sales of tangible personal
79 property are allocable to this State if (1) the property had a situs
80 in this State at the time of the sale, or (2) the taxpayer's commercial
81 domicile is in this State and the taxpayer is not taxable in the State

82 in which the property had a situs.

83 (c) Capital gains and losses from sales of intangible per-
84 sonal property are allocable to this State if the taxpayer's commercial
85 domicile is in this State.

86 7. Interest and dividends are allocable to this State if the tax-
87 payer's commercial domicile is in this State.

88 8. (a) Patent and copyright royalties are allocable to this
89 State: (1) if and to the extent that the patent or copyright is utilized
90 by the payer in this State, or (2) if and to the extent that the patent
91 copyright is utilized by the payer in a State in which the taxpayer is
92 not taxable and the taxpayer's commercial domicile is in this State.

93 (b) A patent is utilized in a State to the extent that it is
94 employed in production, fabrication, manufacturing, or other processing
95 in the State or to the extent that a patented product is produced in the
96 State. If the basis of receipts from patent royalties does not permit
97 allocation to States or if the accounting procedures do not reflect
98 States of utilization, the patent is utilized in the State in which the
99 taxpayer's commercial domicile is located.

100 (c) A copyright is utilized in a State to the extent that
101 printing or other publication originates in the State. If the basis of
102 receipts from copyright royalties does not permit allocation to States
103 or if the accounting procedures do not reflect States of utilization,
104 the copyright is utilized in the State in which the taxpayer's commer-
105 cial domicile is located.

106 9. All business income shall be apportioned to this State by
107 multiplying the income by a fraction, the numerator of which is the
108 property factor plus the payroll factor plus the sales factor, and the
109 denominator of which is three.

110 10. The property factor is a fraction, the numerator of which
111 is the average value of the taxpayer's real and tangible personal prop-
112 erty owned or rented and used in this State during the tax period and
113 the denominator of which is the average value of all the taxpayer's real
114 and tangible personal property owned or rented and used during the tax
115 period.

116 11. Property owned by the taxpayer is valued at its original cost.
117 Property rented by the taxpayer is valued at eight times the net annual
118 rental rate. Net annual rental rate is the annual rental rate paid by the
119 taxpayer less any annual rental rate received by the taxpayer from sub-
120 rentals.

121 12. The average value of property shall be determined by averaging
122 the values at the beginning and ending of the tax period but the tax
123 administrator may require the averaging of monthly values during the tax
124 period if reasonably required to reflect properly the average value of
125 the taxpayer's property.

126 13. The payroll factor is a fraction, the numerator of which is
127 the total amount paid in this State during the tax period by the tax-
128 payer for compensation and the denominator of which is the total compen-
129 sation paid everywhere during the tax period.

130 14. Compensation is paid in this State if:

131 (a) the individual's service is performed entirely within
132 the State;

133 (b) the individual's service is performed both within and
134 without the State, but the service performed without the State is in-
135cidental to the individual's service within the State; or

136 (c) some of the service is performed in the State and (1)
137 the base of operations or, if there is no base of operations, the place
138 from which the service is directed or controlled is in the State, or
139 (2) the base of operations or the place from which the service is di-
140rected or controlled is not in any State in which some part of the service
141 is performed, but the individual's residence is in this State.

142 15. The sales factor is a fraction, the numerator of which is the
143 total sales of the taxpayer in this State during the tax period, and
144 the denominator of which is the total sales of the taxpayer everywhere
145 during the tax period.

146 16. Sales of tangible personal property are in this State if:

147 (a) the property is delivered or shipped to a purchaser, other
148 than the United States Government, within this State regardless of the
149 f.o.b. point or other conditions of the sale; or

150 (b) the property is shipped from an office, store, warehouse,
151 factory, or other place of storage in this State and (1) the purchaser
152 is the United States Government or (2) the taxpayer is not taxable in
153 the State of the purchaser.

154 17. Sales, other than sales of tangible personal property, are in
155 this State if:

156 (a) the income-producing activity is performed in this State; or

157 (b) the income-producing activity is performed both in and
158 outside this State and a greater proportion of the income-producing ac-
159 tivity is performed in this State than in any other State, based on
160 costs of performance.

161 18. If the allocation and apportionment provisions of this Article
162 do not fairly represent the extent of the taxpayer's business activity
163 in this State, the taxpayer may petition for or the tax administrator may
164 require, in respect to all or any part of the taxpayer's business activ-
165 ity, if reasonable:

166 (a) separate accounting;

167 (b) the exclusion of any one or more of the factors;

168 (c) the inclusion of one or more additional factors which will
169 fairly represent the taxpayer's business activity in this State; or

170 (d) the employment of any other method to effectuate an equi-
171 table allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1 1. Each purchaser liable for a use tax on tangible personal
2 property shall be entitled to full credit for the combined amount or
3 amounts of legally imposed sales or use taxes paid by him with respect

4 to the same property to another State and any subdivision thereof. The
5 credit shall be applied first against the amount of any use tax due the
6 State, and any unused portion of the credit shall then be applied against
7 the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

8 2. Whenever a vendor receives and accepts in good faith from a
9 purchaser a resale or other exemption certificate or other written evi-
10 dence of exemption authorized by the appropriate State or subdivision
11 taxing authority, the vendor shall be relieved of liability for a sales
12 or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1 1. (a) The Multistate Tax Commission is hereby established. It
2 shall be composed of one "member" from each party State who shall be
3 the head of the State agency charged with the administration of the
4 types of taxes to which this compact applies. If there is more than
5 one such agency the State shall provide by law for the selection of
6 the Commission member from the heads of the relevant agencies. State
7 law may provide that a member of the Commission be represented by an
8 alternate but only if there is on file with the Commission written noti-
9 fication of the designation and identity of the alternate. The Attorney
10 General of each party State or his designee, or other counsel if the
11 laws of the party State specifically provide, shall be entitled to at-
12 tend the meetings of the Commission, but shall not vote. Such Attorneys
13 General, designees, or other counsel shall receive all notices of meet-
14 ings required under paragraph 1 (e) of this Article.

15 (b) Each party State shall provide by law for the selection
16 of representatives from its subdivisions affected by this compact to
17 consult with the Commission member from that State.

18 (c) Each member shall be entitled to one vote. The Commis-
19 sion shall not act unless a majority of the members are present, and no
20 action shall be binding unless approved by a majority of the total num-
21 ber of members.

22 (d) The Commission shall adopt an official seal to be used
23 as it may provide.

24 (e) The Commission shall hold an annual meeting and such
25 other regular meetings as its bylaws may provide and such special meet-
26 ings as its Executive Committee may determine. The Commission bylaws
27 shall specify the dates of the annual and any other regular meetings,
28 and shall provide for the giving of notice of annual, regular and special
29 meetings. Notices of special meetings shall include the reasons there-
30 for and an agenda of the items to be considered.

