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SENATE BILL 218

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Benny Shendo, Jr.

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

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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 the filing of tax returns and in other phases of tax administration; and
4. avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States;
2. "subdivision" means any governmental unit or special district of a state;
3. "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state;
4. "income tax" means a tax imposed on or measured by net income, including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more

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1 forms of which expenses are not specifically and directly  
2 related to particular transactions;

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

5 6. "gross receipts tax" means a tax, other than a sales  
6 tax, ~~[which]~~ that is imposed on or measured by the gross volume  
7 of business, in terms of gross receipts or in other terms, and  
8 in the determination of which no deduction is allowed ~~[which]~~  
9 that would constitute the tax an income tax;

10 7. "sales tax" means a tax imposed with respect to the  
11 transfer for a consideration of ownership, possession or  
12 custody of tangible personal property or the rendering of  
13 services measured by the price of the tangible personal  
14 property transferred or services rendered and ~~[which]~~ that is  
15 required by state or local law to be separately stated from the  
16 sales price by the seller, or ~~[which]~~ that is customarily  
17 separately stated from the sales price, but does not include a  
18 tax imposed exclusively on the sale of a specifically  
19 identified commodity or article or class of commodities or  
20 articles;

21 8. "use tax" means a nonrecurring tax, other than a sales  
22 tax, ~~[which]~~ that: (a) is imposed on or with respect to the  
23 exercise or enjoyment of any right or power over tangible  
24 personal property incident to the ownership, possession or  
25 custody of that property or the leasing of that property from

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1 another including any consumption, keeping, retention, or other  
2 use of tangible personal property; and (b) is complementary to  
3 a sales tax; and

4 9. "tax" means an income tax, capital stock tax, gross  
5 receipts tax, sales tax, use tax, and any other tax ~~[which]~~  
6 that has a multistate impact, except that the provisions of  
7 Articles III, IV and V of this compact shall apply only to the  
8 taxes specifically designated therein and the provisions of  
9 Article IX of this compact shall apply only in respect to  
10 determinations pursuant to Article IV of this compact;

11 Article III. Elements of Income Tax Laws.

12 ~~[Taxpayer Option, State and Local Taxes.~~

13 ~~1. Any taxpayer subject to an income tax whose income is~~  
14 ~~subject to apportionment and allocation for tax purposes~~  
15 ~~pursuant to the laws of a party state or pursuant to the laws~~  
16 ~~of subdivisions in two or more party states may elect to~~  
17 ~~apportion and allocate his income in the manner provided by the~~  
18 ~~laws of such state or by the laws of such states and~~  
19 ~~subdivisions without reference to this compact, or may elect to~~  
20 ~~apportion and allocate in accordance with Article IV. This~~  
21 ~~election for any tax year may be made in all party states or~~  
22 ~~subdivisions thereof or in any one or more of the party states~~  
23 ~~or subdivisions thereof without reference to the election made~~  
24 ~~in the others. For the purposes of this paragraph, taxes~~  
25 ~~imposed by subdivisions shall be considered separately from~~

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1 ~~state taxes and the apportionment and allocation also may be~~  
2 ~~applied to the entire tax base. In no instance wherein Article~~  
3 ~~IV is employed for all subdivisions of a state may the sum of~~  
4 ~~all apportionments and allocations to subdivisions within a~~  
5 ~~state be greater than the apportionment and allocation that~~  
6 ~~would be assignable to that state if the apportionment or~~  
7 ~~allocation were being made with respect to a state income tax.]~~

8 Taxpayer Option, Short Form.

9 [2.] 1. Each party state or any subdivision thereof  
10 [~~which~~] that imposes an income tax shall provide by law that  
11 any taxpayer required to file a return, whose only activities  
12 within the taxing jurisdiction consist of sales and do not  
13 include owning or renting real estate or tangible personal  
14 property, and whose dollar volume of gross sales made during  
15 the tax year within the state or subdivision, as the case may  
16 be, is not in excess of \$100,000 may elect to report and pay  
17 any tax due on the basis of a percentage of such volume, and  
18 shall adopt rates which shall produce a tax which reasonably  
19 approximates the tax otherwise due. The multistate tax  
20 commission, not more than once in five years, may adjust the  
21 \$100,000 figure in order to reflect such changes as may occur  
22 in the real value of the dollar, and such adjusted figure, upon  
23 adoption by the commission, shall replace the \$100,000 figure  
24 specifically provided herein. Each party state and subdivision  
25 thereof may make the same election available to taxpayers

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1 additional to those specified in this paragraph.

