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1 IN THE SENATE

BY JOSEPHSON

2 SENATE BILL NO. 160

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the adoption of the Multistate
7 Tax Compact; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 43.20 is amended by adding new sections to read:

10 ARTICLE 6. MULTISTATE TAX COMPACT.

11 Sec. 43.20.400. COMPACT. The following Multistate Tax Compact
12 is approved, ratified, adopted, entered into, and enacted into law by
13 the State of Alaska.

14 ARTICLE 1. PURPOSES.

15 The purposes of this compact are to:

- 16 1. Facilitate proper determination of State and local tax liability
17 of multistate taxpayers, including the equitable apportionment of tax
18 bases and settlement of apportionment disputes.
- 19 2. Promote uniformity or compatibility in significant components
20 of tax systems.
- 21 3. Facilitate taxpayer convenience and compliance in the filing of
22 tax returns and in other phases of tax administration.
- 23 4. Avoid duplicative taxation.

24 ARTICLE II. DEFINITIONS.

25 As used in this compact:

- 26 1. "State" means a State of the United States, the District of
27 Columbia, the Commonwealth of Puerto Rico, or any Territory or
28 Possession of the United States.
- 29 2. "Subdivision" means any governmental unit or special district of

1 a State.

2 3. "Taxpayer" means any corporation, partnership, firm, association,
3 governmental unit or agency or person acting as a business entity in more
4 than one State.

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

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

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

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

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

29 9. "Tax" means an income tax, capital stock tax, gross receipts tax,

1 sales tax, use tax, and any other tax which has a multistate impact, except
2 that the provisions of Articles III, IV and V of this compact shall apply
3 only to the taxes specifically designated therein and the provisions of
4 Article IX of this compact shall apply only in respect to determinations
5 pursuant to Article IV.

6 ARTICLE III. ELEMENTS OF INCOME TAX LAWS.
7 TAXPAYER OPTION, STATE AND LOCAL TAXES.

8 1. Any taxpayer subject to an income tax whose income is subject
9 to apportionment and allocation for tax purposes pursuant to the laws of
10 a party State or pursuant to the laws of subdivisions in two or more party
11 States may elect to apportion and allocate his income in the manner pro-
12 vided by the laws of such State or by the laws of such States and subdivi-
13 sions without reference to this compact, or may elect to apportion and
14 allocate in accordance with Article IV. This election for any tax year
15 may be made in all party States or subdivisions thereof or in any one or
16 more of the party States or subdivisions thereof without reference to the
17 election made in the others. For the purposes of this paragraph, taxes im-
18 posed by subdivisions shall be considered separately from State taxes and
19 the apportionment and allocation also may be applied to the entire tax
20 base. In no instance wherein Article IV is employed for all subdivisions
21 of a State may the sum of all apportionments and allocations to subdivi-
22 sions within a State be greater than the apportionment and allocation that
23 would be assignable to that State if the apportionment or allocation were
24 being made with respect to a State income tax.

25 TAXPAYER OPTION, SHORT FORM.

26 2. Each party State or any subdivision thereof which imposes an in-
27 come tax shall provide by law that any taxpayer required to file a return,
28 whose only activities within the taxing jurisdiction consist of sales and do
29 not include owning or renting real estate or tangible personal property,

1 and whose dollar volume of gross sales made during the tax year within
2 the State or subdivision, as the case may be, is not in excess of \$100,000
3 may elect to report and pay any tax due on the basis of a percentage of
4 such volume, and shall adopt rates which shall produce a tax which reason-
5 ably approximates the tax otherwise due. The Multistate Tax Commission,
6 not more than once in five years, may adjust the \$100,000 figure in order
7 to reflect such changes as may occur in the real value of the dollar, and
8 such adjusted figure, upon adoption by the Commission, shall replace the
9 \$100,000 figure specifically provided herein. Each party State and sub-
10 division thereof may make the same election available to taxpayers ad-
11 ditional to those specified in this paragraph.

12 COVERAGE.

13 3. Nothing in this Article relates to the reporting or payment of
14 any tax other than an income tax.

15 ARTICLE IV. DIVISION OF INCOME.

16 1. As used in this Article, unless the context otherwise requires:

17 (a) "Business income" means income arising from transactions
18 and activity in the regular course of the taxpayer's trade or business and
19 includes income from tangible and intangible property if the acquisition,
20 management, and disposition of the property constitute integral parts of
21 the taxpayer's regular trade or business operations.

