

HOUSE BILL No. 4479

March 23, 2011, Introduced by Rep. Gilbert and referred to the Committee on Tax Policy.

A bill to amend 1969 PA 343, entitled

"An act to adopt a multistate tax compact to facilitate and promote convenient, uniform, nonduplicative and proper determination of state and local tax liability of multistate taxpayers,"

by amending section 1 (MCL 205.581).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. The multistate tax compact is enacted into law and
2 entered into with all jurisdictions legally joining therein, in
3 the form substantially as follows:

4 MULTISTATE TAX COMPACT

5 Article I. Purposes.

1 The purposes of this compact are to:

2 (1) Facilitate proper determination of state and local tax
3 liability of multistate taxpayers, including the equitable
4 apportionment of tax bases and settlement of apportionment
5 disputes.

6 (2) Promote uniformity or compatibility in significant
7 components of tax systems.

8 (3) Facilitate taxpayer convenience and compliance in the
9 filing of tax returns and in other phases of tax administration.

10 (4) Avoid duplicative taxation.

11 Article II. Definitions.

12 As used in this compact:

13 (1) "State" means a state of the United States, the district
14 of Columbia, the commonwealth of Puerto Rico, or any territory or
15 possession of the United States.

16 (2) "Subdivision" means any governmental unit or special
17 district of a state.

18 (3) "Taxpayer" means any corporation, partnership, firm,
19 association, governmental unit or agency or person acting as a
20 business entity in more than 1 state.

21 (4) "Income tax" means a tax imposed on or measured by net
22 income including any tax imposed on or measured by an amount
23 arrived at by deducting expenses from gross income, 1 or more
24 forms of which expenses are not specifically and directly related
25 to particular transactions.

26 (5) "Capital stock tax" means a tax measured in any way by

1 the capital of a corporation considered in its entirety.

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

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

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

24 (9) "Tax" means an income tax, capital stock tax, gross
25 receipts tax, sales tax, use tax, and any other tax which has a
26 multistate impact, except that the provisions of articles III, IV
27 and V of this compact shall apply only to the taxes specifically

1 designated therein and the provisions of article IX of this
2 compact shall apply only in respect to determinations pursuant to
3 article IV.

4 Article III. Elements of Income Tax Laws.

5 Taxpayer Option, State and Local Taxes.

6 (1) Any taxpayer subject to an income tax whose income is
7 subject to apportionment and allocation for tax purposes pursuant
8 to the laws of a party state or pursuant to the laws of
9 subdivisions in 2 or more party states may elect to apportion and
10 allocate his income in the manner provided by the laws of such
11 state or by the laws of such states and subdivisions without
12 reference to this compact, or may elect to apportion and allocate
13 in accordance with article IV **EXCEPT THAT ANY TAXPAYER SUBJECT TO**
14 **THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO**
15 **208.1601, OR THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1**
16 **TO 206.697, SHALL, FOR PURPOSES OF THAT ACT, APPORTION AND**
17 **ALLOCATE IN ACCORDANCE WITH THE PROVISIONS OF THAT ACT AND SHALL**
18 **NOT APPORTION OR ALLOCATE IN ACCORDANCE WITH ARTICLE IV.** This
19 election for any tax year may be made in all party states or
20 subdivisions thereof or in any one or more of the party states or
21 subdivisions thereof without reference to the election made in
22 the others. For the purposes of this paragraph, taxes imposed by
23 subdivisions shall be considered separately from state taxes and
24 the apportionment and allocation also may be applied to the

1 entire tax base. In no instance wherein article IV is employed
2 for all subdivisions of a state may the sum of all apportionments
3 and allocations to subdivisions within a state be greater than
4 the apportionment and allocation that would be assignable to that
5 state if the apportionment or allocation were being made with
6 respect to a state 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 or
12 renting real estate or tangible personal property, and whose
13 dollar volume of gross sales made during the tax year within the
14 state or subdivision, is not in excess of \$100,000.00 may elect
15 to report and pay any tax due on the basis of a percentage of
16 such volume, and shall adopt rates which shall produce a tax
17 which reasonably approximates the tax otherwise due. The
18 multistate tax commission, not more than once in 5 years, may
19 adjust the \$100,000.00 figure in order to reflect such changes as
20 may occur in the real value of the dollar, and such adjusted
21 figure, upon adoption by the commission, shall replace the
22 \$100,000.00 figure specifically provided herein. Each party state
23 and subdivision thereof may make the same election available to
24 taxpayers additional to those specified in this paragraph.

