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AN ACT
RELATING TO THE MULTISTATE TAX COMPACT; ELIMINATING A
TAXPAYER ELECTION TO APPORTION AND ALLOCATE INCOME PURSUANT
TO THE MODEL VERSION OF THE UNIFORM DIVISION OF INCOME FOR
TAX PURPOSES ACT; REQUIRING TAXPAYERS TO APPORTION AND
ALLOCATE INCOME PURSUANT TO NEW MEXICO'S UNIFORM DIVISION OF
INCOME FOR TAX PURPOSES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-5-1 NMSA 1978 (being Laws 1967,
Chapter 56, Section 1) is amended to read:

"7-5-1. COMPACT ENACTED AND ENTERED INTO.--The
"Multistate Tax Compact" is enacted into law and entered into
with all jurisdictions legally joining therein, in the form
substantially as follows:

"MULTISTATE TAX COMPACT
Article I. Purposes.

The purposes of this compact are to:

1. facilitate proper determination of state and local
tax liability of multistate taxpayers, including the
equitable apportionment of tax bases and settlement of
apportionment disputes;
2. promote uniformity or compatibility in significant
components of tax systems;
3. facilitate taxpayer convenience and compliance in

1 the filing of tax returns and in other phases of tax
2 administration; and

3 4. avoid duplicative taxation.

4 Article II. Definitions.

5 As used in this compact:

6 1. "state" means a state of the United States, the
7 District of Columbia, the Commonwealth of Puerto Rico, or any
8 Territory or Possession of the United States;

9 2. "subdivision" means any governmental unit or special
10 district of a state;

11 3. "taxpayer" means any corporation, partnership, firm,
12 association, governmental unit or agency or person acting as
13 a business entity in more than one state;

14 4. "income tax" means a tax imposed on or measured by
15 net income, including any tax imposed on or measured by an
16 amount arrived at by deducting expenses from gross income,
17 one or more forms of which expenses are not specifically and
18 directly related to particular transactions;

19 5. "capital stock tax" means a tax measured in any way
20 by the capital of a corporation considered in its entirety;

21 6. "gross receipts tax" means a tax, other than a sales
22 tax, that is imposed on or measured by the gross volume of
23 business, in terms of gross receipts or in other terms, and
24 in the determination of which no deduction is allowed that
25 would constitute the tax an income tax;

1 7. "sales tax" means a tax imposed with respect to the
2 transfer for a consideration of ownership, possession or
3 custody of tangible personal property or the rendering of
4 services measured by the price of the tangible personal
5 property transferred or services rendered and that is
6 required by state or local law to be separately stated from
7 the sales price by the seller, or that is customarily
8 separately stated from the sales price, but does not include
9 a tax imposed exclusively on the sale of a specifically
10 identified commodity or article or class of commodities or
11 articles;

12 8. "use tax" means a nonrecurring tax, other than a
13 sales tax, that: (a) is imposed on or with respect to the
14 exercise or enjoyment of any right or power over tangible
15 personal property incident to the ownership, possession or
16 custody of that property or the leasing of that property from
17 another including any consumption, keeping, retention, or
18 other use of tangible personal property; and (b) is
19 complementary to a sales tax; and

20 9. "tax" means an income tax, capital stock tax, gross
21 receipts tax, sales tax, use tax, and any other tax that has
22 a multistate impact, except that the provisions of Articles
23 III, IV and V of this compact shall apply only to the taxes
24 specifically designated therein and the provisions of
25 Article IX of this compact shall apply only in respect to

1 determinations pursuant to Article IV of this compact;

2 Article III. Elements of Income Tax Laws.

3 1. Each party state or any subdivision thereof that
4 imposes an income tax shall provide by law that any taxpayer
5 required to file a return, whose only activities within the
6 taxing jurisdiction consist of sales and do not include
7 owning or renting real estate or tangible personal property,
8 and whose dollar volume of gross sales made during the tax
9 year within the state or subdivision, as the case may be, is
10 not in excess of \$100,000 may elect to report and pay any tax
11 due on the basis of a percentage of such volume, and shall
12 adopt rates which shall produce a tax which reasonably
13 approximates the tax otherwise due. The multistate tax
14 commission, not more than once in five years, may adjust the
15 \$100,000 figure in order to reflect such changes as may occur
16 in the real value of the dollar, and such adjusted figure,
17 upon adoption by the commission, shall replace the \$100,000
18 figure specifically provided herein. Each party state and
19 subdivision thereof may make the same election available to
20 taxpayers additional to those specified in this paragraph.

