

1 HB434
2 128604-1
3 By Representative Love
4 RFD: Ways and Means Education
5 First Read: 05-APR-11

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8 SYNOPSIS: Multi-state corporations doing business
9 inside and outside of Alabama source their income
10 based on a three factor formula: property, payroll
11 and sales. Currently, sales of services and other
12 sales of intangible property producing income
13 occurring both within and outside of Alabama are
14 sourced to Alabama using the "costs of performance"
15 methodology as denoted in Article IV of Section
16 40-27-1 of the Code of Alabama.

17 This bill proposes to amend the sales factor
18 such that sales of services and other sales of
19 intangible property are sourced to Alabama if the
20 taxpayer's market for the sales is in Alabama.
21 Thus, income a taxpayer receives from providing a
22 service to an Alabama customer will be sourced to
23 Alabama rather than another state.

24 This bill also increases the weight given
25 the sales factor in the apportionment of business
26 income.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Section 40-27-1, Code of Alabama 1975, to
6 change the sourcing rules for sales other than sales of
7 tangible personal property such that the sale is in this state
8 if the taxpayer's market is in this state; and to increase the
9 weight given the sales factor in the apportionment of business
10 income.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 40-27-1, Code of Alabama 1975, is
13 amended to read as follows:

14 "§40-27-1.

15 The following Multistate Tax Compact is hereby ap-
16 proved, adopted and enacted into law by the State of Alabama:

17 Multistate Tax Compact

18 Article I. Purposes.

19 The purposes of this compact are to:

20 1. Facilitate proper determination of state and
21 local tax liability of multistate taxpayers, including the
22 equitable apportionment of tax bases and settlement of
23 apportionment disputes.

1 2. Promote uniformity or compatibility in
2 significant components of tax systems.

3 3. Facilitate taxpayer convenience and compliance in
4 the filing of tax returns and in other phases of tax
5 administration.

6 4. Avoid duplicative taxation.

7 Article II. Definitions.

8 As used in this compact:

9 1. "State" means a state of the United States, the
10 District of Columbia, the Commonwealth of Puerto Rico, or any
11 territory or possession of the United States.

12 2. "Subdivision" means any governmental unit or
13 special district of a state.

14 3. "Taxpayer" means any corporation, partnership,
15 firm, association, governmental unit or agency or other person
16 acting as a business entity in more than one state, but does
17 not include any individual.

18 4. "Income tax" means a tax imposed on or measured
19 by net income including any tax imposed on or measured by an
20 amount arrived at by deducting expenses from gross income, one
21 or more forms of which expenses are not specifically and
22 directly related to particular transactions.

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

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

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

20 8. "Use tax" means a nonrecurring tax, other than a
21 sales tax, which (a) is imposed on or with respect to the
22 exercise or enjoyment of any right or power over tangible
23 personal property incident to the ownership, possession or
24 custody of that property or the leasing of that property from
25 another including any consumption, keeping, retention or other
26 use of tangible personal property and (b) is complementary to
27 a sales tax.

1 9. "Tax" means an income tax, capital stock tax,
2 gross receipts tax, sales tax, use tax and any other tax which
3 has a multistate impact, except that the provisions of arti-
4 cles III, IV and V of this compact shall apply only to the
5 taxes specifically designated therein and the provisions of
6 article IX of this compact shall apply only in respect to de-
7 terminations pursuant to article IV.

8 Article III. Elements of Income Tax Laws.

9 Taxpayer Option, State and Local Taxes.

10 1. Any taxpayer subject to an income tax whose in-
11 come is subject to apportionment and allocation for tax pur-
12 poses pursuant to the laws of a party state or pursuant to the
13 laws of subdivisions in two or more party states may elect to
14 apportion and allocate his or her income in the manner pro-
15 vided by the laws of such state or by the laws of such states
16 and subdivisions without reference to this compact, or may
17 elect to apportion and allocate in accordance with article IV.
18 This election for any tax year may be made in all party states
19 or subdivisions thereof or in any one or more of the party
20 states or subdivisions thereof without reference to the elec-
21 tion made in the others. For the purposes of this paragraph,
22 taxes imposed by subdivisions shall be considered separately
23 from state taxes and the apportionment and allocation also may
24 be applied to the entire tax base. In no instance wherein ar-

1 ticle IV is employed for all subdivisions of a state may the
2 sum of all apportionments and allocations to subdivisions
3 within a state be greater than the apportionment and alloca-
4 tion that would be assignable to that state if the apportion-
5 ment or allocation were being made with respect to a state
6 income tax.