2 Coverage.

3 ~~[3.]~~ 2. Nothing in this article relates to the reporting  
4 or payment of any tax other than an income tax.

5 Article IV. Division of Income.

6 1. As used in this article, unless the context otherwise  
7 requires:

8 (a) "business income" means income arising from  
9 transactions and activity in the regular course of the  
10 taxpayer's trade or business and includes income from tangible  
11 and intangible property if the acquisition, management, and  
12 disposition of the property constitute integral parts of the  
13 taxpayer's regular trade or business operations;

14 (b) "commercial domicile" means the principal place  
15 from which the trade or business of the taxpayer is directed or  
16 managed;

17 (c) "compensation" means wages, salaries,  
18 commissions and any other form of remuneration paid to  
19 employees for personal services;

20 (d) "financial organization" means any bank, trust  
21 company, savings bank, industrial bank, land bank, safe deposit  
22 company, private banker, savings and loan association, credit  
23 union, cooperative bank, small loan company, sales finance  
24 company, investment company, or any type of insurance company;

25 (e) "nonbusiness income" means all income other

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1 than business income;

2 (f) "public utility" means any business entity:

3 (1) [~~which~~] that owns or operates any plant, equipment,  
4 property, franchise, or license for the transmission of  
5 communications, transportation of goods or persons, except by  
6 pipe line, or the production, transmission, sale, delivery, or  
7 furnishing of electricity, water or steam; and (2) whose rates  
8 of charges for goods or services have been established or  
9 approved by a federal, state or local government or  
10 governmental agency;

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

13 (h) "state" means any state of the United States,  
14 the District of Columbia, the commonwealth of Puerto Rico, any  
15 territory or possession of the United States, and any foreign  
16 country or political subdivision thereof; and

17 (i) "this state" means the state in which the  
18 relevant tax return is filed or, in the case of application of  
19 this article to the apportionment and allocation of income for  
20 local tax purposes, the subdivision or local taxing district in  
21 which the relevant tax return is filed.

22 2. Any taxpayer having income from business activity  
23 [~~which~~] that is taxable both within and without this state,  
24 other than activity as a financial organization or public  
25 utility or the rendering of purely personal services by an

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1 individual, shall allocate and apportion [~~his~~] the taxpayer's  
2 net income as provided in this article. If a taxpayer has  
3 income from business activity as a public utility but derives  
4 the greater percentage of [~~his~~] the taxpayer's income from  
5 activities subject to this article, the taxpayer may elect to  
6 allocate and apportion [~~his~~] the taxpayer's entire net income  
7 as provided in this article.

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

16 4. Rents and royalties from real or tangible personal  
17 property, capital gains, interest, dividends or patent or  
18 copyright royalties, to the extent that they constitute  
19 nonbusiness income, shall be allocated as provided in  
20 Paragraphs 5 through 8 of this article.

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

23 (b) Net rents and royalties from tangible personal  
24 property are allocable to this state: (1) if and to the extent  
25 that the property is utilized in this state; or (2) in their

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1 entirety if the taxpayer's commercial domicile is in this state  
2 and the taxpayer is not organized under the laws of or taxable  
3 in the state in which the property is utilized.

4 (c) The extent of utilization of tangible personal  
5 property in a state is determined by multiplying the rents and  
6 royalties by a fraction, the numerator of which is the number  
7 of days of physical location of the property in the state  
8 during the rental or royalty period in the taxable year and the  
9 denominator of which is the number of days of physical location  
10 of the property everywhere during all rental or royalty periods  
11 in the taxable year. If the physical location of the property  
12 during the rental or royalty period is unknown or  
13 unascertainable by the taxpayer, tangible personal property is  
14 utilized in the state in which the property was located at the  
15 time the rental or royalty payer obtained possession.

