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To Be or Not to Be: Uniform Division of Income for Tax Purposes Act (UDITPA) Revision Committee Mandate Debated at NCCUSL

The Committee on Scope and Program of the National Conference of Commissioners on Uniform State Laws (NCCUSL) heard conflicting views on Saturday, July 19th as to whether a Drafting Committee should consider possible changes to the UDITPA, the model act that several states have adopted to govern their corporate income tax collection and is included in the Multistate Tax Compact (MTC). The Drafting Committee has actually already begun its work, having selected Reporters and held an organizational meeting on May 30–31, 2008.

At that meeting in May, business representatives had argued that 1) there is not now and is not likely to be uniformity as to division of income for tax purposes among the states and, thus, 2) the need for action do not meet the standard for NCCUSL to undertake a project. Saturday, the speakers opposing continuation of the revision committee's work were state legislators. Senator Dwight Cook from North Dakota, Senator Curtis Bramble from Utah and Representative Christopher Rants from Iowa all suggested to the Committee on Scope and Program that there was no need for NCCUSL to carry out the project because 1) it is too controversial, 2) it is not desired by elected officials in the states and 3) to move ahead with the project would actually harm the reputation of NCCUSL. It had been suggested in material submitted earlier to the Committee that, inasmuch as NCCUSL is funded by the states, the continuation of the project could undermine the confidence of the states that provide that funding. The legislators suggested that there seemed to be few, if any, supporters of the revision project beyond state tax administrators.

Support for the project before the Committee came in the form of testimony from Ben Miller of the California Franchise Tax Board and from Joe Huddleston, Executive Director of the Multistate Tax Commission. Miller and Huddleston pointed out that NCCUSL had provided the original UDITPA 50 years ago and that the passage of time, a changed economy and operational questions that have arisen during that time period all supported the need for an updated uniform law that could be considered for adoption by the states. They also pointed out that, although some issues had been identified, no one could predict the final product of the revision project.

Members of the Committee on Scope and Program questioned the speakers and there seemed to be interest in the depth and breadth of the opposition and whether or not any agreement might be possible on a more limited scope of review and whether or not additional stakeholders' opinions should be sought. Senator Cook suggested that nexus for taxation should be the Revision Committee's first area of examination.

The Committee will make a recommendation to the NCCUSL Executive Committee which will meet on Tuesday, July 22. The ultimate decision as to whether or not the Revision Committee will continue rests with that NCCUSL Executive Committee. If the decision is made to continue the project, the Revision Committee will meet again in December in Chicago to undertake its work in light of any new instructions from the Executive Committee.

Certainly any significant revision of the uniform law, if adopted by many states, could have significant and far-reaching impact on the collection of corporate income taxes in the states and a revision would need the support of many different constituencies to achieve the stated result of a more uniform approach by the states to collecting corporate income taxes. Good policy is everyone's stated goal. With corporate income tax collections averaging approximately 5% of state tax revenues, there is some suspicion among many observers that one outcome of the revision process would be to increase that percentage.