

## **Multistate Tax Commission Interaction After the Repeal of the Multistate Compact.**

Recently, the California Legislature passed Senate Bill (“S.B.”) 1015, which repealed the Multistate Tax Compact (the “Compact”). This had the effect of withdrawing California from the Multistate Tax Compact on a going forward basis and ended California's participation as a voting and dues paying member of the Multistate Tax Commission (MTC).

SB 1015 did not specify how, if at all, the Franchise Tax Board should interact with the MTC in the future. Many states who are not members of the Compact have chosen to participate in MTC functions despite not being Compact members and the bylaws of the MTC allow for such participation. The bylaws provide for three levels of state participation when not a member of the Compact:

Sovereignty Members are States that support the purposes of the Multistate Tax Compact and work with the Commission and its Member States to fulfill those purposes through regular participation in and financial support for the general activities of the Commission.

Sovereignty Members pay a fee equal to and determined on the same basis as the membership assessment for Commission Members under Article VI.4.(b) of the Compact. For California, in the 11/12 fiscal year, these fees totaled approximately \$540,000, split equally between the FTB and the BOE. Representatives of Sovereignty Members may be voting members and can serve in a leadership capacity on any committee that reports to the Executive Committee, however, they are not eligible to serve as an elected member of the Executive Committee nor can they vote in meetings of the Executive Committee or the Commission. In addition, if there are charges for programs, projects, training sessions or any other fee supported activity, a Sovereignty Member does not pay surcharges or higher fees that are required of Associate Member states. There are currently six Sovereignty Member states.

Associate Members are States that share the purposes and goals of the Compact by participating in Commission meetings and otherwise consulting and cooperating with the Commission and its Member States or that seek to evaluate becoming a Sovereignty or Commission Member, but have not yet assumed the duties or obligations of a Sovereignty or Commission Member. An associate member does not pay a member assessment fee like the Sovereignty Members or Commission Members.

Associate Members can participate in, but cannot vote in, any meeting of the Commission, its Executive Committee, or committees reporting to the Executive Committee or Commission. Representatives of Associate Members may, however, serve in leadership positions for subcommittees of committees reporting to the Executive Committee or Commission. Associate Members may choose to participate in a Commission program project or activity for which a specific fee, charge or reimbursement is required. If they choose to do so, they may participate as a voting member and are eligible to serve in a leadership position on a committee whose work primarily involves such a program, project or activity if the Associate Member participates by paying the charge, fee or reimbursement for its support. Associate Members are charged higher fees for participation in these programs

than those paid by Sovereignty Members or Commission Members. There are currently twenty-two states that participate as either Associate Members or as Project members.

Project Members are States that choose to participate in Commission programs, projects or activities for which a specific fee, charge or reimbursement is required other than the membership assessment paid by Commission Members, but choose not to participate in any other activities of the Commission beyond that program or activity. To reiterate, there are currently twenty-two states that participate as either Associate Members or as Project members.

### California's Past Participation

In the past, as a Commission Member, California has participated in the programs of the MTC and the MTC has provided some services to California. Among those have been:

1. Providing applicants for the Franchise Tax Board's voluntary disclosure program through the National Nexus Program.
2. Providing amicus support for Franchise Tax Board's litigation efforts.
3. Representing the states, including California, at the Federal level. Keeping the states informed of legislative activities in Congress.
4. Coordinating uniformity projects through the Uniformity Committee. Over the many years that California was a member of the MTC, these efforts resulted in several regulations and statutes that have become part of California law.

### Current Participation

Currently, Franchise Tax Board is not participating in any capacity with the MTC due to the withdrawal of California from the MTC. However, because California was a full Commission member prior to withdrawal, the MTC has stated that it considers California to be an Associate Member.