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

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

24 (c) Capital gains and losses from sales of  
25 intangible personal property are allocable to this state if the

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1 taxpayer's commercial domicile is in this state.

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

4 8. (a) Patent and copyright royalties are allocable to  
5 this state: (1) if and to the extent that the patent or  
6 copyright is utilized by the payer in this state; or (2) if and  
7 to the extent that the patent copyright is utilized by the  
8 payer in a state in which the taxpayer is not taxable and the  
9 taxpayer's commercial domicile is in this state.

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

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

25 9. All business income shall be apportioned to this state

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1 by multiplying the income by a fraction, the numerator of which  
2 is the property factor plus the payroll factor plus the sales  
3 factor, and the denominator of which is three.

4 10. The property factor is a fraction, the numerator of  
5 which is the average value of the taxpayer's real and tangible  
6 personal property owned or rented and used in this state during  
7 the tax period and the denominator of which is the average  
8 value of all the taxpayer's real and tangible personal property  
9 owned or rented and used during the tax period.

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

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

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

25 14. Compensation is paid in this state if:

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1 (a) the individual's service is performed entirely  
2 within the state;

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

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

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

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

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

24 (b) the property is shipped from an office, store,  
25 warehouse, factory, or other place of storage in this state

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1 and: (1) the purchaser is the United States government; or (2)  
2 the taxpayer is not taxable in the state of the purchaser.

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

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

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

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

17 (a) separate accounting;

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

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

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

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Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

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

Exemption Certificates, Vendors May Rely.

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

Article VI. The Commission.

Organization and Management.

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

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

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

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

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

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

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

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

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

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

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

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1 or otherwise, from any governmental entity, and may utilize and  
2 dispose of the same.

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

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

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

19 Committees.

20 2. (a) To assist in the conduct of its business when  
21 the full commission is not meeting, the commission shall have  
22 an executive committee of seven members, including the  
23 [~~Chairman~~] chair, vice [~~chairman~~] chair, treasurer and four  
24 other members elected annually by the commission. The  
25 executive committee, subject to the provisions of this compact

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1 and consistent with the policies of the commission, shall  
2 function as provided in the bylaws of the commission.

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

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

12 Powers.

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

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

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

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

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

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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 of  
5 its estimated expenditures for such period as may be required  
6 by the laws of that state for presentation to the legislature  
7 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 budget  
12 shall be apportioned among the party states as follows: one-  
13 tenth in equal shares; and the remainder in proportion to the  
14 amount of revenue collected by each party state and its  
15 subdivisions from income taxes, capital stock taxes, gross  
16 receipts taxes, sales and use taxes. In determining such  
17 amounts, the commission shall employ such available public  
18 sources of information as, in its judgment, present the most  
19 equitable and accurate comparisons among the party states.  
20 Each of the commission's budgets of estimated expenditures and  
21 requests for appropriations shall indicate the sources used in  
22 obtaining information employed in applying the formula  
23 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

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

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

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

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1 Article VII. Uniform Regulations and Forms.

2 1. Whenever any two or more party states, or subdivisions  
3 of party states, have uniform or similar provisions of law  
4 relating to an income tax, capital stock tax, gross receipts  
5 tax, sales or use tax, the commission may adopt uniform  
6 regulations for any phase of the administration of such law,  
7 including assertion of jurisdiction to tax, or prescribing  
8 uniform tax forms. The commission may also act with respect to  
9 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 who  
15 have made timely request of the commission for advance notice  
16 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 by  
22 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 in  
25 accordance with its own laws and procedures.

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Article VIII. Interstate Audits.

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

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

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

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

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

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

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1 the offer to be contingent on sufficient participation therein  
2 as determined by the commission.

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

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

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

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

#### 23 Article IX. Arbitration.

24 1. Whenever the commission finds a need for settling  
25 disputes concerning apportionments and allocations by

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1 arbitration, it may adopt a regulation placing this article in  
2 effect, notwithstanding the provisions of Article VII of this  
3 compact.