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

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

26 (d) "Financial organization" means any bank, trust company,
27 savings bank, industrial bank, land bank, safe deposit company, private
28 banker, savings and loan association, credit union, cooperative bank,
29 small loan company, sales finance company, investment company, or any

1 type of insurance company.

2 (e) "Nonbusiness income" means all income other than business
3 income.

4 (f) "Public utility" means any business entity (1) which owns or
5 operates any plant, equipment, property, franchise, or license for the
6 transmission of communications, transportation of goods or persons, ex-
7 cept by pipe line, or the production, transmission, sale, delivery, or
8 furnishing of electricity, water or steam; and (2) whose rates of charges
9 for goods or services have been established or approved by a Federal, State
10 or local government or governmental agency.

11 (g) "Sales" means all gross receipts of the taxpayer not allocated
12 under paragraphs of this Article.

13 (h) "State" means any State of the United States, the District of
14 Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of
15 the United States, and any foreign country or political subdivision
16 thereof.

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

21 2. Any taxpayer having income from business activity which is tax-
22 able both within and without this State, other than activity as a financial
23 organization or public utility or the rendering of purely personal services
24 by an individual, shall allocate and apportion his net income as provided
25 in this Article. If a taxpayer has income from business activity as a public
26 utility but derives the greater percentage of his income from activities
27 subject to this Article, the taxpayer may elect to allocate and apportion
28 his entire net income as provided in this Article.

29 3. For purposes of allocation and apportionment of income under

1 this Article, a taxpayer is taxable in another State if (1) in that State
2 he is subject to a net income tax, a franchise tax measured by net income,
3 a franchise tax for the privilege of doing business, or a corporate stock
4 tax, or (2) that State has jurisdiction to subject the taxpayer to a net
5 income tax regardless of whether, in fact, the State does or does not.

6 4. Rents and royalties from real or tangible personal property,
7 capital gains, interest, dividends or patent or copyright royalties, to the
8 extent that they constitute nonbusiness income, shall be allocated as
9 provided in paragraphs 5 through 8 of this Article.

10 5. (a) Net rents and royalties from real property located in this
11 State are allocable to this State.

12 (b) Net rents and royalties from tangible personal property are
13 allocable to this State: (1) if and to the extent that the property is
14 utilized in this State, or (2) in their entirety if the taxpayer's commer-
15 cial domicile is in this State and the taxpayer is not organized under the
16 laws of or taxable in the State in which the property is utilized.

17 (c) The extent of utilization of tangible personal property in a
18 State is determined by multiplying the rents and royalties by a fraction,
19 the numerator of which is the number of days of physical location of the
20 property in the State during the rental or royalty period in the taxable
21 year and the denominator of which is the number of days of physical lo-
22 cation of the property everywhere during all rental or royalty periods in
23 the taxable year. If the physical location of the property during the
24 rental or royalty period is unknown or unascertainable by the taxpayer,
25 tangible personal property is utilized in the State in which the property
26 was located at the time the rental or royalty payer obtained possession.

27 6. (a) Capital gains and losses from sales of real property located
28 in this State are allocable to this State.

29 (b) Capital gains and losses from sales of tangible personal

1 property are allocable to this State if (1) the property had a situs in
2 this State at the time of the sale, or (2) the taxpayer's commercial
3 domicile is in this State and the taxpayer is not taxable in the State in
4 which the property had a situs.

5 (c) Capital gains and losses from sales of intangible personal
6 property are allocable to this State if the taxpayer's commercial domicile
7 is in this State.

8 7. Interest and dividends are allocable to this State if the taxpayer's
9 commercial domicile is in this State.

10 8. (a) Patent and copyright royalties are allocable to this State:
11 (1) if and to the extent that the patent or copyright is utilized by the
12 payer in this State, or (2) if and to the extent that the patent or copy-
13 right is utilized by the payer in a State in which the taxpayer is not
14 taxable and the taxpayer's commercial domicile is in this State.

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

22 (c) A copyright is utilized in a State to the extent that printing
23 or other publication originates in the State. If the basis of receipts from
24 copyright royalties does not permit allocation to States or if the account-
25 ing procedures do not reflect States of utilization, the copyright is
26 utilized in the State in which the taxpayer's commercial domicile is located.

27 9. All business income shall be apportioned to this State by multi-
28 plying the income by a fraction, the numerator of which is the property
29 factor plus the payroll factor plus the sales factor, and the denominator

1 of which is three.