31 (f) The Commission shall elect annually, from among its
32 members, a Chairman, a Vice Chairman and a Treasurer. The Commission
33 shall appoint an Executive Director who shall serve at its pleasure,
34 and it shall fix his duties and compensation. The Executive Director
35 shall be Secretary of the Commission. The Commission shall make pro-
36 vision for the bonding of such of its officers and employees as it may
37 deem appropriate.

38 (g) Irrespective of the civil service, personnel or other
39 merit system laws of any party State, the Executive Director shall ap-
40 point or discharge such personnel as may be necessary for the perform-
41 ance of the functions of the Commission and shall fix their duties and
42 compensation. The Commission bylaws shall provide for personnel poli-
43 cies and programs.

44 (h) The Commission may borrow, accept or contract for the
45 services of personnel from any State, the United States, or any other
46 governmental entity.

47 (i) The Commission may accept for any of its purposes and
48 functions any and all donations and grants of money, equipment, supplies,
49 materials and services, conditional or otherwise, from any governmental
50 entity, and may utilize and dispose of the same.

51 (j) The Commission may establish one or more offices for the
52 transacting of its business.

53 (k) The Commission shall adopt bylaws for the conduct of its
54 business. The Commission shall publish its bylaws in convenient form,
55 and shall file a copy of the bylaws and any amendments thereto with the
56 appropriate agency or officer in each of the party States.

57 (l) The Commission annually shall make to the Governor and
58 legislature of each party State a report covering its activities for
59 the preceding year. Any donation or grant accepted by the Commission
60 or services borrowed shall be reported in the annual report of the Com-
61 mission, and shall include the nature, amount and conditions, if any,
62 of the donation, gift, grant or services borrowed and the identity of
63 the donor or lender. The Commission may make additional reports as it
64 may deem desirable.

Committees.

65 2. (a) To assist in the conduct of its business when the full
66 Commission is not meeting, the Commission shall have an Executive Com-
67 mittee of seven members, including the Chairman, Vice Chairman, Treasurer
68 and four other members elected annually by the Commission. The Executive
69 Committee, subject to the provisions of this compact and consistent with
70 the policies of the Commission, shall function as provided in the bylaws
71 of the Commission.

72 (b) The Commission may establish advisory and technical com-
73 mittees, membership on which may include private persons and public
74 officials, in furthering any of its activities. Such committees may
75 consider any matter of concern to the Commission, including problems of
76 special interest to any party State and problems dealing with particular
77 types of taxes.

78 (c) The Commission may establish such additional commit-
79 tees as its bylaws may provide.

Powers.

80 3. In addition to powers conferred elsewhere in this compact,
81 the Commission shall have power to:

82 (a) Study State and local tax systems and particular types
83 of State and local taxes.

84 (b) Develop and recommend proposals for an increase in uni-
85 formity or compatibility of State and local tax laws with a view toward
86 encouraging the simplification and improvement of State and local tax
87 law and administration.

88 (c) Compile and publish information as in its judgment would
89 assist the party States in implementation of the compact and taxpayers
90 in complying with State and local tax laws.

91 (d) Do all things necessary and incidental to the administra-
92 tion of its functions pursuant to this compact.

Finance.

93 4. (a) The Commission shall submit to the Governor or designated
94 officer or officers of each party State a budget of its estimated expendi-
95 tures for such period as may be required by the laws of that State for
96 presentation to the legislature thereof.

97 (b) Each of the Commission's budgets of estimated expenditures
98 shall contain specific recommendations of the amounts to be appropriated
99 by each of the party States. The total amount of appropriations re-
100 quested under any such budget shall be apportioned among the party States
101 as follows: one-tenth in equal shares; and the remainder in proportion
102 to the amount of revenue collected by each party State and its subdivi-
103 sions from income taxes, capital stock taxes, gross receipts taxes,
104 sales and use taxes. In determining such amounts, the Commission shall
105 employ such available public sources of information as, in its judgment,
106 present the most equitable and accurate comparisons among the party
107 States. Each of the Commission's budgets of estimated expenditures and
108 requests for appropriations shall indicate the sources used in obtaining
109 information employed in applying the formula contained in this paragraph.

110 (c) The Commission shall not pledge the credit of any party
111 State. The Commission may meet any of its obligations in whole or in
112 part with funds available to it under paragraph (1) (i) of this Article:
113 provided that the Commission takes specific action setting aside such
114 funds prior to incurring any obligation to be met in whole or in part in
115 such manner. Except where the Commission makes use of funds available
116 to it under paragraph 1 (i), the Commission shall not incur any obliga-
117 tion prior to the allotment of funds by the party States adequate to
118 meet the same.

119 (d) The Commission shall keep accurate accounts of all receipts
120 and disbursements. The receipts and disbursements of the Commission shall

121 be subject to the audit and accounting procedures established under its
122 bylaws. All receipts and disbursements of funds handled by the Commis-
123 sion shall be audited yearly by a certified or licensed public accountant
124 and the report of the audit shall be included in and become part of the
125 annual report of the Commission.

126 (e) The accounts of the Commission shall be open at any rea-
127 sonable time for inspection by duly constituted officers of the party
128 States and by any persons authorized by the Commission.

129 (f) Nothing contained in this Article shall be construed to
130 prevent Commission compliance with laws relating to audit or inspection
131 of accounts by or on behalf of any government contributing to the
132 support of the Commission.

Article VII. Uniform Regulations and Forms.

1 1. Whenever any two or more party States, or subdivisions of party
2 States, have uniform or similar provisions of law relating to an income
3 tax, the Commission may adopt uniform regulations for any phase of the
4 administration of such law, including assertion of jurisdiction to tax,
5 or prescribing uniform tax forms. The Commission may also act with re-
6 spect to the provisions of Article IV of this compact.

7 2. Prior to the adoption of any regulation, the Commission shall:
8 (a) As provided in its bylaws, hold at least one public hear-
9 ing on due notice to all affected party States and subdivisions thereof
10 and to all taxpayers and other persons who have made timely request of
11 the Commission for advance notice of its regulation-making proceedings.

12 (b) Afford all affected party States and subdivisions and
13 interested persons an opportunity to submit relevant written data and
14 views, which shall be considered fully by the Commission.

15 3. The Commission shall submit any regulations adopted by it to the
16 appropriate officials of all party States and subdivisions to which they
17 might apply. Each such State and subdivision shall consider any such
18 regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

1 1. This Article shall be in force only in those party States
2 that specifically provide therefor by statute.

