



To: MTC Compact Member State Representatives
From: Joe Huddleston, Executive Director
Date: January 27, 2010
Subject: Bylaw 7 Survey of Member States regarding Proposed Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries

This memorandum includes an official survey required by the Commission's Bylaws as an essential part of developing a uniformity recommendation.

Enclosed please find a Bylaw 7 Survey Response Form for a proposed model statute on the tax collection responsibilities of accommodations intermediaries. Public Hearing on the proposal was conducted on July 21, 2009 in Washington DC. At its meeting on December 2, 2009 the Executive Committee of the Commission authorized a Bylaw 7 survey.

If your State is an "affected State" within the meaning of MTC Bylaw 7 (see list below), we request that you return a completed survey response form to us by email, fax or mail on or before February 25, 2010. As indicated on the survey form, all responses should be directed to Loretta King by e-mail at lking@mtc.gov, fax at 202-624-8819 or mail at the MTC office in Washington, DC.

The proposal is a model statute on the tax collection responsibilities of accommodations intermediaries who book accommodations on a non-exclusive basis for their customers. In most circumstances, the intermediary collects and remits tax on the discount price that the intermediary pays to the accommodations provider and not on the retail price that the intermediary charges to the intermediary's customer. Some states and localities have determined tax is due on the entire retail price charged by the intermediary to the customer, including the margin between the tax remitted to the provider and the retail price paid by the customer. The proposed model provides a mechanism for the collection and remittance of tax on the entire retail price, including the margin.

Pursuant to the requirements of Commission Bylaw 7, the Executive Committee has referred the proposal to all Compact Member States of the Commission "to determine if the affected members will consider adoption of the recommendation within their respective jurisdictions." If a majority of the affected members indicate they will consider adoption of this proposed amendment, it will be presented for the vote of the Member States of the Commission during the Commission's 2010 Annual Meeting. If a majority of the Commission membership votes in the affirmative, the proposed model statute will be adopted as an MTC uniformity recommendation. If your State is an "affected member," your vote on the attached survey is an important step to bringing the proposals to the vote of the Commission.

Please do not hesitate to contact Roxanne Bland or me via phone at 202-624-8699 or e-mail at rbland@mtc.gov or jhuddleston@mtc.gov if you have any questions about the proposal or the procedure that is being followed in this instance.

List of Affected and Unaffected Multistate Tax Compact Member States

Affected Member States	Unaffected Member States
Alabama Alaska Arkansas California Colorado District of Columbia Hawaii Idaho Kansas Michigan Minnesota Missouri Montana New Mexico North Dakota Oregon South Dakota Texas Utah Washington	

The staff of the Commission has made an initial determination of the affected States within the meaning of Bylaw 7 based on whether the state imposes lodging taxes on accommodations. **If you believe we have erroneously classified your State in the *List of Member States*, please advise us of that fact and the basis upon which you have reached the contrary conclusion. If you are an "affected State," regardless of how your State is classified on the *List of Member States*, please be sure to return your survey in all events.**

MULTISTATE TAX COMMISSION—BYLAW 7 SURVEY RESPONSE FORM

Proposed Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries

Please return by February 25, 2010, by mail, fax or e-mail to:
Ms. Loretta King
Multistate Tax Commission
444 North Capitol Street, N.W., Suite 425, Washington, DC 2001
FAX: (202) 624-8819—Phone: (202) 624-8699—e-mail: lking@mtc.gov

From: _____
Name of Tax Agency Official

Jurisdiction: _____

The MTC Hearing Officer has recommended adoption of a Model Statute on the Tax Collection Responsibilities of Accommodation Intermediaries. The Executive Committee has authorized a Bylaw 7 survey to determine the Member States' interest in considering adoption of the proposal. The proposal is attached as *Exhibit A*. A copy of the proposal, as well as the Hearing Officer's Report, is also available online at:

<http://www.mtc.gov/Uniformity.aspx?id=1822>

The purpose of this survey is to determine how many affected Multistate Tax Compact Member States would consider adopting the proposal if it were adopted as a uniformity recommendation by the Commission.

The questions for your consideration and response are as follows:

- 1. If the Commission were to recommend to its affected Member States the adoption of proposed amendments to Multistate Tax Commission Model Regulation IV.17 attached hereto as Exhibit A, would your agency consider adoption of the proposal?*

YES NO

If you have marked "NO" as your answer above, but a change in the proposal would change your answer to "YES", please note such changes or other comments that you might have in the space provided on the next page.

Comments and/or suggested changes (attach additional sheets if necessary):

Exhibit A

**PROPOSED MODEL STATUTE ON THE TAX COLLECTION
RESPONSIBILITIES OF ACCOMMODATIONS INTERMEDIARIES**

1. Definitions.—

(a) “Accommodations” means one or more individual sleeping rooms or suites for transient overnight lodging.

(b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of [less than thirty days ^{***alternative language***} thirty days or less] to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

(d) “Accommodations fee” means the room charge less the discount room charge, if any, provided that for purposes of this Act the accommodations fee shall not be less than zero.

(e) “Room charge” means the full retail price charged to the customer for the use of the accommodations, including any accommodations fee before taxes.

(f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for furnishing accommodation.

(g) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. Section 1563(a), that includes the accommodations provider.

(h) A “travel package” consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price.

1. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and

shall be required to separately state on the invoice the specific amount of taxes collected.

(b) An accommodations intermediary shall remit to the accommodations provider the tax collected on the discount room charge.

(c) An accommodations intermediary shall remit to the [state or local tax agency] the tax(es) collected on the accommodations fee.

(d) An accommodations provider shall collect and remit to the [state or local tax agency] the tax(es) imposed on the discount room charge.

(e) The value of the accommodations bundled as part of a travel package may be determined by reasonable and verifiable standards from the accommodation intermediaries' books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

2. Safe Harbor.—

(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting

and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.

(b) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodations through Accommodations Intermediary (Intermediary). The Provider bills the Intermediary for a discount room charge of \$80.00. The price at which the Intermediary facilitates the sale of a one-night accommodations to the customer is \$100.00, which includes a \$20.00 accommodations fee. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to customer).

Intermediary remits \$4.00 tax (5% tax rate x \$80.00 discount room charge) to the Provider and a \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to [the state or local tax agency]. Provider remits the \$4.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge

\$4.00		Tax on discount room charge remitted by intermediary to provider, and by provider to [state or local government] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to [state or local government] = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to customer including tax charged by Provider and Intermediary