21 2. Nothing in this article relates to the reporting or
22 payment of any tax other than an income tax.

23 Article IV. Division of Income.

24 1. As used in this article, unless the context
25 otherwise requires:

1 (a) "business income" means income arising from
2 transactions and activity in the regular course of the
3 taxpayer's trade or business and includes income from
4 tangible and intangible property if the acquisition,
5 management, and disposition of the property constitute
6 integral parts of the taxpayer's regular trade or business
7 operations;

8 (b) "commercial domicile" means the principal
9 place from which the trade or business of the taxpayer is
10 directed or managed;

11 (c) "compensation" means wages, salaries,
12 commissions and any other form of remuneration paid to
13 employees for personal services;

14 (d) "financial organization" means any bank, trust
15 company, savings bank, industrial bank, land bank, safe
16 deposit company, private banker, savings and loan
17 association, credit union, cooperative bank, small loan
18 company, sales finance company, investment company, or any
19 type of insurance company;

20 (e) "nonbusiness income" means all income other
21 than business income;

22 (f) "public utility" means any business entity:
23 (1) that owns or operates any plant, equipment, property,
24 franchise, or license for the transmission of communications,
25 transportation of goods or persons, except by pipe line, or

1 the production, transmission, sale, delivery, or furnishing
2 of electricity, water or steam; and (2) whose rates of
3 charges for goods or services have been established or
4 approved by a federal, state or local government or
5 governmental agency;

6 (g) "sales" means all gross receipts of the
7 taxpayer not allocated under paragraphs of this article;

8 (h) "state" means any state of the United States,
9 the District of Columbia, the commonwealth of Puerto Rico,
10 any territory or possession of the United States, and any
11 foreign country or political subdivision thereof; and

12 (i) "this state" means the state in which the
13 relevant tax return is filed or, in the case of application
14 of this article to the apportionment and allocation of income
15 for local tax purposes, the subdivision or local taxing
16 district in which the relevant tax return is filed.

17 2. Any taxpayer having income from business activity
18 that is taxable both within and without this state, other
19 than activity as a financial organization or public utility
20 or the rendering of purely personal services by an
21 individual, shall allocate and apportion the taxpayer's net
22 income as provided in this article. If a taxpayer has income
23 from business activity as a public utility but derives the
24 greater percentage of the taxpayer's income from activities
25 subject to this article, the taxpayer may elect to allocate

1 and apportion the taxpayer's entire net income as provided in
2 this article.

3 3. For purposes of allocation and apportionment of
4 income under this article, a taxpayer is taxable in another
5 state if: (1) in that state, the taxpayer is subject to a
6 net income tax, a franchise tax measured by net income, a
7 franchise tax for the privilege of doing business, or a
8 corporate stock tax; or (2) that state has jurisdiction to
9 subject the taxpayer to a net income tax regardless of
10 whether, in fact, the state does or does not.

11 4. Rents and royalties from real or tangible personal
12 property, capital gains, interest, dividends or patent or
13 copyright royalties, to the extent that they constitute
14 nonbusiness income, shall be allocated as provided in
15 Paragraphs 5 through 8 of this article.

16 5. (a) Net rents and royalties from real property
17 located in this state are allocable to this state.

18 (b) Net rents and royalties from tangible personal
19 property are allocable to this state: (1) if and to the
20 extent that the property is utilized in this state; or (2) in
21 their entirety if the taxpayer's commercial domicile is in
22 this state and the taxpayer is not organized under the laws
23 of or taxable in the state in which the property is utilized.