3 2. Any party State or subdivision thereof desiring to make or
4 participate in an audit of any accounts, books, papers, records or other
5 documents may request the Commission to perform the audit on its behalf.
6 In responding to the request, the Commission shall have access to and
7 may examine, at any reasonable time, such accounts, books, papers,
8 records, and other documents and any relevant property or stock of mer-
9 chandise. The Commission may enter into agreements with party States
10 or their subdivisions for assistance in performance of the audit. The
11 Commission shall make charges, to be paid by the State or local govern-
12 ment or governments for which it performs the service, for any audits
13 performed by it in order to reimburse itself for the actual costs in-
14 curred in making the audit.

capital stock tax, gross receipts tax, sales or use tax,

(Erratum received Jan 23)

15 3. The Commission may require the attendance of any person within
16 the State where it is conducting an audit or part thereof at a time and
17 place fixed by it within such State for the purpose of giving testimony
18 with respect to any account, book, paper, document, other record, prop-
19 erty or stock of merchandise being examined in connection with the audit.
20 If the person is not within the jurisdiction, he may be required to at-
21 tend for such purpose at any time and place fixed by the Commission
22 within the State of which he is a resident: provided that such State has
23 adopted this Article.

24 4. The Commission may apply to any court having power to issue
25 compulsory process for orders in aid of its powers and responsibilities
26 pursuant to this Article and any and all such courts shall have jurisdic-
27 tion to issue such orders. Failure of any person to obey any such
28 order shall be punishable as contempt of the issuing court. If the
29 party or subject matter on account of which the Commission seeks an
30 order is within the jurisdiction of the court to which application is
31 made, such application may be to a court in the State or subdivision
32 on behalf of which the audit is being made or a court in the State in
33 which the object of the order being sought is situated. The provisions
34 of this paragraph apply only to courts in a State that has adopted this
35 Article.

36 5. The Commission may decline to perform any audit requested if
37 it finds that its available personnel or other resources are insuffi-
38 cient for the purpose or that, in the terms requested, the audit is
39 impracticable of satisfactory performance. If the Commission, on the
40 basis of its experience, has reason to believe that an audit of a par-
41 ticular taxpayer, either at a particular time or on a particular sched-
42 ule, would be of interest to a number of party States or their subdivi-
43 sions, it may offer to make the audit or audits, the offer to be con-
44 tingent on sufficient participation therein as determined by the Commis-
45 sion.

46 6. Information obtained by any audit pursuant to this Article
47 shall be confidential and available only for tax purposes to party
48 States, their subdivisions or the United States. Availability of in-
49 formation shall be in accordance with the laws of the States or sub-
50 divisions on whose account the Commission performs the audit, and only
51 through the appropriate agencies or officers of such States or subdivi-
52 sions. Nothing in this Article shall be construed to require any tax-
53 payer to keep records for any period not otherwise required by law.

54 7. Other arrangements made or authorized pursuant to law for co-
55 operative audit by or on behalf of the party States or any of their sub-
56 divisions are not superseded or invalidated by this Article.

57 8. In no event shall the Commission make any charge against a
58 taxpayer for an audit.

59 9. As used in this Article, "tax," in addition to the meaning
60 ascribed to it in Article II, means any tax or license fee imposed in
61 whole or in part for revenue purposes.

Article IX. Arbitration.

1 1. Whenever the Commission finds a need for settling disputes con-
2 cerning apportionments and allocations by arbitration, it may adopt a
3 regulation placing this Article in effect, notwithstanding the provisions
4 of Article VII.

5 2. The Commission shall select and maintain an Arbitration Panel
6 composed of officers and employees of State and local governments and
7 private persons who shall be knowledgeable and experienced in matters
8 of tax law and administration.

9 3. Whenever a taxpayer who has elected to employ Article IV, or
10 whenever the laws of the party State or subdivision thereof are substan-
11 tially identical with the relevant provisions of Article IV, the taxpayer,
12 by written notice to the Commission and to each party State or subdivision
13 thereof that would be affected, may secure arbitration of an apportionment
14 or allocation, if he is dissatisfied with the final administrative deter-
15 mination of the tax agency of the State or subdivision with respect thereto
16 on the ground that it would subject him to double or multiple taxation by
17 two or more party States or subdivisions thereof. Each party State and
18 subdivision thereof hereby consents to the arbitration as provided herein,
19 and agrees to be bound thereby.

20 4. The Arbitration Board shall be composed of one person selected
21 by the taxpayer, one by the agency or agencies involved, and one member
22 of the Commission's Arbitration Panel. If the agencies involved are un-
23 able to agree on the person to be selected by them, such person shall be
24 selected by lot from the total membership of the Arbitration Panel. The
25 two persons selected for the Board in the manner provided by the foregoing
26 provisions of this paragraph shall jointly select the third member of the
27 Board. If they are unable to agree on the selection, the third member
28 shall be selected by lot from among the total membership of the Arbitra-
29 tion Panel. No member of a Board selected by lot shall be qualified to
30 serve if he is an officer or employee or is otherwise affiliated with any
31 party to the arbitration proceeding. Residence within the jurisdiction
32 of a party to the arbitration proceeding shall not constitute affiliation
33 within the meaning of this paragraph.

34 5. The Board may sit in any State or subdivision party to the pro-
35 ceeding, in the State of the taxpayer's incorporation, residence or domi-
36 cile, in any State where the taxpayer does business, or in any place that
37 it finds most appropriate for gaining access to evidence relevant to the
38 matter before it.

39 6. The Board shall give due notice of the times and places of its
40 hearings. The parties shall be entitled to be heard, to present evidence,
41 and to examine and cross-examine witnesses. The Board shall act by major-
42 ity vote.

43 7. The Board shall have power to administer oaths, take testimony,
44 subpoena and require the attendance of witnesses and the production of
45 accounts, books, papers, records, and other documents, and issue commissions

46 to take testimony. Subpoenas may be signed by any member of the Board.
47 In case of failure to obey a subpoena, and upon application by the Board,
48 any judge of a court of competent jurisdiction of the State in which the
49 Board is sitting or in which the person to whom the subpoena is directed
50 may be found may make an order requiring compliance with the subpoena,
51 and the court may punish failure to obey the order as a contempt. The
52 provisions of this paragraph apply only in States that have adopted this
53 Article.

54 8. Unless the parties otherwise agree the expenses and other costs
55 of the arbitration shall be assessed and allocated among the parties by
56 the Board in such manner as it may determine. The Commission shall fix
57 a schedule of compensation for members of Arbitration Boards and of other
58 allowable expenses and costs. No officer or employee of a State or local
59 government who serves as a member of a Board shall be entitled to compen-
60 sation therefor unless he is required on account of his service to forego
61 the regular compensation attaching to his public employment, but any such
62 Board member shall be entitled to expenses.

63 9. The Board shall determine the disputed apportionment or alloca-
64 tion and any matters necessary thereto. The determinations of the Board
65 shall be final for purposes of making the apportionment or allocation,
66 but for no other purpose.

67 10. The Board shall file with the Commission and with each tax agency
68 represented in the proceeding: the determination of the Board; the Board's
69 written statement of its reasons therefor; the record of the Board's pro-
70 ceedings; and any other documents required by the arbitration rules of
71 the Commission to be filed.

72 11. The Commission shall publish the determinations of Boards together
73 with the statements of the reasons therefor.

74 12. The Commission shall adopt and publish rules of procedure and
75 practice and shall file a copy of such rules and of any amendment thereto
76 with the appropriate agency or officer in each of the party States.