7 Taxpayer Option, Short Form.

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

1 make the same election available to taxpayers additional to
2 those specified in this paragraph.

3 Coverage.

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

6 Article IV. Division of Income.

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

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

15 (b) "Commercial domicile" means the principal place
16 from which the trade or business of the taxpayer is directed
17 or managed.

18 (c) "Compensation" means wages, salaries,
19 commissions and any other form of remuneration paid to
20 employees for personal services.

21 (d) "Financial organization" means any bank, trust
22 company, savings bank, industrial bank, land bank, safe

1 deposit company, private banker, savings and loan association,
2 credit union, cooperative bank, small loan company, sales
3 finance company, investment company or any type of insurance
4 company.

5 (e) "Nonbusiness income" means all income other than
6 business income.

7 (f) "Public utility" means any business entity (1)
8 which owns or operates any plant, equipment, property,
9 franchise or license for the transmission of communications,
10 transportation of goods or persons, except by pipeline, or the
11 production, transmission, sale, delivery, or furnishing of
12 electricity, water or steam; and (2) whose rates of charges
13 for goods or services have been established or approved by a
14 federal, state or local government or governmental agency.

15 (g) "Sales" means all gross receipts of the taxpayer
16 not allocated under paragraphs of this article.

17 (h) "State" means any state of the United States,
18 the District of Columbia, the Commonwealth of Puerto Rico, any
19 territory or possession of the United States, and any foreign
20 country or political subdivision thereof.

21 (i) "This state" means the state in which the
22 relevant tax return is filed or, in the case of application of
23 this article to the apportionment and allocation of income for
24 local tax purposes, the subdivision or local taxing district
25 in which the relevant tax return is filed.

26 2. Any taxpayer having income from business activity
27 which is taxable both within and without this state, other

1 than activity as a financial organization or public utility or
2 an individual, shall allocate and apportion his or her or its
3 net income as provided in this article. If a taxpayer has
4 income from business activity as a public utility but derives
5 the greater percentage of his or her or its income from
6 activities subject to this article, the taxpayer may elect to
7 allocate and apportion his or her or its entire net income as
8 provided in this article.

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

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

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

24 (b) Net rents and royalties from tangible personal
25 property are allocable to this state: (1) if and to the extent
26 that the property is utilized in this state, or (2) in their
27 entirety if the taxpayer's commercial domicile is in this

1 state and the taxpayer is not organized under the laws of or
2 taxable in the state in which the property is utilized.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 14. Compensation is paid in this state if:

25 (a) The individual's service is performed entirely
26 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 (2)
25 the taxpayer is not taxable in the state of the purchaser.

26 ~~17. Sales, other than sales of tangible personal~~
27 ~~property, are in this state if:~~

1 ~~(a) The income-producing activity is performed in~~
2 ~~this state; or~~

3 ~~(b) The income-producing activity is performed both~~
4 ~~in and outside this state and a greater proportion of the~~
5 ~~income-producing activity is performed more in this state than~~
6 ~~in any other state, based on costs of performance. Sales,~~
7 ~~other than sales described in Section 16, are in this State if~~
8 ~~the taxpayer's market for the sale is in this state.~~

9 (a) The taxpayer's market for a sale is in this
10 state:

11 (1) In the case of sale, rental, lease or license of
12 real property, if and to the extent the property is located in
13 this state;

14 (2) In the case of rental, lease or license of
15 tangible personal property, if and to the extent the property
16 is located in this state;

17 (3) In the case of sale of a service, if and to the
18 extent the service is delivered to a location in this state;

19 (4) In the case of lease or license of intangible
20 property; or sale or other exchange of intangible property if
21 the receipts from the sale or exchange derive from payments
22 that are contingent on the productivity, use, or disposition
23 of the property, if and to the extent the intangible property
24 is used in this state; provided that intangible property used
25 in marketing a good or service to a consumer is used in this
26 state if the good or service that is marketed using the

1 intangible property is purchased by a consumer who is in this
2 state; and

3 (5) In the case of sale of intangible property other
4 than that referenced in section (4) above; where the property
5 sold is a contract right, government license, or similar
6 intangible property that authorizes the holder to conduct a
7 business activity in a specific geographic area; if and to the
8 extent the intangible property is used in or otherwise
9 associated with this state, provided that any sale of
10 intangible property not otherwise described in this section
11 (5) or section (4) above shall be excluded from the numerator
12 and the denominator of the sales factor.