24 (c) The extent of utilization of tangible personal
25 property in a state is determined by multiplying the rents

1 and royalties by a fraction, the numerator of which is the
2 number of days of physical location of the property in the
3 state during the rental or royalty period in the taxable year
4 and the denominator of which is the number of days of
5 physical location of the property everywhere during all
6 rental or royalty periods in the taxable year. If the
7 physical location of the property during the rental or
8 royalty period is unknown or unascertainable by the taxpayer,
9 tangible personal property is utilized in the state in which
10 the property was located at the time the rental or royalty
11 payer obtained possession.

12 6. (a) Capital gains and losses from sales of real
13 property located in this state are allocable to this state.

14 (b) Capital gains and losses from sales of
15 tangible personal property are allocable to this state if:
16 (1) the property had a situs in this state at the time of the
17 sale; or (2) the taxpayer's commercial domicile is in this
18 state and the taxpayer is not taxable in the state in which
19 the property had a situs.

20 (c) Capital gains and losses from sales of
21 intangible personal property are allocable to this state if
22 the taxpayer's commercial domicile is in this state.

23 7. Interest and dividends are allocable to this state
24 if the taxpayer's commercial domicile is in this state.

25 8. (a) Patent and copyright royalties are allocable

1 to this state: (1) if and to the extent that the patent or
2 copyright is utilized by the payer in this state; or (2) if
3 and to the extent that the patent copyright is utilized by
4 the payer in a state in which the taxpayer is not taxable and
5 the taxpayer's commercial domicile is in this state.

6 (b) A patent is utilized in a state to the extent
7 that it is employed in production, fabrication,
8 manufacturing, or other processing in the state or to the
9 extent that a patented product is produced in the state. If
10 the basis of receipts from patent royalties does not permit
11 allocation to states or if the accounting procedures do not
12 reflect states of utilization, the patent is utilized in the
13 state in which the taxpayer's commercial domicile is located.

14 (c) A copyright is utilized in a state to the
15 extent that printing or other publication originates in the
16 state. If the basis of receipts from copyright royalties
17 does not permit allocation to states or if the accounting
18 procedures do not reflect states of utilization, the
19 copyright is utilized in the state in which the taxpayer's
20 commercial domicile is located.

21 9. All business income shall be apportioned to this
22 state by multiplying the income by a fraction, the numerator
23 of which is the property factor plus the payroll factor plus
24 the sales factor, and the denominator of which is three.

25 10. The property factor is a fraction, the numerator of

1 which is the average value of the taxpayer's real and
2 tangible personal property owned or rented and used in this
3 state during the tax period and the denominator of which is
4 the average value of all the taxpayer's real and tangible
5 personal property owned or rented and used during the tax
6 period.

7 11. Property owned by the taxpayer is valued at its
8 original cost. Property rented by the taxpayer is valued at
9 eight times the net annual rental rate. Net annual rental
10 rate is the annual rental rate paid by the taxpayer less any
11 annual rental rate received by the taxpayer from subrentals.

12 12. The average value of property shall be determined
13 by averaging the values at the beginning and ending of the
14 tax period but the tax administrator may require the
15 averaging of monthly values during the tax period if
16 reasonably required to reflect properly the average value of
17 the taxpayer's property.

18 13. The payroll factor is a fraction, the numerator of
19 which is the total amount paid in this state during the tax
20 period by the taxpayer for compensation and the denominator
21 of which is the total compensation paid everywhere during the
22 tax period.

23 14. Compensation is paid in this state if:

24 (a) the individual's service is performed entirely
25 within the state;

1 (b) the individual's service is performed both
2 within and without the state, but the service performed
3 without the state is incidental to the individual's service
4 within the state; or

5 (c) some of the service is performed in the state
6 and: (1) the base of operations or, if there is no base of
7 operations, the place from which the service is directed or
8 controlled is in the state; or (2) the base of operations or
9 the place from which the service is directed or controlled is
10 not in any state in which some part of the service is
11 performed, but the individual's residence is in this state.

12 15. The sales factor is a fraction, the numerator of
13 which is the total sales of the taxpayer in this state during
14 the tax period, and the denominator of which is the total
15 sales of the taxpayer everywhere during the tax period.