77 13. Nothing contained herein shall prevent at any time a written com-
78 promise of any matter or matters in dispute, if otherwise lawful, by the
79 parties to the arbitration proceeding.

Article X. Entry Into Force and Withdrawal.

1 1. This compact shall enter into force when enacted into law by any
2 seven States. Thereafter, this compact shall become effective as to any
3 other State upon its enactment thereof. The Commission shall arrange for
4 notification of all party States whenever there is a new enactment of the
5 compact.

6 2. Any party State may withdraw from this compact by enacting a
7 statute repealing the same. No withdrawal shall affect any liability
8 already incurred by or chargeable to a party State prior to the time of
9 such withdrawal.

10 3. No proceeding commenced before an Arbitration Board prior to the
11 withdrawal of a State and to which the withdrawing State or any subdivision

12 thereof is a party shall be discontinued or terminated by the withdrawal,
13 nor shall the Board thereby lose jurisdiction over any of the parties to
14 the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

1 Nothing in this compact shall be construed to:

2 (a) Affect the power of any State or subdivision thereof to fix
3 rates of taxation, except that a party State shall be obligated to imple-
4 ment Article III 2 of this compact.

5 (b) Apply to any tax or fixed fee imposed for the registration
6 of a motor vehicle or any tax on motor fuel, other than a sales tax;
7 provided that the definition of "tax" in Article VIII 9 may apply for the
8 purposes of that Article and the Commission's powers of study and recom-
9 mendation pursuant to Article VI 3 may apply.

10 (c) Withdraw or limit the jurisdiction of any State or local
11 court or administrative officer or body with respect to any person, cor-
12 poration or other entity or subject matter, except to the extent that
13 such jurisdiction is expressly conferred by or pursuant to this compact
14 upon another agency or body.

15 (d) Supersede or limit the jurisdiction of any court of the
16 United States.

Article XII. Construction and Severability.

1 This compact shall be liberally construed so as to effectuate the
2 purposes thereof. The provisions of this compact shall be severable and
3 if any phrase, clause, sentence or provision of this compact is declared
4 to be contrary to the constitution of any State or of the United States or
5 the applicability thereof to any government, agency, person or circumstance
6 is held invalid, the validity of the remainder of this compact and the ap-
7 plicability thereof to any government, agency, person or circumstance shall
8 not be affected thereby. If this compact shall be held contrary to the
9 constitution of any State participating therein, the compact shall remain
10 in full force and effect as to the remaining party States and in full
11 force and effect as to the State affected as to all severable matters.

FINAL COMPLETE TEXT
December 20, 1966
Council of State Governments
Washington Office

Erratum for Art. VII, p. 10 rec'd & noted 1/23/67

THE COUNCIL OF STATE GOVERNMENTS

WASHINGTON OFFICE

1755 Massachusetts Avenue, N. W., Washington, D. C. 20036 • Tel. 483-9500

January 20, 1967

RE: ERRATUM NOTICE
SUMMARY AND ANALYSIS OF THE MULTISTATE TAX COMPACT

Enclosed are two documents. One is an erratum notice calling attention to an omission from the Final Complete Text of the Multistate Tax Compact, dated December 20, 1966. Unfortunately a line was omitted from Article VII, page 10, of the text of December 20. It is important that the text be corrected since the omission changes drastically the scope of the authority of the Multistate Tax Commission to adopt and submit uniform regulations and forms. As it appeared in the compact text you have, that authority would be limited to income taxes. It should include, as the notice indicates, capital stock, gross receipts, sales and use taxes.

The second is the promised explanatory statement of the Multistate Tax Compact -- promised for January 15, but unfortunately delayed beyond that date. The Summary and Analysis should answer many questions about the compact. It does not -- it could not -- answer all of them. For such additional questions as you may have, we repeat the offer we made in New Orleans that you call or write us.

On the matter of state appropriations, also discussed at New Orleans, it is very difficult to suggest a firm figure because of a number of variables. First, no one can say with certainty how many states will be party to the compact during the initial fiscal period. Second, as among the states, the compact provides that much the greater share of requested state appropriations shall be determined on the basis of the proportionate amount of revenue collected by each of the states and their subdivisions from income, capital stock, gross receipts, sales and use taxes. Third, much of the time and effort during the initial fiscal period must be devoted to preparation for subsequent activity, i.e. organization of the Commission, preparation of bylaws, hiring the Executive Director, securing office space, furniture and equipment, etc. Fourth, as the value of the compact proves itself to the states, it may be anticipated that appropriations will need to be increased to support requested services.

Under these circumstances we suggest a contingency appropriation to be used as needed for the fiscal period July 1, 1967-June 30, 1968, of not less

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San Francisco, California 94108

January 20, 1967

Page 2

than \$3,000 for the small states and proportionately larger amounts for the larger states. If a state is on a biennial budget, the amount should be doubled.

We should like to request that we receive information concerning introduction and adoption of the compact.

Sincerely,

CHARLES F. SCHWAN, JR.
Secretary, Special Committee on
Interstate Taxation, Council
of State Governments

cfs:e
enclosures

160-1a1

THE COUNCIL OF STATE GOVERNMENTS
WASHINGTON OFFICE
1755 Massachusetts Avenue, N. W., Washington, D. C. 20036 • Tel. 483-2500

January 18, 1967

ERRATUM NOTICE

RE: THE MULTISTATE TAX COMPACT

An unfortunate error was made in reproducing the final complete text, dated December 20, 1966, of the Multistate Tax Compact. A line was omitted from Article VII, page 10. Following the word "tax," there should have appeared "capital stock tax, gross receipts tax, sales or use tax, ..."

For the first paragraph of Article VII as it appears in the text of the compact dated December 20, 1966, there should appear the following:

- 1 1. Whenever any two or more party States, or subdivisions of party
- 2 States, have uniform or similar provisions of law relating to an income
- 3 tax, capital stock tax, gross receipts tax, sales or use tax, the Com
- 4 mission may adopt uniform regulations for any phase of the administration
- 5 of such law, including assertion of jurisdiction to tax, or prescribing
- 6 uniform tax forms. The Commission may also act with respect to the
- 7 provisions of Article IV of this compact.

We regret very much any inconvenience we may have caused you.

Yours very truly,

CHARLES F. SCHWAN, JR.
Secretary, Special Committee on
Interstate Taxation, Council
of State Governments

Assembly Representative
Legislative Service
State Capitol

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January 20, 1967

THE MULTISTATE TAX COMPACT

Summary and Analysis

Introduction

For almost a year a Multistate Tax Compact has been in the process of development under the auspices of the Council of State Governments, with the cooperation of the National Association of Tax Administrators, the National Association of Attorneys General and the National Legislative Conference. The compact is now ready for consideration by the 1967 sessions of State legislatures.

Development of the compact is the result of two factors: (1) the desirability of achieving a significant measure of interjurisdictional compatibility in State and local tax systems, and (2) the growing likelihood that federal action will curtail seriously existing State and local taxing power if appropriate coordinated action is not taken very soon by the States. Adoption of the compact offers several positive advantages to States, local governments and taxpayers. The threat of federal action imparts a high degree of urgency to the undertaking.

