



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

May 27, 2008

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The Honorable Martha Lee Walters  
President, National Conference of  
Commissioners on Uniform State Laws  
Oregon Supreme Court  
1163 State Street  
Salem, Oregon 97301-2563

Mr. John Sebert  
Executive Director  
National Conference of Commissioners on  
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111 N. Wabash Avenue, Suite 1010  
Chicago, Illinois 60602

Dear Justice Walters and Mr. Sebert:

We write to you on behalf of the National Conference of State Legislatures (NCSL) Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce (Task Force), to express the concerns of the members with regard to the decision of the National Conference of Commissioners on Uniform State Laws (NCCUSL) to undertake the review and revision of the Uniform Division of Income for Tax Purposes Act (UDIPTA).

As you are aware, the Task Force met May 16, 2008, in Wilmington, Delaware to receive a report from Charles Trost, Chair of the NCCUSL Drafting Committee to Revise UDIPTA and from representatives of the private sector on the process, funding, goals and status of the NCCUSL effort. It is our understanding that the criteria for NCCUSL to undertake a project such as the revision of UDIPTA requires that uniformity in the subject area be desirable and practically achievable. We would argue that decisions regarding UDIPTA made by state legislatures over the last fifty years, raise serious questions as to whether uniformity in this area is either desirable or achievable.

Uniformity in the application of business activity taxation would eliminate the ability of state legislatures to offer economic incentives to companies to do business in our states. With all due respect, the question as to whether state legislatures should use state business activity tax statutes as an economic incentive tool is a question worthy of debate by elected state policymakers. We are concerned about efforts to address this question through the development of uniform apportionment formula by an organization that has limited legislative participation or state tax expertise.

Over the last 50 years, state legislatures have modified the formulas they use to apportion corporate income leaving only four states now in compliance with the standards formulated by UDIPTA in 1957. As state economies evolve and compete in the global economy, it seems unrealistic that states will choose to revert to uniform standards under a revised UDIPTA. We are concerned that should NCCUSL adopt a new uniform division of income for tax purposes act and states fail to

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once again comply with the new uniform statute, we will leave ourselves open to attack by those in Washington who only want to preempt state tax laws.

With the record of state compliance to UDIPTA, or should we say, the determination of many state legislatures to deviate from UDIPTA, led many of our Task Force members to question the need and cost of this effort. During Mr. Trost's presentation to the Task Force, it was not clear how NCCUSL determined that uniformity in this area was desirable or achievable.

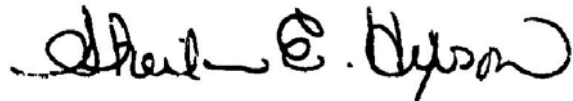
As was indicated to Mr. Trost during the meeting, the members of the Task Force remained concerned with the process and achievability of the UDIPTA project. The Task Force appreciates the tireless efforts of NCCUSL members to produce uniform legislation in important and vital areas, however, we are concerned about using limited state resources on this project with little guarantee that either elected policymakers or business will support the final product.

On behalf of the members of the NCSL Task Force, we thank you for taking the concerns of state legislators under consideration and welcome the opportunity to discuss them further with you.

Sincerely,



Representative Christopher Rants, Iowa



Delegate Sheila Hixson, Maryland

Co-Chairs, NCSL Executive Committee Task Force on State and Local Taxation  
of Communications & Electronic Commerce

CC. Legislative Members of the National Conference of Commissioners on Uniform State Laws