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

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

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

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

21 14. Compensation is paid in this State if:

22 (a) the individual's service is performed entirely within the
23 State;

24 (b) the individual's service is performed both within and with-
25 out the State, but the service performed without the State is incidental
26 to the individual's service within the State; or

27 (c) some of the service is performed in the State and (1) the
28 base of operations or, if there is no base of operations, the place from
29 which the service is directed or controlled is in the State, or (2) the base

1 of operations or the place from which the service is directed or controlled
2 is not in any State in which some part of the service is performed, but the
3 individual's residence is in this State.

4 15. The sales factor is a fraction, the numerator of which is the
5 total sales of the taxpayer in this State during the tax period, and the
6 denominator of which is the total sales of the taxpayer everywhere during
7 the tax period.

8 16. Sales of tangible personal property are in this State if:

9 (a) the property is delivered or shipped to a purchaser, other
10 than the United States Government, within this State regardless of the
11 f.o.b. point or other conditions of the sale; or

12 (b) the property is shipped from an office, store, warehouse,
13 factory, or other place of storage in this State and (1) the purchaser is
14 the United States Government or (2) the taxpayer is not taxable in the
15 State of the purchaser.

16 17. Sales, other than sales of tangible personal property, are in this
17 State if:

18 (a) the income-producing activity is performed in this State; or

19 (b) the income-producing activity is performed both in and
20 outside this State and a greater proportion of the income-producing
21 activity is performed in this State than in any other State, based on costs
22 of performance.

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

28 (a) separate accounting;

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

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

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

5 ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

6 TAX CREDIT.

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

14 EXEMPTION CERTIFICATES, VENDORS MAY RELY.

15 2. Whenever a vendor receives and accepts in good faith from a pur-
16 chaser a resale or other exemption certificate or other written evidence
17 of exemption authorized by the appropriate State or subdivision taxing
18 authority, the vendor shall be relieved of liability for a sales or use tax
19 with respect to the transaction.

20 ARTICLE VI. THE COMMISSION.

21 ORGANIZATION AND MANAGEMENT.

22 1. (a) The Multistate Tax Commission is hereby established. It
23 shall be composed of one "member" from each party State who shall be the
24 head of the State agency charged with the administration of the types of
25 taxes to which this compact applies. If there is more than one such
26 agency the State shall provide by law for the selection of the Commission
27 member from the heads of the relevant agencies. State law may provide
28 that a member of the Commission be represented by an alternate but
29 only if there is on file with the Commission written notification of

1 the designation and identity of the alternate. The Attorney General of
2 each party State or his designee, or other counsel if the laws of the party
3 State specifically provide, shall be entitled to attend the meetings of the
4 Commission, but shall not vote. Such Attorneys General, designees, or
5 other counsel shall receive all notices of meetings required under paragraph
6 1(e) of this Article.

7 (b) Each party State shall provide by law for the selection of
8 representatives from its subdivisions affected by this compact to consult
9 with the Commission member from that State.

10 (c) Each member shall be entitled to one vote. The Commission
11 shall not act unless a majority of the members are present, and no action
12 shall be binding unless approved by a majority of the total number of
13 members.

14 (d) The Commission shall adopt an official seal to be used as it
15 may provide.

16 (e) The Commission shall hold an annual meeting and such other
17 regular meetings as its bylaws may provide and such special meetings as
18 its Executive Committee may determine. The Commission bylaws shall specify
19 the dates of the annual and any other regular meetings, and shall provide
20 for the giving of notice of annual, regular and special meetings. Notices
21 of special meetings shall include the reasons therefor and an agenda of
22 the items to be considered.

23 (f) The Commission shall elect annually, from among its members,
24 a Chairman, a Vice Chairman and a Treasurer. The Commission shall appoint
25 an Executive Director who shall serve at its pleasure, and it shall fix his
26 duties and compensation. The Executive Director shall be Secretary of the
27 Commission. The Commission shall make provision for the bonding of such
28 of its officers and employees as it may deem appropriate.

29 (g) Irrespective of the civil service, personnel or other merit

1 system laws of any party State, the Executive Director shall appoint or
2 discharge such personnel as may be necessary for the performance of the
3 functions of the Commission and shall fix their duties and compensation.
4 The Commission bylaws shall provide for personnel policies and programs.

5 (h) The Commission may borrow, accept or contract for the
6 services of personnel from any State, the United States, or any other
7 governmental entity.