1 Coverage.

2 (3) Nothing in this article relates to the reporting or
3 payment of any tax other than an income tax.

4 Article IV. Division of Income.

5 (1) As used in this article, unless the context otherwise
6 requires:

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

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

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

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

24 (e) "Nonbusiness income" means all income other than
25 business income.

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

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

11 (h) "State" means any state of the United States, the
12 district of Columbia, the commonwealth of Puerto Rico, any
13 territory or possession of the United States, and any foreign
14 country or political subdivision thereof.

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

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

1 to allocate and apportion his entire net income as provided in
2 this article.

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

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

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

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

23 (c) The extent of utilization of tangible personal property
24 in a state is determined by multiplying the rents and royalties
25 by a fraction, the numerator of which is the number of days of
26 physical location of the property in the state during the rental
27 or royalty period in the taxable year and the denominator of

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

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

10 (b) Capital gains and losses from sales of tangible personal
11 property are allocable to this state if (1) the property had a
12 situs in this state at the time of the sale, or (2) the
13 taxpayer's commercial domicile is in this state and the taxpayer
14 is not taxable in the state in which the property had a situs.

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

18 (7) Interest and dividends are allocable to this state if
19 the taxpayer's commercial domicile is in this state.

20 (8) (a) Patent and copyright royalties are allocable to this
21 state: (1) if and to the extent that the patent or copyright is
22 utilized by the payer in this state, or (2) if and to the extent
23 that the patent copyright is utilized by the payer in a state in
24 which the taxpayer is not taxable and the taxpayer's commercial
25 domicile is in this state.

26 (b) A patent is utilized in a state to the extent that it is
27 employed in production, fabrication, manufacturing, or other

1 processing in the state or to the extent that a patented product
2 is produced in the state. If the basis of receipts from patent
3 royalties does not permit allocation to states or if the
4 accounting procedures do not reflect states of utilization, the
5 patent is utilized in the state in which the taxpayer's
6 commercial domicile is located.

7 (c) A copyright is utilized in a state to the extent that
8 printing or other publication originates in the state. If the
9 basis of receipts from copyright royalties does not permit
10 allocation to states or if the accounting procedures do not
11 reflect states of utilization, the copyright is utilized in the
12 state in which the taxpayer's commercial domicile is located.

13 (9) All business income shall be apportioned to this state
14 by multiplying the income by a fraction, the numerator of which
15 is the property factor plus the payroll factor plus the sales
16 factor, and the denominator of which is 3.

17 (10) The property factor is a fraction, the numerator of
18 which is the average value of the taxpayer's real and tangible
19 personal property owned or rented and used in this state during
20 the tax period and the denominator of which is the average value
21 of all the taxpayer's real and tangible personal property owned
22 or rented and used during the tax period.

23 (11) Property owned by the taxpayer is valued at its
24 original cost. Property rented by the taxpayer is valued at 8
25 times the net annual rental rate. Net annual rental rate is the
26 annual rental rate paid by the taxpayer less any annual rental
27 rate received by the taxpayer from subrentals.

1 (12) The average value of property shall be determined by
2 averaging the values at the beginning and ending of the tax
3 period but the tax administrator may require the averaging of
4 monthly values during the tax period if reasonably required to
5 reflect properly the average value of the taxpayer's property.

6 (13) The payroll factor is a fraction, the numerator of
7 which is the total amount paid in this state during the tax
8 period by the taxpayer for compensation and the denominator of
9 which is the total compensation paid everywhere during the tax
10 period.

11 (14) Compensation is paid in this state if:

12 (a) The individual's service is performed entirely within
13 the state;

14 (b) The individual's service is performed both within and
15 without the state, but the service performed without the state is
16 incidental to the individual's service within the state; or

17 (c) Some of the service is performed in the state and (1)
18 the base of operations or, if there is no base of operations, the
19 place from which the service is directed or controlled is in the
20 state, or (2) the base of operations or the place from which the
21 service is directed or controlled is not in any state in which
22 some part of the service is performed, but the individual's
23 residence is in this state.

24 (15) The sales factor is a fraction, the numerator of which
25 is the total sales of the taxpayer in this state during the tax
26 period, and the denominator of which is the total sales of the
27 taxpayer everywhere during the tax period.

1 (16) Sales of tangible personal property are in this state
2 if:

3 (a) The property is delivered or shipped to a purchaser,
4 other than the United States government, within this state
5 regardless of the f.o.b. point or other conditions of the sale;
6 or

7 (b) The property is shipped from an office, store,
8 warehouse, factory, or other place of storage in this state and
9 (1) the purchaser is the United States government or (2) the
10 taxpayer is not taxable in the state of the purchaser.