13 (b) If the state of assignment cannot be determined
14 under subsection (a), it shall be reasonably approximated.

15 (c) If the taxpayer is not taxable in a state to
16 which a sale is assigned under subsection (a), or if the state
17 of assignment cannot be determined under subsection (a) or
18 reasonably approximated under subsection (b), the sale shall
19 be excluded from the denominator of the sales factor.

20 18. If the allocation and apportionment provisions
21 of this article do not fairly represent the extent of the
22 taxpayer's business activity in this state, the taxpayer may
23 petition for or the tax administrator may require, in respect
24 to all or any part of the taxpayer's business activity, if
25 reasonable:

26 (a) Separate accounting;

27 (b) The exclusion of any one or more of the factors;

1 (c) The inclusion of one or more additional factors
2 which will fairly represent the taxpayer's business activity
3 in this state; or

4 (d) The employment of any other method to effectuate
5 an equitable allocation and apportionment of the taxpayer's
6 income.

7 Article V. Elements of Sales and Use Tax Laws.

8 Tax Credit.

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

17 Exemption Certificates, Vendors May Rely.

18 2. Whenever a vendor receives and accepts in good
19 faith from a purchaser a resale or other exemption certificate
20 or other written evidence of exemption authorized by the ap-
21 propriate state or subdivision taxing authority, the vendor

1 shall be relieved of liability for a sales or use tax with
2 respect to the transaction.

3 Article VI. The Commission.

4 Organization and Management.

5 1. (a) The Multistate Tax Commission is hereby
6 established. It shall be composed of one "member" from each
7 party state who shall be the head of the state agency charged
8 with the administration of the types of taxes to which this
9 compact applies. If there is more than one such agency the
10 state shall provide by law for the selection of the commission
11 member from the heads of the relevant agencies. State law may
12 provide that a member of the commission be represented by an
13 alternate but only if there is on file with the commission
14 written notification of the designation and identity of the
15 alternate. The Attorney General of each party state or his or
16 her designee, or other counsel if the laws of the party state
17 specifically provide, shall be entitled to attend the meetings
18 of the commission, but shall not vote. Such Attorneys General,
19 designees, or other counsel shall receive all notices of
20 meetings required under paragraph 1 (e) of this article.

21 (b) Each party state shall provide by law for the
22 selection of representatives from its subdivisions affected by
23 this compact to consult with the commission member from that
24 state.

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

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

7 (e) The commission shall hold an annual meeting and
8 such other regular meetings as its bylaws may provide and such
9 special meetings as its executive committee may determine. The
10 commission bylaws shall specify the dates of the annual and
11 any other regular meetings, and shall provide for the giving
12 of notice of annual, regular and special meetings. Notices of
13 special meetings shall include the reasons therefor and an
14 agenda of the items to be considered.

15 (f) The commission shall elect annually, from among
16 its members, a chair, a vice-chair and a treasurer. The
17 commission shall appoint an executive director who shall serve
18 at its pleasure, and it shall fix his or her duties and
19 compensation. The executive director shall be secretary of the
20 commission. The commission shall make provision for the
21 bonding of such of its officers and employees as it may deem
22 appropriate.

23 (g) Irrespective of the civil service, personnel or
24 other merit system laws of any party state, the executive
25 director shall appoint or discharge such personnel as may be
26 necessary for the performance of the functions of the
27 commission and shall fix their duties and compensation. The

1 commission bylaws shall provide for personnel policies and
2 programs.

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

6 (i) The commission may accept for any of its
7 purposes and functions any and all donations and grants of
8 money, equipment, supplies, materials and services,
9 conditional or otherwise, from any governmental entity, and
10 may utilize and dispose of the same.

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

13 (k) The commission shall adopt bylaws for the
14 conduct of its business. The commission shall publish its
15 bylaws in convenient form, and shall file a copy of the bylaws
16 and any amendments thereto with the appropriate agency or
17 officer in each of the party states.

18 (l) The commission annually shall make to the Gover-
19 nor and legislature of each party state a report covering its
20 activities for the preceding year. Any donation or grant ac-
21 cepted by the commission or services borrowed shall be re-
22 ported in the annual report of the commission, and shall in-
23 clude the nature, amount and conditions, if any, of the dona-
24 tion, gift, grant or services borrowed and the identity of the
25 donor or lender. The commission may make additional reports as
26 it may deem desirable.

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Committees.

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

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

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

Powers.

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

(a) Study state and local tax systems and particular types of state and local taxes.