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

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

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

18 (l) The Commission annually shall make to the Governor and
19 legislature of each party State a report covering its activities for the
20 preceding year. Any donation or grant accepted by the Commission or
21 services borrowed shall be reported in the annual report of the Commission,
22 and shall include the nature, amount and conditions, if any, of the
23 donation, gift, grant or services borrowed and the identity of the donor
24 or lender. The Commission may make additional reports as it may deem
25 desirable.

26 COMMITTEES.

27 2. (a) To assist in the conduct of its business when the full Com-
28 mission is not meeting, the Commission shall have an Executive Committee
29 of seven members, including the Chairman, Vice Chairman, Treasurer

1 and four other members elected annually by the Commission. The Executive
2 Committee, subject to the provisions of this compact and consistent
3 with the policies of the Commission, shall function as provided in the
4 bylaws of the Commission.

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

11 (c) The Commission may establish such additional committees
12 as its bylaws may provide.

13 POWERS.

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

16 (a) Study State and local tax systems and particular types of
17 State and local taxes.

18 (b) Develop and recommend proposals for an increase in uni-
19 formity or compatibility of State and local tax laws with a view toward
20 encouraging the simplification and improvement of State and local tax
21 law and administration.

22 (c) Compile and publish information as in its judgment would
23 assist the party States in implementation of the compact and taxpayers in
24 complying with State and local tax laws.

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

27 FINANCE.

28 4. (a) The Commission shall submit to the Governor or desig-
29 nated officer or officers of each party State a budget of its estimated

1 expenditures for such period as may be required by the laws of that State
2 for presentation to the legislature thereof.

3 (b) Each of the Commission's budgets of estimated expendi-
4 tures shall contain specific recommendations of the amounts to be ap-
5 propriated by each of the party States. The total amount of appropri-
6 ations requested under any such budget shall be apportioned among the
7 party States as follows: one-tenth in equal shares; and the remainder in
8 proportion to the amount of revenue collected by each party State and
9 its subdivisions from income taxes, capital stock taxes, gross receipts
10 taxes, sales and use taxes. In determining such amounts, the Commission
11 shall employ such available public sources of information as, in its judg-
12 ment, present the most equitable and accurate comparisons among the
13 party States. Each of the Commission's budgets of estimated expendi-
14 tures and requests for appropriations shall indicate the sources used in ob-
15 taining information employed in applying the formula contained in this
16 paragraph.

17 (c) The Commission shall not pledge the credit of any party
18 State. The Commission may meet any of its obligations in whole or in
19 part with funds available to it under paragraph 1 (1) of this Article:
20 provided that the Commission takes specific action setting aside such
21 funds prior to incurring any obligation to be met in whole or in part in
22 such manner. Except where the Commission makes use of funds avail-
23 able to it under paragraph 1 (1), the Commission shall not incur any obli-
24 gation prior to the allotment of funds by the party States adequate to
25 meet the same.

26 (d) The Commission shall keep accurate accounts of all re-
27 ceipts and disbursements. The receipts and disbursements of the Com-
28 mission shall be subject to the audit and accounting procedures estab-
29 lished under its bylaws. All receipts and disbursements of funds handled

1 by the Commission shall be audited yearly by a certified or licensed pub-
2 lic accountant and the report of the audit shall be included in and become
3 part of the annual report of the Commission.

4 (e) The accounts of the Commission shall be open at any reason-
5 able time for inspection by duly constituted officers of the party States
6 and by any persons authorized by the Commission.

7 (f) Nothing contained in this Article shall be construed to pre-
8 vent Commission compliance with laws relating to audit or inspection of
9 accounts by or on behalf of any government contributing to the support
10 of the Commission.

11 . ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

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

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

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

24 (b) Afford all affected party States and subdivisions and inter-
25 ested persons an opportunity to submit relevant written data and views,
26 which shall be considered fully by the Commission.

27 3. The Commission shall submit any regulations adopted by it to
28 the appropriate officials of all party States and subdivisions to which they
29 might apply. Each such State and subdivision shall consider any such

1 regulation for adoption in accordance with its own laws and procedures.

2 ARTICLE VIII. INTERSTATE AUDITS.

3 1. This Article shall be in force only in those party States that
4 specifically provide therefor by statute.

5 2. Any party State or subdivision thereof desiring to make or par-
6 ticipate in an audit of any accounts, books, papers, records or other docu-
7 ments may request the Commission to perform the audit on its behalf.
8 In responding to the request, the Commission shall have access to and
9 may examine, at any reasonable time, such accounts, books, papers, rec-
10 ords, and other documents and any relevant property or stock of mer-
11 chandise. The Commission may enter into agreements with party States
12 or their subdivisions for assistance in performance of the audit. The
13 Commission shall make charges, to be paid by the State or local govern-
14 ment or governments for which it performs the service, for any audits
15 performed by it in order to reimburse itself for the actual costs incurred
16 in making the audit.