16 16. Sales of tangible personal property are in this
17 state if:

18 (a) the property is delivered or shipped to a
19 purchaser, other than the United States government, within
20 this state regardless of the f.o.b. point or other conditions
21 of the sale; or

22 (b) the property is shipped from an office, store,
23 warehouse, factory, or other place of storage in this state
24 and: (1) the purchaser is the United States government; or
25 (2) the taxpayer is not taxable in the state of the

1 purchaser.

2 17. Sales, other than sales of tangible personal
3 property, are in this state if:

4 (a) the income-producing activity is performed in
5 this state; or

6 (b) the income-producing activity is performed
7 both in and outside this state and a greater proportion of
8 the income-producing activity is performed in this state than
9 in any other state, based on costs of performance.

10 18. If the allocation and apportionment provisions of
11 this article do not fairly represent the extent of the
12 taxpayer's business activity in this state, the taxpayer may
13 petition for or the tax administrator may require, in respect
14 to all or any part of the taxpayer's business activity, if
15 reasonable:

16 (a) separate accounting;

17 (b) the exclusion of any one or more of the
18 factors;

19 (c) the inclusion of one or more additional
20 factors which will fairly represent the taxpayer's business
21 activity in this state; or

22 (d) the employment of any other method to
23 effectuate an equitable allocation and apportionment of the
24 taxpayer's income.

1 Tax Credit.

2 1. Each purchaser liable for a use tax on tangible
3 personal property shall be entitled to full credit for the
4 combined amount or amounts of legally imposed sales or use
5 taxes paid by the purchaser with respect to the same property
6 to another state and any subdivision thereof. The credit
7 shall be applied first against the amount of any use tax due
8 the state, and any unused portion of the credit shall then be
9 applied against the amount of any use tax due a subdivision.

10 Exemption Certificates, Vendors May Rely.

11 2. Whenever a vendor receives and accepts in good faith
12 from a purchaser a resale or other exemption certificate or
13 other written evidence of exemption authorized by the
14 appropriate state or subdivision taxing authority, the vendor
15 shall be relieved of liability for a sales or use tax with
16 respect to the transaction.

17 Article VI. The Commission.

18 Organization and Management.

19 1. (a) The "multistate tax commission" is hereby
20 established. It shall be composed of one "member" from each
21 party state who shall be the head of the state agency charged
22 with the administration of the types of taxes to which this
23 compact applies. If there is more than one such agency the
24 state shall provide by law for the selection of the
25 commission member from the heads of the relevant agencies.

1 State law may provide that a member of the commission be
2 represented by an alternate but only if there is on file with
3 the commission written notification of the designation and
4 identity of the alternate. The attorney general of each
5 party state or the attorney general's designee, or other
6 counsel if the laws of the party state specifically provide,
7 shall be entitled to attend the meetings of the commission,
8 but shall not vote. Such attorneys general, designees, or
9 other counsel shall receive all notices of meetings required
10 under Paragraph 1 (e) of this article.

11 (b) Each party state shall provide by law for the
12 selection of representatives from its subdivisions affected
13 by this compact to consult with the commission member from
14 that State.

15 (c) Each member shall be entitled to one vote.
16 The commission shall not act unless a majority of the members
17 are present, and no action shall be binding unless approved
18 by a majority of the total number of members.

19 (d) The commission shall adopt an official seal to
20 be used as it may provide.

21 (e) The commission shall hold an annual meeting
22 and such other regular meetings as its bylaws may provide and
23 such special meetings as its executive committee may
24 determine. The commission bylaws shall specify the dates of
25 the annual and any other regular meetings, and shall provide

1 for the giving of notice of annual, regular and special
2 meetings. Notices of special meetings shall include the
3 reasons therefor and an agenda of the items to be considered.

4 (f) The commission shall elect annually, from
5 among its members, a chair, a vice chair and a treasurer.
6 The commission shall appoint an executive director who shall
7 serve at its pleasure, and it shall fix the executive
8 director's duties and compensation. The executive director
9 shall be secretary of the commission. The commission shall
10 make provision for the bonding of such of its officers and
11 employees as it may deem appropriate.

