

*This report was prepared by and shared with us through the courtesy of Jim Eads of Ryan, a tax services firm with offices throughout the United States, Canada and now in London. Jim is the former Executive Director of the New Mexico Tax Research Institute.*

### **National Conference of Commissioners on Uniform State Laws (NCCUSL) Changes Mandate to Uniform Division of Income for Tax Purposes Act (UDITPA) Drafting Committee**

The Executive Committee of the NCCUSL on Tuesday, July 22, 2008, retreated a half-step from its prior direction to a Drafting Committee to consider revising the Uniform Division of Income for Tax Purposes Act (UDITPA). The Executive Committee changed the Drafting Committee back to a more preliminary Study Committee and directed the Study Committee to reach out to a wider variety of stakeholders to discern whether or not the UDITPA should be revised and if so, the scope of that revision. In addition, the Executive Committee directed that advisors be added to the Study Committee, and to any Drafting Committee that might proceed therefrom, representing the National Conference of State Legislatures, the American Legislative Exchange Council and the Council of State Governments. The Executive Committee took the action after it considered a report from the NCCUSL Committee on Scope and Program (S&P) prepared after S&P heard conflicting views on Saturday, July 19, 2008 as to whether the Drafting Committee should move ahead to consider possible changes to the UDITPA, the model act that several states have adopted to govern their corporate income tax collection. The Drafting Committee had already begun its work by selecting Reporters and holding an organizational meeting on May 30–31, 2008.

At that meeting in May, business representatives 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 does not meet the standard for NCCUSL to undertake a project. On Saturday, July 19, 2008, the speakers opposing continuation of the Drafting 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 that there was no need for the 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 the 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. Mr. Miller and Mr. Huddleston pointed out that the 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 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. Obviously, the Executive Committee chose that course.

Now that new direction has been given to the UDITPA project, the former Drafting Committee, now Study Committee, will have to consider its plan to meet again in December 2008 in Chicago to proceed with its work.

Certainly any significant revision of the uniform law, if adopted by many states, could have a 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.

If this plan of action is unclear or you have any questions regarding the above information, please contact Jim Eads, Director of Public Affairs of Ryan in Austin at 512.476.0022 or via email at [jim.eads@ryanco.com](mailto:jim.eads@ryanco.com)