1 (b) Develop and recommend proposals for an increase
2 in uniformity or compatibility of state and local tax laws
3 with a view toward encouraging the simplification and
4 improvement of state and local tax law and administration.

5 (c) Compile and publish information as in its
6 judgment would assist the party states in implementation of
7 the compact and taxpayers in complying with state and local
8 tax laws.

9 (d) Do all things necessary and incidental to the
10 administration of its functions pursuant to this compact.

11 Finance.

12 4. (a) The commission shall submit to the Governor
13 or designated officer or officers of each party state a budget
14 of its estimated expenditures for such period as may be
15 required by the laws of that state for presentation to the
16 legislature thereof.

17 (b) Each of the commission's budgets of estimated
18 expenditures shall contain specific recommendations of the
19 amounts to be appropriated by each of the party states. The
20 total amount of appropriations requested under any such budget
21 shall be apportioned among the party states as follows: one
22 tenth in equal shares; and the remainder in proportion to the
23 amount of revenue collected by each party state and its
24 subdivisions from income taxes, capital stock taxes, gross

1 receipts taxes, sales and use taxes. In determining such
2 amounts, the commission shall employ such available public
3 sources of information as, in its judgment, present the most
4 equitable and accurate comparisons among the party states.
5 Each of the commission's budgets of estimated expenditures and
6 requests for appropriations shall indicate the sources used in
7 obtaining information employed in applying the formula
8 contained in this paragraph.

9 (c) The commission shall not pledge the credit of
10 any party state. The commission may meet any of its
11 obligations in whole or in part with funds available to it
12 under paragraph 1 (i) of this article: Provided that the
13 commission takes specific action setting aside such funds
14 prior to incurring any obligation to be met in whole or in
15 part in such manner. Except where the commission makes use of
16 funds available to it under paragraph 1 (i), the commission
17 shall not incur any obligation prior to the allotment of funds
18 by the party states adequate to meet the same.

19 (d) The commission shall keep accurate accounts of
20 all receipts and disbursements. The receipts and disbursements
21 of the commission shall be subject to the audit and accounting
22 procedures established under its bylaws. All receipts and
23 disbursements of funds handled by the commission shall be
24 audited yearly by a certified or licensed public accountant
25 and the report of the audit shall be included in and become
26 part of the annual report of the commission.

1 (e) The accounts of the commission shall be open at
2 any reasonable time for inspection by duly constituted
3 officers of the party states and by any persons authorized by
4 the commission.

5 (f) Nothing contained in this article shall be con-
6 strued to prevent commission compliance with laws relating to
7 audit or inspection of accounts by or on behalf of any govern-
8 ment contributing to the support of the commission.

9 Article VII. Uniform Regulations and Forms.

10 1. Whenever any two or more party states, or
11 subdivisions of party states, have uniform or similar
12 provisions of law relating to an income tax, capital stock
13 tax, gross receipts tax, sales or use tax, the commission may
14 adopt uniform regulations for any phase of the administration
15 of such law, including assertion of jurisdiction to tax, or
16 prescribing uniform tax forms. The commission may also act
17 with respect to the provisions of article IV of this compact.

18 2. Prior to the adoption of any regulation, the
19 commission shall:

20 (a) As provided in its bylaws, hold at least one
21 public hearing on due notice to all affected party states and
22 subdivisions thereof and to all taxpayers and other persons
23 who have made timely request of the commission for advance
24 notice of its regulation-making proceedings.

1 (b) Afford all affected party states and
2 subdivisions and interested persons an opportunity to submit
3 relevant written data and views, which shall be considered
4 fully by the commission.

5 3. The commission shall submit any regulations
6 adopted by it to the appropriate officials of all party states
7 and subdivisions to which they might apply. Each such state
8 and subdivision shall consider any such regulation for adop-
9 tion in accordance with its own laws and procedures.

10 Article VIII. Interstate Audits.

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

13 2. Any party state or subdivision thereof desiring
14 to make or participate in an audit of any accounts, books,
15 papers, records or other documents may request the commission
16 to perform the audit on its behalf. In responding to the
17 request, the commission shall have access to and may examine,
18 at any reasonable time, such accounts, books, papers, records
19 and other documents and any relevant property or stock of
20 merchandise. The commission may enter into agreements with
21 party states or their subdivisions for assistance in
22 performance of the audit. The commission shall make charges,
23 to be paid by the state or local government or governments for
24 which it performs the service, for any audits performed by it

1 in order to reimburse itself for the actual costs incurred in
2 making the audit.