12 (g) Irrespective of the civil service, personnel
13 or other merit system laws of any party state, the executive
14 director shall appoint or discharge such personnel as may be
15 necessary for the performance of the functions of the
16 commission and shall fix their duties and compensation. The
17 commission bylaws shall provide for personnel policies and
18 programs.

19 (h) The commission may borrow, accept or
20 contract for the services of personnel from any state, the
21 United States, or any other governmental entity.

22 (i) The commission may accept for any of its
23 purposes and functions any and all donations and grants of
24 money, equipment, supplies, materials and services,
25 conditional or otherwise, from any governmental entity, and

1 may utilize and dispose of the same.

2 (j) The commission may establish one or more
3 offices for the transacting of its business.

4 (k) The commission shall adopt bylaws for the
5 conduct of its business. The commission shall publish its
6 bylaws in convenient form, and shall file a copy of the
7 bylaws and any amendments thereto with the appropriate agency
8 or officer in each of the party states.

9 (l) The commission annually shall make to the
10 governor and legislature of each party state a report
11 covering its activities for the preceding year. Any donation
12 or grant accepted by the commission or services borrowed
13 shall be reported in the annual report of the commission, and
14 shall include the nature, amount and conditions, if any, of
15 the donation, gift, grant or services borrowed and the
16 identity of the donor or lender. The commission may make
17 additional reports as it may deem desirable.

18 Committees.

19 2. (a) To assist in the conduct of its business when
20 the full commission is not meeting, the commission shall have
21 an executive committee of seven members, including the chair,
22 vice chair, treasurer and four other members elected annually
23 by the commission. The executive committee, subject to the
24 provisions of this compact and consistent with the policies
25 of the commission, shall function as provided in the bylaws

1 of the commission.

2 (b) The commission may establish advisory and
3 technical committees, membership on which may include private
4 persons and public officials, in furthering any of its
5 activities. Such committees may consider any matter of
6 concern to the commission, including problems of special
7 interest to any party state and problems dealing with
8 particular types of taxes.

9 (c) The commission may establish such additional
10 committees as its bylaws may provide.

11 Powers.

12 3. In addition to powers conferred elsewhere in this
13 compact, the commission shall have power to:

14 (a) study state and local tax systems and
15 particular types of state and local taxes;

16 (b) develop and recommend proposals for an
17 increase in uniformity or compatibility of state and local
18 tax laws with a view toward encouraging the simplification
19 and improvement of state and local tax law and
20 administration;

21 (c) compile and publish information as in its
22 judgment would assist the party states in implementation of
23 the compact and taxpayers in complying with state and local
24 tax laws; and

25 (d) do all things necessary and incidental to the

1 administration of its functions pursuant to this compact.

2 Finance.

3 4. (a) The commission shall submit to the governor or
4 designated officer or officers of each party state a budget
5 of its estimated expenditures for such period as may be
6 required by the laws of that state for presentation to the
7 legislature thereof.

8 (b) Each of the commission's budgets of estimated
9 expenditures shall contain specific recommendations of the
10 amounts to be appropriated by each of the party states. The
11 total amount of appropriations requested under any such
12 budget shall be apportioned among the party states as
13 follows: one-tenth in equal shares; and the remainder in
14 proportion to the amount of revenue collected by each party
15 state and its subdivisions from income taxes, capital stock
16 taxes, gross receipts taxes, sales and use taxes. In
17 determining such amounts, the commission shall employ such
18 available public sources of information as, in its judgment,
19 present the most equitable and accurate comparisons among the
20 party states. Each of the commission's budgets of estimated
21 expenditures and requests for appropriations shall indicate
22 the sources used in obtaining information employed in
23 applying the formula contained in this paragraph.

24 (c) The commission shall not pledge the credit of
25 any party state. The commission may meet any of its

1 obligations in whole or in part with funds available to it
2 under Paragraph (1) (i) of this article: provided that the
3 commission takes specific action setting aside such funds
4 prior to incurring any obligation to be met in whole or in
5 part in such manner. Except where the commission makes use
6 of funds available to it under Paragraph 1 (i) of this
7 article, the commission shall not incur any obligation prior
8 to the allotment of funds by the party states adequate to
9 meet the same.