17 3. The Commission may require the attendance of any person with-
18 in the State where it is conducting an audit or part thereof at a time and
19 place fixed by it within such State for the purpose of giving testimony
20 with respect to any account, book, paper, document, other record, prop-
21 erty or stock of merchandise being examined in connection with the
22 audit. If the person is not within the jurisdiction, he may be required to
23 attend for such purpose at any time and place fixed by the Commission
24 within the State of which he is a resident: provided that such State has
25 adopted this Article.

26 4. The Commission may apply to any court having power to issue
27 compulsory process for orders in aid of its powers and responsibilities
28 pursuant to this Article and any and all such courts shall have jurisdiction
29 to issue such orders. Failure of any person to obey any such order shall

1 be punishable as contempt of the issuing court. If the party or subject
2 matter on account of which the Commission seeks an order is within the
3 jurisdiction of the court to which application is made, such application
4 may be to a court in the State or subdivision on behalf of which the
5 audit is being made or a court in the State in which the object of the
6 order being sought is situated. The provisions of this paragraph apply
7 only to courts in a State that has adopted this Article.

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

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

25 7. Other arrangements made or authorized pursuant to law for co-
26 operative audit by or on behalf of the party States or any of their sub-
27 divisions are not superseded or invalidated by this Article.

28 8. In no event shall the Commission make any charge against a tax-
29 payer for an audit.

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

4 ARTICLE IX. ARBITRATION.

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

9 2. The Commission shall select and maintain an Arbitration Panel
10 composed of officers and employees of State and local governments and
11 private persons who shall be knowledgeable and experienced in matters of
12 tax law and administration.

13 3. Whenever a taxpayer who has elected to employ Article IV, or
14 whenever the laws of the party State or subdivision thereof are substan-
15 tially identical with the relevant provisions of Article IV, the taxpayer, by
16 written notice to the Commission and to each party State or subdivision
17 thereof that would be affected, may secure arbitration of an apportion-
18 ment or allocation, if he is dissatisfied with the final administrative deter-
19 mination of the tax agency of the State or subdivision with respect there-
20 to on the ground that it would subject him to double or multiple taxation
21 by two or more party States or subdivisions thereof. Each party State
22 and subdivision thereof hereby consents to the arbitration as provided
23 herein, and agrees to be bound thereby.

24 4. The Arbitration Board shall be composed of one person selected
25 by the taxpayer, one by the agency or agencies involved, and one member
26 of the Commission's Arbitration Panel. If the agencies involved are un-
27 able to agree on the person to be selected by them, such person shall be
28 selected by lot from the total membership of the Arbitration Panel. The
29 two persons selected for the Board in the manner provided by the foregoing

1 provisions of this paragraph shall jointly select the third member of
2 the Board. If they are unable to agree on the selection, the third member
3 shall be selected by lot from among the total membership of the Arbitra-
4 tion Panel. No member of a Board selected by lot shall be qualified to
5 serve if he is an officer or employee or is otherwise affiliated with any
6 party to the arbitration proceeding. Residence within the jurisdiction of
7 a party to the arbitration proceeding shall not constitute affiliation with-
8 in the meaning of this paragraph.

9 5. The Board may sit in any State or subdivision party to the pro-
10 ceeding, in the State of the taxpayer's incorporation, residence or domi-
11 cile, in any State where the taxpayer does business, or in any place that
12 it finds most appropriate for gaining access to evidence relevant to the
13 matter before it.

14 6. The Board shall give due notice of the times and places of its
15 hearings. The parties shall be entitled to be heard, to present evidence,
16 and to examine and cross-examine witnesses. The Board shall act by ma-
17 jority vote.

18 7. The Board shall have power to administer oaths, take testimony,
19 subpoena and require the attendance of witnesses and the production of
20 accounts, books, papers, records, and other documents, and issue com-
21 missions to take testimony. Subpoenas may be signed by any member of
22 the Board. In case of failure to obey a subpoena, and upon application
23 by the Board, any judge of a court of competent jurisdiction of the State
24 in which the Board is sitting or in which the person to whom the sub-
25 poena is directed may be found may make an order requiring compliance
26 with the subpoena, and the court may punish failure to obey the order
27 as a contempt. The provisions of this paragraph apply only in States that
28 have adopted this Article.

