

State & Local Tax **Alert**

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ULC Study Committee Votes to Recommend Termination of UDITPA Revision Project

During a June 30, 2009 conference call, the Uniform Law Commission (ULC) Study Committee that was formed to consider revision of the Uniform Division of Income for Tax Purposes Act (UDITPA) voted to recommend termination of the project. By a 5 to 2 vote, the Study Committee decided to make this recommendation at the ULC's Scope and Program Committee meeting scheduled for later this month. However, the motion includes a provision that the project could be reopened in the future.

Project Subject to Much Debate

The Study Committee considered revising key provisions of UDITPA, including the following: (1) location of sales of other than tangible personal property; (2) definition of business income; (3) authority for alternative apportionment; (4) definition of sales; (5) location of sales of tangible personal property; and (6) appropriate weighting of the three apportionment factors. Proponents argued that these UDITPA provisions are over 50 years old and need to be revised to reflect the significantly different business environment and to facilitate more uniformity between states. Opponents argued that uniformity between states is not necessarily desirable in the areas of apportionment and revenue sourcing. Further, they contended that states would not adopt the uniform provisions.

A great deal of debate occurred at the public meetings that the Study Committee held in Chicago in May 2008 and March 2009. Many high-profile state and local tax scholars, administrators and practitioners attended the meetings. Prior to the June 2009 conference call, the Study Committee received letters in opposition of the revision from the American Legislative Exchange Council, the Council on State Taxation, the National Conference of State Legislatures and other business interests. The Multistate Tax Commission (MTC) submitted a letter in favor of the revision. Following further discussion during the public conference call on June 30, the Study Committee decided to recommend that the project not continue.

Commentary

In light of the substantial opposition to the UDITPA revision project, it is surprising that the project lasted this long. Judging from historical practice, the states would prefer to act independently and make their own decisions on matters such as apportionment and sourcing, rather than cede authority to the determinations of the ULC. Considering the fact that many states are actively competing for business during these challenging economic times, the states do not want to limit their options to a set statutory model.

Release date

July 1, 2009

States

All States with Corporate Income Tax

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Further, corporate taxpayers were opposed to changes in UDITPA that would potentially result in fundamental changes in some states' tax laws. As a result, the effort to revise UDITPA lacked sufficient support to move forward. ***It remains to be seen if the MTC will now proceed with its own review of selected provisions of UDITPA such as the sourcing of the sale of services and the definition of business income. It was the request by the MTC which initially started this review of UDITPA by the ULC.***

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