10 (d) The commission shall keep accurate accounts of
11 all receipts and disbursements. The receipts and
12 disbursements of the commission shall be subject to the audit
13 and accounting procedures established under its bylaws. All
14 receipts and disbursements of funds handled by the commission
15 shall be audited yearly by a certified or licensed public
16 accountant and the report of the audit shall be included in
17 and become part of the annual report of the commission.

18 (e) The accounts of the commission shall be open
19 at any reasonable time for inspection by duly constituted
20 officers of the party states and by any persons authorized by
21 the commission.

22 (f) Nothing contained in this article shall be
23 construed to prevent commission compliance with laws relating
24 to audit or inspection of accounts by or on behalf of any
25 government contributing to the support of the commission.

1 Article VII. Uniform Regulations and Forms.

2 1. Whenever any two or more party states, or
3 subdivisions of party states, have uniform or similar
4 provisions of law relating to an income tax, capital stock
5 tax, gross receipts tax, sales or use tax, the commission may
6 adopt uniform regulations for any phase of the administration
7 of such law, including assertion of jurisdiction to tax, or
8 prescribing uniform tax forms. The commission may also act
9 with respect to the provisions of Article IV of this compact.

10 2. Prior to the adoption of any regulation, the
11 commission shall:

12 (a) as provided in its bylaws, hold at least one
13 public hearing on due notice to all affected party states and
14 subdivisions thereof and to all taxpayers and other persons
15 who have made timely request of the commission for advance
16 notice of its regulation-making proceedings; and

17 (b) afford all affected party states and
18 subdivisions and interested persons an opportunity to submit
19 relevant written data and views, which shall be considered
20 fully by the commission.

21 3. The commission shall submit any regulations adopted
22 by it to the appropriate officials of all party states and
23 subdivisions to which they might apply. Each such state and
24 subdivision shall consider any such regulation for adoption
25 in accordance with its own laws and procedures.

1 Article VIII. Interstate Audits.

2 1. This article shall be in force only in those party
3 states that specifically provide therefor by statute.

4 2. Any party state or subdivision thereof desiring to
5 make or participate in an audit of any accounts, books,
6 papers, records or other documents may request the commission
7 to perform the audit on its behalf. In responding to the
8 request, the commission shall have access to and may examine,
9 at any reasonable time, such accounts, books, papers,
10 records, and other documents and any relevant property or
11 stock of merchandise. The commission may enter into
12 agreements with party states or their subdivisions for
13 assistance in performance of the audit. The commission shall
14 make charges, to be paid by the state or local government or
15 governments for which it performs the service, for any audits
16 performed by it in order to reimburse itself for the actual
17 costs incurred in making the audit.

18 3. The commission may require the attendance of any
19 person within the state where it is conducting an audit or
20 part thereof at a time and place fixed by it within such
21 state for the purpose of giving testimony with respect to any
22 account, book, paper, document, other record, property or
23 stock of merchandise being examined in connection with the
24 audit. If the person is not within the jurisdiction, the
25 person may be required to attend for such purpose at any time

1 and place fixed by the commission within the state of which
2 the person is a resident; provided that such state has
3 adopted this article.

4 4. The commission may apply to any court having power
5 to issue compulsory process for orders in aid of its powers
6 and responsibilities pursuant to this article and any and all
7 such courts shall have jurisdiction to issue such orders.
8 Failure of any person to obey any such order shall be
9 punishable as contempt of the issuing court. If the party or
10 subject matter on account of which the commission seeks an
11 order is within the jurisdiction of the court to which
12 application is made, such application may be to a court in
13 the state or subdivision on behalf of which the audit is
14 being made or a court in the state in which the object of the
15 order being sought is situated. The provisions of this
16 paragraph apply only to courts in a state that has adopted
17 this article.

18 5. The commission may decline to perform any audit
19 requested if it finds that its available personnel or other
20 resources are insufficient for the purpose or that, in the
21 terms requested, the audit is impracticable of satisfactory
22 performance. If the commission, on the basis of its
23 experience, has reason to believe that an audit of a
24 particular taxpayer, either at a particular time or on a
25 particular schedule, would be of interest to a number of

1 party states or their subdivisions, it may offer to make the
2 audit or audits, the offer to be contingent on sufficient
3 participation therein as determined by the commission.

