

June 11, 2008

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John Sebert, Executive Director
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

BY:

Re: Revisions to UDITPA

Dear Mr. Sebert:

As Secretary of the Kansas Department of Revenue, I wish to express my strong support and appreciation for NCCUSL's decision to move forward with the drafting of appropriate revisions to the Uniform Division of Income for Tax Purposes Act ("UDITPA").

Since its adoption by Kansas in 1963, UDITPA has served as the cornerstone of our corporate income tax system. Its provisions have enabled our state to raise revenues needed to fund essential governmental services while doing so in a manner that is fair, rational and evenhanded.

Kansas was also one of the first states to adopt the Multistate Tax Compact, which provides a framework for the implementation of UDITPA by the participating states. The opportunity to work with other states and the Multistate Tax Commission ("MTC"), the organization responsible for administering the Compact, has enabled us to build upon the foundation established by NCCUSL when it adopted UDITPA more than 50 years ago. As a result, despite changes in the ways corporations transact business and generate income, UDITPA has never been more vibrant, relevant and necessary than it is today.

As a former Chair of the MTC, it is my hope that NCCUSL and the MTC will coordinate their efforts in drafting revisions to UDITPA so that the next 50 years of the model act will be as beneficial and productive – for states and taxpayers alike – as the first. Several reasons that make review and modernization of UDITPA appropriate at this time are as follows:

- Because the division of income earned by corporations doing business in several states necessarily implicates the limitations embodied in the Commerce Clause, it is essential that the provisions of UDITPA reflect the substance of the United States Supreme Court's rulings in cases such as *Moorman Mfg. Co. v. Bair*, 437 U.S. 267 (1978); *Mobil Oil Corp. v. Comm'r of Taxes*, 445 U.S. 425 (1980); *Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159 (1983); *Allied-Signal, Inc. v.*

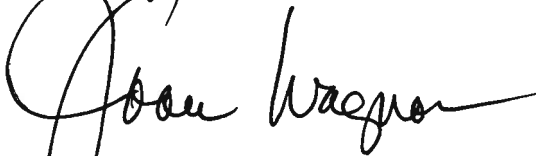
Dir., Div. of Taxation, 504 U.S. 768 (1992); and most recently in *MeadWestvaco Corp. v. Illinois Dept. of Rev.*, (No. 06-1413) (Apr. 15, 2008).

- When first drafted, UDITPA was primarily intended to address the division of income earned by mercantile and manufacturing businesses, which tend to rely heavily on labor and real and tangible property in conducting their operations. In the 21st Century, however, state tax administrators also require appropriate methods for the division of income earned by “service sector” businesses and those that generate income largely through the use of intangibles.
- Given the growing tendency on the part of states to attribute greater weight to the sales factor in apportioning a taxpayer’s business income, there is a corresponding need for greater clarification and specificity with respect to the sourcing of sales of intangible personal property and the definition of “gross receipts.”

Thank you for your willingness to evaluate these and other relevant considerations as you undertake the process of revising UDITPA. This act continues to be of crucial importance to the states, both individually and collectively, and also to corporations that are subject to tax in multiple jurisdictions. By utilizing their collective resources, NCCUSL, the states, the MTC, and the private sector can refine and modernize UDITPA in a manner than will adequately accommodate their respective interests while also maintaining consistency with the Constitution and bedrock principles of fairness, reasonableness and workability.

Please let me know if I can provide any assistance on this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Wagnon". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joan Wagnon
Secretary of Revenue