The basic objective of the compact is to provide solutions and additional facilities for dealing with a number of tax problems of multistate businesses, notably the ones identified by the Willis Subcommittee of the House Committee on the Judiciary.* Perhaps even more important in the long run, the compact would provide mechanisms for dealing with multistate tax problems on a continuing basis and for solving future problems as well as those presently known to exist. Like the bills bearing Congressman Willis's name, the compact deals most immediately with income, capital stock, gross receipts, sales and use taxation. Also the compact is designed to provide for study, recommendatory and certain service features that could be applied to other State and local taxes as well.

One of the principal measures for improvements -- i.e. simplification of taxpayer compliance and elimination of the possibility of double taxation -- in the income tax field is the Uniform Division of Income for Tax Purposes Act. The compact would permit any multistate taxpayer, at his option, to employ the Uniform Act for allocations and apportionments involving party States or their subdivisions. Each party State could retain its existing division of income provisions, but it would be required to make the Uniform Act available to any taxpayer wishing to use it. Consequently, any taxpayer could obtain the benefits of multijurisdictional uniformity whenever he might want it.

While the availability of the Uniform Act should prevent disputes or minimize their number, the compact also provides for an arbitration procedure for the settlement of such disputes as may remain. This would also be at the option of the taxpayer, who could pursue a judicial remedy if he chose.

* Special Subcommittee on State Taxation of Interstate Commerce

The compact further aids uniformity by providing for the making of advisory administrative regulations applicable to any uniform provisions of statutory law.

A number of reforms already adopted widely would be made universal among the party States by the compact. For example, credits for sales taxes paid to other jurisdictions, provision for a small taxpayer to elect to pay a tax on gross sales in lieu of net income and relief of vendors from collection of sales or use taxes upon good faith acceptance of an exemption certificate would be assured.

The matter of efficiency of audits, with concomitant convenience to taxpayers, long has been a subject of interest. The compact would make single audits possible on a multistate basis, in those States choosing to become parties to a cooperative audit article.

While many of the compact's provisions would be self-executing, some would require the conduct of research, informational and implementing activities. For these purposes, the compact would establish a Multistate Tax Commission composed of representatives of the party States having responsibility in multistate tax matters. Although an interstate administrative agency would be new in the tax field, there are already a number of interstate administrative agencies, some with many years of successful operation. The Port of New York Authority which now operates and manages a billion and a half dollars worth of transportation and related public works is the oldest example. It is now forty-five years old. Multistate commissions with large numbers of member States are to be found in the fields of education, natural resource development and management, and pollution control. Several compacts have a membership of all or almost all the States. These include the Interstate Compact for the Supervision of Parolees and Probationers, the Interstate Compact on Juveniles, and the Interstate Compact on Mental Health. Accordingly, there would be a considerable body of experience for a Multistate Tax Compact and its Commission to draw upon.

The compact approach offers a number of advantages in addition to removing any possible validity for federal legislation restricting State and local taxing jurisdiction. In effect the latter declares the solution of multistate tax problems to be hopeless and seeks to minimize their impact by curtailing State and local taxing authority. While those taxpayers so situated as to secure preferential treatment from such a system might be glad for the windfall, the consequences for their nonexempt competitors and State and local revenues could be disastrous. These portions of the business community, including utilities of all types, retailers, vendors of items such as beverages, gasoline, tobacco and other products, and intrastate businesses of all sorts also will be faced with the likelihood of increased tax burdens in order to make up the revenue losses resulting from federally required preferential exemptions.

The serious implications of federal intervention in this area are further emphasized by the current proposals, because they would adopt a double standard for Federal and State governments. While assuming the propriety of the Federal Government's use of tax policy to implement economic policies, the Willis bills

would prohibit the States from utilizing tax policy to encourage industrial development programs best suited to their own particular resources and needs. These bills would thereby prevent States from stimulating economic growth and creating new job opportunities for their citizens.

It should be remembered that taxes are not levied for their own sake. They provide the means to support State and local services and other necessary programs of State and local government. Decisions that affect the amounts of money that State and local governments can raise and the sources from which they can raise them have an inescapable relation to the scope and content of all functions of State and local government.

It is particularly ironic at this time that the States and local governments should be faced with a threat of loss of revenue when the pressure for new or improved services is almost inexorable. During the decade 1955-1964, for example, State-local expenditures increased from \$33.7 billion to \$69.3 billion, a rise of 105 per cent. State-local revenues from their own sources rose during the period from \$27.9 billion to \$58.4 billion, an increase of 109 per cent. State-local debt, \$44.3 billion in 1955, increased by 108 per cent to \$92.2 billion in 1964. Federal aid during the period increased by more than three times, from \$3 billion to \$10 billion.

Those forces which have contributed to the major changes in the State-local fiscal pattern may be anticipated to continue to be operative or to produce even more startling consequences. These include a continuing increase in total population; expanding governmental services for both the young and the elderly; the comparatively great expense of providing governmental services and facilities in urban and suburban areas where an increasing proportion of the population lives and works; the steadily multiplying demands for recreational, cultural, educational and other services by an affluent society; and the more sophisticated needs of the business community.

Project '70, a grant-supported study sponsored by the Council of State Governments, projects expenditures of current State-local activities at \$108.2 billion in 1970. Estimates of needs for certain additional activities have been made. Together, the total of such State-local expenditures is \$127.7 billion in 1970.

State-local revenues, including a significant increase in federal grants-in-aid, are projected to be \$105.5 billion. The gap between this figure and \$127.7 billion is \$22.2 billion. It might be added that these projections do not take into account other areas in which State-local expenditures may increase because reliable estimates of the magnitudes of such increase have not been completed.

The genius of the American federal system is that it provides for diversity within a unified whole. Entirely bound up with the autonomy of the States and local governments are all the decisions that relate to tax policies. It is not good government to have the responsibility for State and local tax policy determined by Congress, but other policies determinable by State and local governments.

Inevitably they would be shackled by Congressional enactments made by a body not responsible for the consequences of its acts.

A free, competitive economy operating within our traditional framework of a viable federal system cannot endure the centralized, monolithic control over the entire economy necessarily involved in this type of federal intervention in State and local tax policies. Such federal legislation does not meet the needs of State governments nor of the vast majority of taxpayers. In fact it would be inimical to them. On the other hand, the Multistate Tax Compact proposes to tackle the real problems of assuring equitable treatment of taxpayers, facilitating compliance and providing means of avoiding or settling multistate tax disputes.