3 3. The commission may require the attendance of any
4 person within the state where it is conducting an audit or
5 part thereof at a time and place fixed by it within such state
6 for the purpose of giving testimony with respect to any
7 account, book, paper, document, other record, property or
8 stock of merchandise being examined in connection with the
9 audit. If the person is not within the jurisdiction, he or she
10 may be required to attend for such purpose at any time and
11 place fixed by the commission within the state of which he or
12 she is a resident: Provided that such state has adopted this
13 article.

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

1 5. The commission may decline to perform any audit
2 requested if it finds that its available personnel or other
3 resources are insufficient for the purpose or that, in the
4 terms requested, the audit is impracticable of satisfactory
5 performance. If the commission, on the basis of its
6 experience, has reason to believe that an audit of a
7 particular taxpayer, either at a particular time or on a
8 particular schedule, would be of interest to a number of party
9 states or their subdivisions, it may offer to make the audit
10 or audits, the offer to be contingent on sufficient
11 participation therein as determined by the commission.

12 6. Information obtained by an audit pursuant to this
13 article shall be confidential and available only for tax
14 purposes to party states, their subdivisions or the United
15 States. Availability of information shall be in accordance
16 with the laws of the states or subdivisions on whose account
17 the commission performs the audit, and only through the
18 appropriate agencies or officers of such states or
19 subdivisions. Nothing in this article shall be construed to
20 require any taxpayer to keep records for any period not
21 otherwise required by law.

22 7. Other arrangements made or authorized pursuant to
23 law for cooperative audit by or on behalf of the party states
24 or any of their subdivisions are not superseded or invalidated
25 by this article.

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

1 9. As used in this article, "tax," in addition to
2 the meaning ascribed to it in article II, means any tax or
3 license fee imposed in whole or in part for revenue purposes.

4 Article IX. Arbitration.

5 1. Whenever the commission finds a need for settling
6 disputes concerning apportionments and allocations by
7 arbitration, it may adopt a regulation placing this article in
8 effect, notwithstanding the provisions of article VII.

9 2. The commission shall select and maintain an
10 arbitration panel composed of officers and employees of state
11 and local governments and private persons who shall be
12 knowledgeable and experienced in matters of tax law and
13 administration.

14 3. Whenever a taxpayer who has elected to employ
15 article IV, or whenever the laws of the party state or
16 subdivision thereof are substantially identical with the
17 relevant provisions of article IV, the taxpayer, by written
18 notice to the commission and to each party state or
19 subdivision thereof that would be affected, may secure
20 arbitration of an apportionment or allocation, if he or she is
21 dissatisfied with the final administrative determination of
22 the tax agency of the state or subdivision with respect
23 thereto on the ground that it would subject him or her to
24 double or multiple taxation by two or more party states or

1 subdivisions thereof. Each party state and subdivision thereof
2 hereby consents to the arbitration as provided herein, and
3 agrees to be bound thereby.

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

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

1 6. The board shall give due notice of the times and
2 places of its hearings. The parties shall be entitled to be
3 heard, to present evidence, and to examine and cross-examine
4 witnesses. The board shall act by majority vote.

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

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

1 employment, but any such board member shall be entitled to
2 expenses.

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

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

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

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

21 13. Nothing contained herein shall prevent at any
22 time a written compromise of any matter or matters in dispute,
23 if otherwise lawful, by the parties to the arbitration pro-
24 ceeding.

25 Article X. Entry Into Force and Withdrawal.

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

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

10 3. No proceeding commenced before an arbitration
11 board prior to the withdrawal of a state and to which the
12 withdrawing state or any subdivision thereof is a party shall
13 be discontinued or terminated by the withdrawal, nor shall the
14 board thereby lose jurisdiction over any of the parties to the
15 proceeding necessary to make a binding determination 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 2. 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,

1 other than a sales tax: Provided that the definition of "tax"
2 in article VIII 9. may apply for the purposes of that article
3 and the commission's powers of study and recommendation
4 pursuant to article VI 3. may apply.

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

11 (d) Supersede or limit the jurisdiction of any court
12 of the United States.

13 Article XII. Construction and Severability.

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

1 full force and effect as to the remaining party states and in
2 full force and effect as to the state affected as to all
3 severable matters.

4 Section 2. The provisions of this act are severable.
5 If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

8 Section 3. All laws or parts of laws which conflict
9 with this act are hereby repealed.

10 Section 4. This act shall become effective for all
11 taxable years beginning on or after December 31, 2010,
12 following its passage and approval by the Governor, or its
13 otherwise becoming law.