29 8. Unless the parties otherwise agree the expenses and other costs

1 of the arbitration shall be assessed and allocated among the parties by the
2 Board in such manner as it may determine. The Commission shall fix a
3 schedule of compensation for members of Arbitration Boards and of other
4 allowable expenses and costs. No officer or employee of a State or local
5 government who serves as a member of a Board shall be entitled to compen-
6 sation therefor unless he is required on account of his service to fore-
7 go the regular compensation attaching to his public employment, but any
8 such Board member shall be entitled to expenses.

9 9. The Board shall determine the disputed apportionment or alloca-
10 tion and any matters necessary thereto. The determinations of the Board
11 shall be final for purposes of making the apportionment or allocation,
12 but for no other purpose.

13 10. The Board shall file with the Commission and with each tax
14 agency represented in the proceeding: the determination of the Board;
15 the Board's written statement of its reasons therefor; the record of the
16 Board's proceedings; and any other documents required by the arbitration
17 rules of the Commission to be filed.

18 11. The Commission shall publish the determinations of Boards to-
19 gether with the statements of the reasons therefor.

20 12. The Commission shall adopt and publish rules of procedure and
21 practice and shall file a copy of such rules and of any amendment there-
22 to with the appropriate agency or officer in each of the party States.

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

26
27 ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

28 1. This compact shall enter into force when enacted into law by
29 any seven States. Thereafter, this compact shall become effective as to
any other State upon its enactment thereof. The Commission shall

1 arrange for notification of all party States whenever there is a new enact-
2 ment of the compact.

3 2. Any party State may withdraw from this compact by enacting a
4 statute repealing the same. No withdrawal shall affect any liability al-
5 ready incurred by or chargeable to a party State prior to the time of such
6 withdrawal.

7 3. No proceeding commenced before an Arbitration Board prior to
8 the withdrawal of a State and to which the withdrawing State or any sub-
9 division thereof is a party shall be discontinued or terminated by the
10 withdrawal, nor shall the Board thereby lose jurisdiction over any of the
11 parties to the proceeding necessary to make a binding determination therein.

12 ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

13 Nothing in this compact shall be construed to:

14 (a) Affect the power of any State or subdivision thereof to fix rates
15 of taxation, except that a party State shall be obligated to implement
16 Article III 2 of this compact.

17 (b) Apply to any tax or fixed fee imposed for the registration of a
18 motor vehicle or any tax on motor fuel, other than a sales tax: provided
19 that the definition of "tax" in Article VIII 9 may apply for the purposes
20 of that Article and the Commission's powers of study and recommendation
21 pursuant to Article VI 3 may apply.

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

27 (d) Supersede or limit the jurisdiction of any court of the United
28 States.

29 ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

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

13 Sec. 43.20.410. DIRECTOR OF REVENUE TO REPRESENT DEPARTMENT. (a)
14 the commissioner of the Department of Revenue shall represent this
15 state on the Multistate Tax Commission.

16 (b) The member representing this state on the multistate commis-
17 sion may be represented by an alternate designated by the commissioner.

18 Sec. 43.20.420. CONSULTING COMMITTEE. The governor shall appoint
19 a consulting committee consisting of three persons who are representa-
20 tive of subdivisions affected or likely to be affected by the Multistate
21 Tax Compact, none of whom may be members of the legislature. The
22 member of the commission representing this state, and any alternate
23 designated by him shall consult regularly with this committee, in
24 accordance with Article VI, 1. (b) of the compact.

25 Sec. 43.20.430. ADVISORY COMMITTEE. There is established the
26 Multistate Tax Compact Advisory Committee composed of the member of the
27 Multistate Tax Commission representing this state, any alternate desig-
28 nated by him, the attorney general or his designee, the members of the
29 consulting committee, two members of the senate to be appointed by the

1 president, and two members of the house of representatives to be
2 appointed by the speaker. The chairman shall be the member of the
3 commission representing this state. The committee shall meet on the
4 call of its chairman or at the request of a majority of its members,
5 but in any event it shall meet not less than three times in each year.
6 The committee may consider all matters relating to recommendations of
7 the Multistate Tax Commission and the activities of the members in
8 representing this state on the commission.

9 Sec. 43.20.440. INTERSTATE AUDITS. Article VIII of the compact
10 relating to interaudits shall be in force in and with respect to this
11 state.

12 * Sec. 2. EFFECTIVE DATE. This Act takes effect on July 1, 1969.
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