Background

In 1959, the United States Supreme Court decided the Northwest Portland Cement and Stockham Valve Cases. The net effect of these decisions, and of that in the Scripto case of 1961, was to make it absolutely clear that State and local jurisdiction to tax could rest on sales activity of the taxpayer within the jurisdiction, even if the taxpayer had no physical property or full-time employees within the jurisdiction. This conclusion was not at all surprising, because it was in support of the general proposition that a taxpayer's benefiting from economic activity in a jurisdiction makes him liable for taxes there. However, the final judicial determination that such was the case led some elements of the multistate business community to press for federal legislation that would establish a contrary result. Within months of the Northwest and Stockham decisions, this pressure succeeded in securing enactment of Public Law 86-272, a statute which removed many sales activities of out-of-state firms from State and local taxing jurisdiction. One of its consequences has been to place at a tax disadvantage local firms and those multistate firms that cannot organize their activities to take advantage of the statute.

Also authorized by Public Law 86-272 and amendments to it was a study of state and local taxation of multistate businesses. On the last day of the first session of the 89th Congress, the Willis Subcommittee presented its bill, H. R. 11798. Briefly stated, H. R. 11798 would have limited drastically the jurisdiction of State and local governments in the fields of income, sales and use, gross receipts and capital stock taxation. It would have injected the Federal Government into the administration of State and local tax laws and adjudication of tax disputes. Finally, it would have prohibited certain practices complained of.

In the hearings on H. R. 11798, Governors, legislators, Attorneys General, tax administrators and other witnesses who appeared for 46 States testified that enactment of the bill would cost their States dearly in revenue, shift the burden of taxation among taxpayers, encourage the organization of business operations to avoid taxation and impede their administration of their own tax laws.

The Subcommittee's response to the testimony was another bill, H. R. 16491. The principal difference between the bills was in the elimination from H. R. 16491

of provisions for direct federal administration of State and local tax laws and for adjudication of tax disputes. On the other hand, H. R. 16491 provided for a jurisdictional standard for all business activities taxes based on a combination of the provisions of Public Law 86-272 and the "business location" test. The latter requires that to be taxable by a jurisdiction a business must own or lease real property in the jurisdiction and have one or more full-time employees there.

Already introduced in the first session of the 90th Congress is S. 2158, by Mr. Willis, and bills offered by six others. The latest bills are identical to H. R. 16491. The financial importance of the proposal and the efforts lavished in its behalf thus far offer convincing evidence that proponents of federal action will continue their pressure to obtain a Congressional enactment restricting State and local taxing power.

Supporters of this type of federal action contend that lack of uniformity in State and local tax laws, as they affect multistate business activities, produce taxpayer inconvenience and raise the cost of reporting and paying these taxes. They also allege that certain features of the present system can result in double or multiple taxation. There is good reason to believe that in some respects these charges are entirely without foundation and that in most others they are much exaggerated. Nevertheless, the assertions have had great effect on members of Congress and on that part of public opinion that concerns itself with subjects of this kind. Consequently, tangible State action is necessary to meet that portion that is real and to assure taxpayers and public officials that multistate machinery exists to cope with any multistate aspects of the State and local tax problem that may arise.

The several Congressional bills prevent overlapping or nonuniform State and local taxation by the simple expedient of exempting certain multistate businesses from such taxation. Obviously, this would relieve the favored taxpayers of any compliance burdens or from any concern with nonuniformity of State and local laws. But it would do so at the expense of State and local revenue raising capacity, and without attempting to determine whether the favored taxpayers actually do owe any obligation of support to the jurisdictions affected.

There are several specific areas that are especially sensitive, from the multijurisdictional standpoint. These include the allocation and apportionment of income for tax purposes among the several jurisdictions in which a taxpayer operates; the availability of credits for sales taxes paid to another jurisdiction; and the simplification of reporting for relatively small taxpayers. These items, together with the general proposition that substantive compatibility or uniformity should be encouraged wherever appropriate, could be viewed as a miscellaneous program for tax reform. The Multistate Tax Compact deals with all of them.

Also, it should be noted that several types of taxes seem to involve a particularly large multijurisdictional incidence. For this reason they have the concentrated attention of the proponents of federal action and also receive the central attention of the compact. These are income, capital stock, gross receipts, sales and use taxes. However, the compact also recognizes that many

other forms of State and local taxation can have some multijurisdictional aspects. Accordingly, it provides for an agency that can study and make recommendations on a continuing basis with respect to virtually all such taxes, as well as with respect to the enumerated ones.

The Compact and Uniformity

Uniformity in State laws is generally considered to be a desirable objective, but a balance must be struck between a required uniformity and State and local independence. The ability of States to vary their policies to meet their own particular needs and the specific preferences of their inhabitants is a cardinal virtue of the American form of government. States can achieve uniformity by individual and unilateral actions, provided that they enact the same statutes as all other States, keep them uniform after enactment, and administer them in the same ways. An attempt to achieve uniformity by such unilateral action is the "Uniform Division of Income for Tax Purposes Act," first made available by the National Conference of Commissioners on Uniform State Laws in 1957. The Act has now been adopted in about a third of the States which levy corporate income taxes. Both within and without those States, this statute represents the nearest approach to consensus in respect to the allocation and apportionment of income for tax purposes. On the other hand, it is doubtful whether complete and universal agreement on the substantive law can be attained, except over a considerable period of years. This should not discourage as many States as find it possible to do so from adopting the Uniform Act at the earliest opportunity. But even if the recently accelerating pace of Uniform Act adoptions continues, the Multistate Tax Compact can add several highly beneficial ingredients.

The first of these may be attributed to the fact that uniformity is not equally important to all interested parties and that its advantages may vary to some extent with circumstances. Uniformity in tax laws is much more of an advantage to certain multistate taxpayers than to the officials of individual States or local governments. These public officials do not normally face any confusion that may arise from differences between the tax laws or regulations of their own jurisdiction and those of other jurisdictions. They administer or legislate only with respect to their own laws. On the other hand, multistate taxpayers are often willing to forego the advantages of uniformity in order to benefit from particular State and local policies that may serve both their needs and those of the governmental units in question.

The Multistate Tax Compact provides that the Uniform Act will be available in all party States to any multistate taxpayer wishing to use it. Consequently, taxpayers will be able to have the benefits of uniformity whenever they want it. On the other hand, States adopting the compact reserve the right to enact any other laws dealing with allocation and apportionment of income that may seem to them to have a special appropriateness or to meet their own policies.

Another advantage of the compact is that it would make this same approach to uniformity applicable to local allocations and apportionments as well as to those at the State level. While the income tax has been more identified with

States than with local governments, a number of the latter are in the field. The Uniform Act by itself does not reach the multijurisdictional problem at the local level.

Aside from the simplicity of uniformity, its virtue in the income tax field is generally thought to be avoidance of the possibility of double or multiple taxation of the same income. In all probability the compact can achieve this result in all or nearly all cases merely by helping to make the Uniform Act universally available to multistate taxpayers at both the State and local levels. However, in the event that experience shows a lingering area of conflict or overlap to exist, the compact would make it possible for the Multistate Tax Commission to initiate a system of arbitration of disputed allocations and apportionments.