4 6. Information obtained by any audit pursuant to this
5 article shall be confidential and available only for tax
6 purposes to party states, their subdivisions or the
7 United States. Availability of information shall be in
8 accordance with the laws of the states or subdivisions on
9 whose account the commission performs the audit, and only
10 through the appropriate agencies or officers of such states
11 or subdivisions. Nothing in this article shall be construed
12 to require any taxpayer to keep records for any period not
13 otherwise required by law.

14 7. Other arrangements made or authorized pursuant to
15 law for cooperative audit by or on behalf of the party states
16 or any of their subdivisions are not superseded or
17 invalidated by this article.

18 8. In no event shall the commission make any charge
19 against a taxpayer for an audit.

20 9. As used in this article, "tax," in addition to the
21 meaning ascribed to it in Article II of this compact, means
22 any tax or license fee imposed in whole or in part for
23 revenue purposes.

24 Article IX. Arbitration.

25 1. Whenever the commission finds a need for settling

1 disputes concerning apportionments and allocations by
2 arbitration, it may adopt a regulation placing this article
3 in effect, notwithstanding the provisions of Article VII of
4 this compact.

5 2. The commission shall select and maintain an
6 arbitration panel composed of officers and employees of state
7 and local governments and private persons who shall be
8 knowledgeable and experienced in matters of tax law and
9 administration.

10 3. Whenever a taxpayer who has elected to employ
11 Article IV of this compact, or whenever the laws of the party
12 state or subdivision thereof are substantially identical with
13 the relevant provisions of Article IV, the taxpayer, by
14 written notice to the commission and to each party state or
15 subdivision thereof that would be affected, may secure
16 arbitration of an apportionment or allocation, if the
17 taxpayer is dissatisfied with the final administrative
18 determination of the tax agency of the state or subdivision
19 with respect thereto on the ground that it would subject the
20 taxpayer to double or multiple taxation by two or more party
21 states or subdivisions thereof. Each party state and
22 subdivision thereof hereby consents to the arbitration as
23 provided herein, and agrees to be bound thereby.

24 4. The arbitration board shall be composed of one
25 person selected by the taxpayer, one by the agency or

1 agencies involved, and one member of the commission's
2 arbitration panel. If the agencies involved are unable to
3 agree on the person to be selected by them, such person shall
4 be selected by lot from the total membership of the
5 arbitration panel. The two persons selected for the board in
6 the manner provided by the foregoing provisions of this
7 paragraph shall jointly select the third member of the board.
8 If they are unable to agree on the selection, the third
9 member shall be selected by lot from among the total
10 membership of the arbitration panel. No member of a board
11 selected by lot shall be qualified to serve if the member is
12 an officer or employee or is otherwise affiliated with any
13 party to the arbitration proceeding. Residence within the
14 jurisdiction of a party to the arbitration proceeding shall
15 not constitute affiliation within the meaning of this
16 paragraph.

17 5. The board may sit in any state or subdivision party
18 to the proceeding, in the state of the taxpayer's
19 incorporation, residence or domicile, in any state where the
20 taxpayer does business, or in any place that it finds most
21 appropriate for gaining access to evidence relevant to the
22 matter before it.

23 6. The board shall give due notice of the times and
24 places of its hearings. The parties shall be entitled to be
25 heard, to present evidence, and to examine and cross-examine

1 witnesses. The board shall act by majority vote.

2 7. The board shall have power to administer oaths, take
3 testimony, subpoena and require the attendance of witnesses
4 and the production of accounts, books, papers, records, and
5 other documents, and issue commissions to take testimony.

6 Subpoenas may be signed by any member of the board. In case
7 of failure to obey a subpoena, and upon application by the
8 board, any judge of a court of competent jurisdiction of the
9 state in which the board is sitting or in which the person to
10 whom the subpoena is directed may be found may make an order
11 requiring compliance with the subpoena, and the court may
12 punish failure to obey the order as a contempt. The
13 provisions of this paragraph apply only in states that have
14 adopted this article.

