



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

August 28, 2013

Honorable Jeffrey Essmann
President
Montana Senate
PO Box 20050
Helena, MT 59620-0500

Bruce W. Starr
*Senator
Oregon
President, NCSL*

Thomas W. Wright
*Chief of Staff to Speaker
Alaska
Staff Chair, NCSL*

William T. Pound
Executive Director

Dear Senator Essmann,

On behalf of the National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation, we wanted to transmit the attached memorandum which discusses legal questions being raised regarding the impact of Montana's membership in the Multistate Tax Compact. At the heart of those questions lays an important issue for states. Simply put, litigation is pending in four states seeking to determine whether membership in the Compact removes the state legislature's control over corporate income tax apportionment and certain tax base definitions.

In states that have modified the traditional three factor apportionment formula for determining corporate income subject to tax, out-of-state taxpayers are able to override the state's law electing instead to use rules provided by the Compact, even when those rules have not been legislatively adopted by the state. In two states, lower courts have held taxpayers may elect to be taxed under the rules of the Compact rather than the provisions adopted by the state legislature. See *Gillette Co. v. Franchise Tax Bd.*, 209 Cal. App. 4th 938 (2012) and *Anheuser-Busch, Inc. v. Mich. Dept. of Treasury*, No. 11-85-MT (Mich. Ct. Cl., June 6, 2013). In reaction, the legislatures in five states and the District have acted to attempt to maintain control of their state apportionment regimes. California, District of Columbia, Minnesota, Oregon, South Dakota, and Utah have all withdrawn from the Compact or are seeking to eliminate the binding nature of the Compact's apportionment scheme.

At the August 11, 2013 meeting of the National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation, we discussed these issues and voted to communicate the attached memorandum to legislators in states that were members of the Compact. The memorandum was prepared for discussion at the Task Force meeting by a state tax lawyer who represents taxpayers in front of the Task Force. We would encourage you to read the attached memorandum and evaluate the issues facing your state as a result of its membership in the Compact and the growing number of lawsuits following on *Gillette*.

If you have questions or would like additional information, please contact us or Neal Osten, in NCSL's Washington office at neal.osten@ncsl.org.

Sincerely,

Senator Pam Althoff, Illinois
Co-Chairs, NCSL Executive Committee Task Force on State and Local Taxation

Delegate Shelia Hixson, Maryland

Denver
7700 East First Place
Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org
Email info@ncsl.org