Another aspect of uniformity goes beyond the words of statutes. Uniform language in legislative enactments may be diminished in its effectiveness by differing administrative or judicial interpretations adopted in some of the separate jurisdictions. The compact takes a long step toward preserving and safeguarding statutory uniformity, once achieved, by giving the Multistate Tax Commission established by the compact power to make uniform regulations implementing substantially uniform laws -- not only income tax laws, but also capital stock, gross receipts and sales and use tax laws. At the same time, assurance is given that the Commission will not become independent of the States. Any such regulation, to be effective in a State or subdivision, must be considered and adopted in accordance with its own laws and procedures.

A related power given to the Multistate Tax Commission is to develop uniform tax forms. The creation of machinery to promote the availability of such aids to State and local tax administration could of itself do much to simplify a multistate taxpayer's work.

Audits

One of the longest lived hopes in the multistate tax field has been that some practicable system of cooperative audits could be devised. To the taxpayer, such a system could mean lessened inconvenience since a smaller number of audits -- or perhaps a single audit -- could suffice to verify his returns to all jurisdictions. To tax administrators and public officials generally, successful multijurisdictional audits would promote the economy and efficiency of tax administration. Heretofore many legal and, practical obstacles have blocked the realization of a multistate audit system. The compact offers a broadly based and flexible authorization for such a system that would come into operation if the Multistate Tax Commission and a number of the party States found it feasible.

Local Tax Laws

Reference has already been made to the fact that the Compact covers the multistate aspects of both State and local tax laws. Since local governments levy and administer taxes on or collectable by multistate business, a comprehensive approach requires that local taxes of the relevant kinds be handled. As

in the case of the States, the compact seeks to preserve for local governments the maximum degree of autonomy in the determination of tax policy while bringing about a desired degree of uniformity and compatibility in administration and procedure.

Experience With Compacts

For handling significant problems which are beyond the unaided capabilities of the regularly constituted agencies of individual State governments, the accepted instrument is an interstate compact. In the field of taxation, the Vehicle Registration Proration and Reciprocity Agreement has been operative among western States for a decade. Its seventeen members, by agreement, apportion commercial vehicle taxes of the registration and fixed-fee type on a mileage basis. This compact, although presently operative regionally, is open to joinder by States of other regions.

To appreciate that an interstate compact can perform the desired functions in the tax field it is only necessary to know that: (1) there are already in operation a number of nationwide compacts, and (2) there are compacts under which all of the types of activity appropriate to the handling of the interstate aspects of multistate taxation are being performed.

Some interstate compacts of nationwide scope pertaining to various subject matter fields include:

(a) The Interstate Compact for the Supervision of Parolees and Probationers is in operation among all fifty States, the Commonwealth of Puerto Rico and the Virgin Islands. Under this compact, between ten and fifteen thousand parolees and probationers every year receive supervision on parole or probation in States other than the one where they were convicted.

(b) The Interstate Compact to Conserve Oil and Gas is a recommendatory and study compact dealing with the conservation of vital natural resources. Its membership is thirty States, which represent all jurisdictions within the United States having any significant oil or natural gas production.

(c) The Vehicle Equipment Safety Compact has been enacted by forty-four States and the District of Columbia. It provides for the formulation of vehicle equipment safety specifications for incorporation in the laws of the party jurisdictions.

(d) The Interstate Compact on Juveniles is in force in forty-two States. It provides administrative and judicial procedures for the return of interstate runaway children and for interstate supervision of juveniles on parole and probation.

(e) The Interstate Compact on Mental Health, enacted by thirty-two States, provides for the interstate transfer of mental patients on the basis of clinical welfare considerations, and without reference to residence.

(f) The Driver License Compact is in effect among twenty-one States. It provides for exchange of information and action on driver licenses affected by serious offenses in all party jurisdictions, rather than merely in the jurisdiction of licensure.

(g) The Agreement on Detainers has now been enacted by fifteen States. It provides an expeditious means of clearing interjurisdictional "hold orders" against prisoners and of affording speedy trials on charges pending from another jurisdiction.

In addition to the compacts listed above, there are many compacts of a bi-state or regional nature. Many compacts are administered directly by the regular departments of the State governments. However, there are now over forty interstate compact agencies in operation. A few of them, such as the Waterfront Commission for New York Harbor (a labor-management regulatory body) and the Ohio River Valley Water Sanitation Commission and Interstate Sanitation Commission (water pollution control agencies) have important and complex regulatory functions. Others administer public works running all the way from modest little bridges to vast mass transportation systems; a number of others apportion waters of interstate basins (as the Delaware River Basin Commission is doing in the northeast and as compact commissions in the western States have done for years); and still others perform study and recommendatory functions in subject matter areas ranging from education to natural resource conservation and management.

Summary of Compact Provisions

Some of the provisions of the compact are self-explanatory. The following commentary is confined to those features which appear to merit special notice.

Article I. Purposes

This article sets forth the basic purposes of the compact which cover the essential considerations involved in the handling of the interstate aspects of multistate taxation. It is intended as an aid in construction.

Article II. Definitions

The term "taxpayer" is defined in such a way as to limit the application of the compact to corporations and other business entities. "Tax" is defined to include those State and local taxes which may raise multistate questions, but to exclude any tax or fixed fee for registration of a motor vehicle or any tax on motor fuel except a sales tax.

Article III. Elements of Income Tax Laws

This article enacts provisions designed to alleviate unnecessary burdens in reporting and paying income taxes. Paragraph 1 permits a taxpayer to elect to allocate and apportion his income in accordance with the law of a party State or the Uniform Division of Income for Tax Purposes Act and to make a similar election in the case of subdivisions in two or more party States. Paragraph 2

permits small taxpayers to pay an optional tax on gross sales in lieu of taxes on net income.

Article IV. Division of Income

Article IV of the compact is almost verbatim the "Uniform Division of Income for Tax Purposes Act." The only significant changes are three in number: (1) if used under the compact, the substance of the Uniform Act also would apply to allocation and apportionment pursuant to local income tax laws as well as to State income tax laws; (2) a narrowing of the definition of "public utility" would permit a taxpayer to employ the Uniform Act for the apportionment of income from pipeline operations; and (3) if a taxpayer has income as a public utility but derives the greater portion of his income from nonutility activities, he may elect to allocate and apportion his entire net income as provided in the Uniform Act.

It should also be noted that under the compact, a taxpayer could either employ the Uniform Act or whatever alternative apportionment provisions a State may have under other laws or, in the case of a local income tax, that might exist pursuant to local law. Consequently, a taxpayer could secure uniformity whenever he desires, but State and local governments also could continue to use their tax laws as instruments of economic policy in dealing with multistate businesses and the overall problems of industrial and commercial growth.

Article V. Elements of Sales and Use Tax Laws

Two matters are dealt with in this article: granting of credit for State and local sales and use taxes paid to other jurisdictions, and relieving of vendors from collection of sales or use taxes upon good faith acceptance of a resale or other exemption certificate.