15 8. Unless the parties otherwise agree the expenses and
16 other costs of the arbitration shall be assessed and
17 allocated among the parties by the board in such manner as it
18 may determine. The commission shall fix a schedule of
19 compensation for members of arbitration boards and of other
20 allowable expenses and costs. No officer or employee of a
21 state or local government who serves as a member of a board
22 shall be entitled to compensation therefor unless the member
23 is required on account of the member's service to forego the
24 regular compensation attaching to the member's public
25 employment, but any such board member shall be entitled to

1 expenses.

2 9. The board shall determine the disputed apportionment
3 or allocation and any matters necessary thereto. The
4 determinations of the board shall be final for the purposes
5 of making the apportionment or allocation, but for no other
6 purpose.

7 10. The board shall file with the commission and with
8 each tax agency represented in the proceeding: the
9 determination of the board; the board's written statement of
10 its reasons therefor; the record of the board's proceedings;
11 and any other documents required by the arbitration rules of
12 the commission to be filed.

13 11. The commission shall publish the determinations of
14 boards together with the statements of the reasons therefor.

15 12. The commission shall adopt and publish rules of
16 procedure and practice and shall file a copy of such rules
17 and of any amendment thereto with the appropriate agency or
18 officer in each of the party states.

19 13. Nothing contained herein shall prevent at any time
20 a written compromise of any matter or matters in dispute, if
21 otherwise lawful, by the parties to the arbitration
22 proceeding.

23 Article X. Entry Into Force and Withdrawal.

24 1. This compact shall enter into force when enacted
25 into law by any seven states. Thereafter, this compact shall

1 become effective as to any other state upon its enactment
2 thereof. The commission shall arrange for notification of
3 all party states whenever there is a new enactment of the
4 compact.

5 2. Any party state may withdraw from this compact by
6 enacting a statute repealing the same. No withdrawal shall
7 affect any liability already incurred by or chargeable to a
8 party state prior to the time of such withdrawal.

9 3. No proceeding commenced before an arbitration board
10 prior to the withdrawal of a state and to which the
11 withdrawing state or any subdivision thereof is a party shall
12 be discontinued or terminated by the withdrawal, nor shall
13 the board thereby lose jurisdiction over any of the parties
14 to the proceeding necessary to make a binding determination
15 therein.

16 Article XI. Effect on Other Laws and Jurisdiction.

17 Nothing in this compact shall be construed to:

18 (a) affect the power of any state or subdivision
19 thereof to fix rates of taxation, except that a party state
20 shall be obligated to implement Article III 1 of this
21 compact;

22 (b) apply to any tax or fixed fee imposed for the
23 registration of a motor vehicle or any tax on motor fuel,
24 other than a sales tax; provided that the definition of "tax"
25 in Article VIII 9 of this compact may apply for the purposes

1 of that article and the commission's powers of study and
2 recommendation pursuant to Article VI 3 of this compact may
3 apply;

4 (c) withdraw or limit the jurisdiction of any
5 state or local court or administrative officer or body with
6 respect to any person, corporation or other entity or subject
7 matter, except to the extent that such jurisdiction is
8 expressly conferred by or pursuant to this compact upon
9 another agency or body; and

10 (d) supersede or limit the jurisdiction of any
11 court of the United States.

12 Article XII. Construction and Severability.

13 This compact shall be liberally construed so as to
14 effectuate the purposes thereof. The provisions of this
15 compact shall be severable and if any phrase, clause,
16 sentence or provision of this compact is declared to be
17 contrary to the constitution of any state or of the
18 United States or the applicability thereof to any government,
19 agency, person or circumstance is held invalid, the validity
20 of the remainder of this compact and the applicability
21 thereof to any government, agency, person or circumstance
22 shall not be affected thereby. If this compact shall be held
23 contrary to the constitution of any State participating
24 therein, the compact shall remain in full force and effect as
25 to the remaining party states and in full force and effect as

1 to the state affected as to all severable matters."

2 SECTION 2. APPLICABILITY.--The provisions of this
3 act apply to taxable years beginning on or after
4 January 1, 2021.

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