11 (17) Sales, other than sales of tangible personal property,
12 are in this state if:

13 (a) The income-producing activity is performed in this
14 state; or

15 (b) The income-producing activity is performed both in and
16 outside this state and a greater proportion of the income-
17 producing activity is performed in this state than in any other
18 state, based on costs of performance.

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

24 (a) Separate accounting;

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

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

1 or

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

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

5 Tax Credit.

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

14 Tax Credit

15 Exemption Certificates, Vendors May Rely.

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

1 Article VI. The Commission.

2 Organization and Management.

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

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

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

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

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

11 (f) The commission shall elect annually, from among its
12 members, a chairman, a vice chairman and a treasurer. The
13 commission shall appoint an executive director who shall serve at
14 its pleasure, and it shall fix his duties and compensation. The
15 executive director shall be secretary of the commission. The
16 commission shall make provision for the bonding of such of its
17 officers and employees as it may deem appropriate.

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

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

27 (i) The commission may accept for any of its purposes and

1 functions any and all donations and grants of money, equipment,
2 supplies, materials and services, conditional or otherwise, from
3 any governmental entity, and may utilize and dispose of the same.

4 (j) The commission may establish 1 or more offices for the
5 transacting of its business.

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

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

19 Committees.

20 (2) (a) To assist in the conduct of its business when the
21 full commission is not meeting, the commission shall have an
22 executive committee of 7 members, including the chairman, vice
23 chairman, treasurer and 4 other members elected annually by the
24 commission. The executive committee, subject to the provisions of
25 this compact and consistent with the policies of the commission,

1 shall function as provided in the bylaws of the commission.

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

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

10 Powers.

11 (3) In addition to powers conferred elsewhere in this
12 compact, the commission shall have power to:

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

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

19 (c) Compile and publish information as in its judgment would
20 assist the party states in implementation of the compact and
21 taxpayers in complying with state and local tax laws.

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

24 Finance.

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

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

21 (c) The commission shall not pledge the credit of any party
22 state. The commission may meet any of its obligations in whole or
23 in part with funds available to it under paragraph (1) (i) of
24 this article: provided that the commission takes specific action
25 setting aside such funds prior to incurring any obligation to be
26 met in whole or in part in such manner. Except where the
27 commission makes use of funds available to it under paragraph (1)

1 (i), the commission shall not incur any obligation prior to the
2 allotment of funds by the party states adequate to meet the same.

3 (d) The commission shall keep accurate accounts of all
4 receipts and disbursements. The receipts and disbursements of the
5 commission shall be subject to the audit and accounting
6 procedures established under its bylaws. All receipts and
7 disbursements of funds handled by the commission shall be audited
8 yearly by a certified or licensed public accountant and the
9 report of the audit shall be included in and become part of the
10 annual report of the commission.

11 (e) The accounts of the commission shall be open at any
12 reasonable time for inspection by duly constituted officers of
13 the party states and by any persons authorized by the commission.

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

18 Article VII. Uniform Regulations and Forms.

19 (1) Whenever any 2 or more party states, or subdivisions of
20 party states, have uniform or similar provisions of law relating
21 to an income tax, capital stock tax, gross receipts tax, sales or
22 use tax, the commission may adopt uniform regulations for any
23 phase of the administration of such law, including assertion of
24 jurisdiction to tax, or prescribing uniform tax forms. The
25 commission may also act with respect to the provisions of article
26 IV of this compact.

1 (2) Prior to the adoption of any regulation, the commission
2 shall:

3 (a) As provided in its bylaws, hold at least 1 public
4 hearing on due notice to all affected party states and
5 subdivisions thereof and to all taxpayers and other persons who
6 have made timely request of the commission for advance notice of
7 its regulation-making proceedings.

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

11 (3) The commission shall submit any regulations adopted by
12 it to the appropriate officials of all party states and
13 subdivisions to which they might apply. Each such state and
14 subdivision shall consider any such regulation for adoption in
15 accordance with its own laws and procedures.

16 Article VIII. Interstate Audits.

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

19 (2) Any party state or subdivision thereof desiring to make
20 or participate in an audit of any accounts, books, papers,
21 records or other documents may request the commission to perform
22 the audit on its behalf. In responding to the request, the
23 commission shall have access to and may examine, at any
24 reasonable time, such accounts, books, papers, records, and other
25 documents and any relevant property or stock of merchandise. The

1 commission may enter into agreements with party states or their
2 subdivisions for assistance in performance of the audit. The
3 commission shall make charges, to be paid by the state or local
4 government or governments for which it performs the service, for
5 any audits performed by it in order to reimburse itself for the
6 actual costs incurred in making the audit.