Article VI. The Commission

This article contains the housekeeping provisions which are necessary because the compact sets up an interstate agency. It establishes the Multi-state Tax Commission, and provides for the selection by each party State of one member, and, if State law so provides, an alternate member. The Attorney General or his designee or other counsel, if State law so provides, may attend Commission meetings but shall not vote. It requires that each party State provide for selection of appropriate subdivision representatives to consult with such member. It permits official action to be taken only at a meeting where a majority of all the member States are represented and then only by an affirmative vote of a majority of all members.

The Commission is required to appoint an Executive Director and to provide for other employees as needed. It may borrow or contract for the services of personnel from any State, or the Federal Government, or any other governmental entity.

The Commission may accept and dispose of donations and grants from any governmental entity. The Commission must adopt and publish its bylaws and is required to report annually to the Governor and legislature of each party State.

This article also provides for an Executive Committee and authorizes establishment of advisory and technical committees.

The Commission is empowered to perform general study, recommendatory and informational activities to the end of achieving the compact's goals of improvement, uniformity and simplification in tax laws and administration and of assistance to taxpayers. The article also encourages and facilitates a continuing review, as general conditions and the economy change, of areas in which uniformity or modernization would be desirable.

The regular operating funds of the Commission are to come entirely from appropriation by the party States. This article requires the Commission to submit a budget to each party State for such period as may be required by the laws of that State. The costs are to be apportioned among the member States in accordance with a formula: "one-tenth in equal shares; and the remainder in proportion to the total amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes." The formula reflects the fact that all party States have a stake in the Commission and benefit from its work. At the same time, it takes into account the fact that some States obtain more revenue from taxes to which the compact applies than others, and in that sense derive greater benefit. In determining such revenue, the Commission is required to use the public sources of data which in its judgment are most equitable and accurate.

Article VII. Uniform Regulations and Forms

This article does not in itself prescribe uniform standards. Rather it sets up the procedure and machinery for interstate cooperation in the formulation of such standards. Building upon present uniformity or similarity in the laws of member States and their subdivisions, the Commission is authorized to adopt and amend "... uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms." All party States participate in this process through their officially designated Commission members. Further, the Commission may act only upon notice to both affected States or subdivisions and taxpayers, public hearing and full consideration of data submitted. After these steps are completed, each regulation issued must be filed with the States and subdivisions where it would be applicable. Party States are not obligated to accept them. But since one of the major purposes of the compact is to encourage prompt adoption of uniform standards, this article provides that the regulations must be considered by each such State or subdivision in accordance with its own laws and procedures.

Article VIII. Interstate Audits

This article, in force only in those party States that specifically provide therefor by statute, empowers the Commission to act as a vehicle for cooperative audits upon the request of any party State or subdivision, and to offer to make audits in which it invites participation. Audits may be conducted only at reasonable times and may be facilitated by appropriate arrangements with States and subdivisions. Costs incurred must be paid by the requesting government or governments. The Commission may decline to perform an audit if it has insufficient

personnel or finds it impracticable of satisfactory performance. Information secured is confidential and available only for tax purposes through the appropriate agencies of party States and subdivisions concerned. This article is not intended to affect other arrangements for cooperative audit by or on behalf of party States or their subdivisions. For purpose of audit tax is defined to include, in addition to the meaning ascribed to it elsewhere, "any tax or any license fee imposed in whole or in part for revenue purposes."

In conducting an audit, the Commission may require the presence of any person to give testimony. If the person is not within the jurisdiction, he may be required to attend at a time and place fixed by the Commission in the State of his residence if such State is party to the compact. The Commission may apply to any court having power to issue compulsory process for orders to enable it to carry out its responsibilities. Application may be made to a court of the State or subdivision for which the audit is being made or a court in the State in which the object of the order being sought is situated. Failure to obey an order would be punishable as contempt of the issuing court.

Article IX. Arbitration

This article sets up a mechanism for settlement of multistate allocation and apportionment disputes. It would become operative upon a finding by the Commission of a need therefor, and its adopting an appropriate regulation.

An Arbitration Panel would be established made up of persons knowledgeable and experienced in tax law and administration. Arbitration would be available to a taxpayer alleging that a State or subdivision tax agency's determination of an allocation or apportionment would subject him to double or multiple taxation by two or more party States or subdivisions. Party States would consent to arbitration and agree to be bound thereby. Arbitration would be by a Board made up of one person selected by the taxpayer, one by the agency or agencies involved and one member of the Arbitration Panel jointly selected by them. If the agencies involved are unable to agree on the person to be selected by them, or if the two persons selected are unable to agree on the third, selection would be by lot from the entire membership of the Arbitration Panel.

The Board would have power to administer oaths, take testimony, and require the attendance of persons and production of documents. Failure to obey a subpoena, upon application to a court of competent jurisdiction would be punishable as a contempt. Determinations of a Board as to the disputed allocation or apportionment would be final. Determinations and the reasons therefor would be punishable by the Multistate Tax Commission. Rules of procedure and practice for arbitration proceedings would be adopted and published by the Commission.

Articles X, XI and XII

Article X, covering entry into force and withdrawal, and Article XII, relating to construction and severability, are self-explanatory. Article XI governs the effect on other laws and jurisdiction. Among other things, it makes clear that, except for purposes of audit or of study and recommendation, nothing in the compact applies "to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: ..."

Suggested Enabling Act

Many provisions of the Enabling Act have been placed in brackets. These provisions are optional in a double sense. Not only is their specific content subject to variation among the party States, but they are not really essential in the legal sense to make a State party to the compact. The unbracketed provisions of the Suggested Enabling Act may also be varied by the States, but it is important that each State handle in some way the substance of the unbracketed provisions.

PROOF OF SERVICE

I declare that I am employed with the law firm of Silverstein & Pomerantz LLP, whose address is 55 Hawthorne Street, Suite 440, San Francisco, California 94105-3910. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 16, 2013, I served a copy of:

PLAINTIFFS/APPELLANTS' MOTION FOR JUDICIAL NOTICE

- BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and delivery at the mailroom of Silverstein & Pomerantz LLP, causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below through registered process server Wheels of Justice whose business address is located at 657 Mission Street, #502, San Francisco, California 94105.

I am readily familiar with Silverstein & Pomerantz LLP's practice for the collection and processing of documents for hand delivery and know that in the ordinary course of Silverstein & Pomerantz LLP's business practice the document(s) described above will be taken from Silverstein & Pomerantz LLP's mailroom and hand delivered through registered process server Wheels of Justice to the document's addressee (or left with an employee or person in charge of the addressee's office) on the same date that it is placed at Silverstein & Pomerantz LLP's mailroom.

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- BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 55 Hawthorne Street, San Francisco, California 94105-3910 in accordance with Silverstein & Pomerantz LLP's ordinary business practices.

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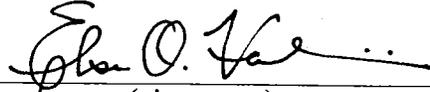
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, this 16th day of July, 2013.

Elsa O. Valmidiano
(typed)



(signature)