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

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

23 4. The arbitration board shall be composed of one person  
24 selected by the taxpayer, one by the agency or agencies  
25 involved, and one member of the commission's arbitration panel.

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

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

20 6. The board shall give due notice of the times and  
21 places of its hearings. The parties shall be entitled to be  
22 heard, to present evidence, and to examine and cross-examine  
23 witnesses. The board shall act by majority vote.

24 7. The board shall have power to administer oaths, take  
25 testimony, subpoena and require the attendance of witnesses and

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1 the production of accounts, books, papers, records, and other  
2 documents, and issue commissions to take testimony. Subpoenas  
3 may be signed by any member of the board. In case of failure  
4 to obey a subpoena, and upon application by the board, any  
5 judge of a court of competent jurisdiction of the state in  
6 which the board is sitting or in which the person to whom the  
7 subpoena is directed may be found may make an order requiring  
8 compliance with the subpoena, and the court may punish failure  
9 to obey the order as a contempt. The provisions of this  
10 paragraph apply only in states that have adopted this article.

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

22 9. The board shall determine the disputed apportionment  
23 or allocation and any matters necessary thereto. The  
24 determinations of the board shall be final for the purposes of  
25 making the apportionment or allocation, but for no other

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1 purpose.

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

8 11. The commission shall publish the determinations of  
9 boards together with the statements of the reasons therefor.

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

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

17 Article X. Entry Into Force and Withdrawal.

18 1. This compact shall enter into force when enacted into  
19 law by any seven states. Thereafter, this compact shall become  
20 effective as to any other state upon its enactment thereof.  
21 The commission shall arrange for notification of all party  
22 states whenever there is a new enactment of the compact.

23 2. Any party state may withdraw from this compact by  
24 enacting a statute repealing the same. No withdrawal shall  
25 affect any liability already incurred by or chargeable to a

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1 party state prior to the time of such withdrawal.

2 3. No proceeding commenced before an arbitration board  
3 prior to the withdrawal of a state and to which the withdrawing  
4 state or any subdivision thereof is a party shall be  
5 discontinued or terminated by the withdrawal, nor shall the  
6 board thereby lose jurisdiction over any of the parties to the  
7 proceeding necessary to make a binding determination therein.

8 Article XI. Effect on Other Laws and Jurisdiction.

9 Nothing in this compact shall be construed to:

10 (a) affect the power of any state or subdivision  
11 thereof to fix rates of taxation, except that a party state  
12 shall be obligated to implement Article III [2] 1 of this  
13 compact;

14 (b) apply to any tax or fixed fee imposed for the  
15 registration of a motor vehicle or any tax on motor fuel, other  
16 than a sales tax; provided that the definition of "tax" in  
17 Article VIII 9 of this compact may apply for the purposes of  
18 that article and the commission's powers of study and  
19 recommendation pursuant to Article VI 3 of this compact may  
20 apply;

21 (c) withdraw or limit the jurisdiction of any state  
22 or local court or administrative officer or body with respect  
23 to any person, corporation or other entity or subject matter,  
24 except to the extent that such jurisdiction is expressly  
25 conferred by or pursuant to this compact upon another agency or

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1 body; and

2 (d) supersede or limit the jurisdiction of any  
3 court of the United States.

4 Article XII. Construction and Severability.

5 This compact shall be liberally construed so as to  
6 effectuate the purposes thereof. The provisions of this  
7 compact shall be severable and if any phrase, clause, sentence  
8 or provision of this compact is declared to be contrary to the  
9 constitution of any state or of the United States or the  
10 applicability thereof to any government, agency, person or  
11 circumstance is held invalid, the validity of the remainder of  
12 this compact and the applicability thereof to any government,  
13 agency, person or circumstance shall not be affected thereby.  
14 If this compact shall be held contrary to the constitution of  
15 any State participating therein, the compact shall remain in  
16 full force and effect as to the remaining party states and in  
17 full force and effect as to the state affected as to all  
18 severable matters."

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