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

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

1 paragraph apply only to courts in a state that has adopted this
2 article.

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

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

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

27 (8) In no event shall the commission make any charge against

1 a taxpayer for an audit.

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

5 Article IX. Arbitration.

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

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

14 (3) Whenever a taxpayer who has elected to employ article
15 IV, or whenever the laws of the party state or subdivision
16 thereof are substantially identical with the relevant provisions
17 of article IV, the taxpayer, by written notice to the commission
18 and to each party state or subdivision thereof that would be
19 affected, may secure arbitration of an apportionment or
20 allocation, if he is dissatisfied with the final administrative
21 determination of the tax agency of the state or subdivision with
22 respect thereto on the ground that it would subject him to double
23 or multiple taxation by 2 or more party states or subdivisions
24 thereof. Each party state and subdivision thereof hereby consents
25 to the arbitration as provided herein, and agrees to be bound
26 thereby.

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

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

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

26 (7) The board shall have power to administer oaths, take
27 testimony, subpoena and require the attendance of witnesses and

1 the production of accounts, books, papers, records, and other
2 documents, and issue commissions to take testimony. Subpoenas may
3 be signed by any member of the board. In case of failure to obey
4 a subpoena, and upon application by the board, any judge of a
5 court of competent jurisdiction of the state in which the board
6 is sitting or in which the person to whom the subpoena is
7 directed may be found may make an order requiring compliance with
8 the subpoena, and the court may punish failure to obey the order
9 as a contempt. The provisions of this paragraph apply only in
10 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 expenses
16 and costs. No officer or employee of a state or local government
17 who serves as a member of a board shall be entitled to
18 compensation therefor unless he is required on account of his
19 service to forego the regular compensation attaching to his
20 public employment, but any such board member shall be entitled to
21 expenses.

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

26 (10) The board shall file with the commission and with each
27 tax agency represented in the proceeding: the determination of

1 the board; the board's written statement of its reasons therefor;
2 the record of the board's proceedings; and any other documents
3 required by the arbitration rules of the commission to be filed.

4 (11) The commission shall publish the determinations of
5 boards together with the statements of the reasons therefor.

6 (12) The commission shall adopt and publish rules of
7 procedure and practice and shall file a copy of such rules and of
8 any amendment thereto with the appropriate agency or officer in
9 each of the party states.

10 (13) Nothing contained herein shall prevent at any time a
11 written compromise of any matter or matters in dispute, if
12 otherwise lawful, by the parties to the arbitration proceeding.

13 Article X. Entry Into Force and Withdrawal.

14 (1) This compact shall enter into force when enacted into
15 law by any 7 states. Thereafter, this compact shall become
16 effective as to any other state upon its enactment thereof. The
17 commission shall arrange for notification of all party states
18 whenever there is a new enactment of the compact.

19 (2) Any party state may withdraw from this compact by
20 enacting a statute repealing the same. No withdrawal shall affect
21 any liability already incurred by or chargeable to a party state
22 prior to the time of such withdrawal.

23 (3) No proceeding commenced before an arbitration board
24 prior to the withdrawal of a state and to which the withdrawing
25 state or any subdivision thereof is a party shall be discontinued

1 or terminated by the withdrawal, nor shall the board thereby lose
2 jurisdiction over any of the parties to the proceeding necessary
3 to make a binding determination therein.

4 Article XI. Effect on Other Laws and Jurisdiction.

5 Nothing in this compact shall be construed to:

6 (a) Affect the power of any state or subdivision thereof to
7 fix rates of taxation, except that a party state shall be
8 obligated to implement article III (2) of this compact.

9 (b) Apply to any tax or fixed fee imposed for the
10 registration of a motor vehicle or any tax on motor fuel, other
11 than a sales tax: provided that the definition of "tax" in
12 article VIII (9) may apply for the purposes of that article and
13 the commission's powers of study and recommendation pursuant to
14 article VI (3) may apply.

15 (c) Withdraw or limit the jurisdiction of any state or local
16 court or administrative officer or body with respect to any
17 person, corporation or other entity or subject matter, except to
18 the extent that such jurisdiction is expressly conferred by or
19 pursuant to this compact upon another agency or body.

20 (d) Supersede or limit the jurisdiction of any court of the
21 United States.

22 Article XII. Construction and Severability.

23 This compact shall be liberally construed so as to
24 effectuate the purposes thereof. The provisions of this compact

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