MARYLAND BUSINESS TAX REFORM COMMISSION

Raymond S. Wacks, Chairman

Maryland Business Tax Reform Commission

January 7, 2010
Minutes of Meeting

A meeting of the Maryland Business Tax Reform Commission was held in the Louis L. Goldstein Treasury Building, Assembly Room on Thursday, January 7, 2010 at 1:30 p.m.

Those present were:

Raymond Wacks, Chairman
Secretary T. Eloise Foster, Department Budget and Management
Linda Tanton, Deputy Comptroller
Paul Nolan, Manufacturer's Alliance of Maryland
Senator Richard S. Madaleno, Jr.
Steven J. Banks, Greater Baltimore Committee
Karen Syrylo, Maryland Chamber of Commerce
Martin Lobel, Public Member
Michael Ettlinger, Public Member
Delegate Sheila Hixson
Senator Verna Jones

David Roose, Director, Bureau of Revenue Estimates
Marc Nicole, Department of Budget and Management

Those also present were:

Patty Horton for Senator Nancy J. King
Mark Vulcan for Secretary Christian Johansson, Department of Business and Economic Development

The meeting was open to the public and members of the local government, state government, media, as well as other interested parties, were in attendance.

The Chairman opened the meeting at 1:40 p.m. and introduced David Roose to discuss the first item on the agenda.

<u>Subcommittee Work to Date</u>

David Roose stated that the commission agreed to meet as a full commission to discuss apportionment since that applies to the work of both subcommittees. David Roose then turned the discussion over to Andrew Schaufele to go over what each committee has accomplished to date.

Andrew Schaufele discussed the Work to Date Summary of both subcommittees; Business Tax Reporting Subcommittee and the Business Incentives in the Tax Code Subcommittee. Andrew spoke first with regards to the Business Tax Reporting Subcommittee; Separate Reporting/Pass through entities, combined reporting, tax philosophy, tax law changes to name a few.

Karen Syrylo asked that Andrew mention that when we were talking about the characteristics of good tax policy system that most of the items we discussed were accepted by many different organizations; National Conference of State Legislatures, American Institute of CPAs, American Bar Association so that the full membership gets the feeling of what was meant by their acceptance.

Andrew Schaufele then spoke on the work to date for the Business Incentives in the Tax Code Subcommittee; Income tax incentives, sales tax incentives, presentation by Department of Business and Economic Development to name a few. Please refer to the Subcommittee Work to Date Summaries on the web site; January 7, 2010 meeting.

Chairman Wacks thanked Andrew for his presentation on the work to date summaries of both subcommittees. Chairman Wacks also asked David Roose to give a brief overview of the state's fiscal situation.

<u>Overview of State's Fiscal Situation</u>

David Roose indicated the revenue side of Maryland's budget did not change much; revised the estimates approximately $75 million for this year and next and that is out of total general funds of about $25 billion. In September 2009, the estimate for FY 2010 was written down $680 million. March and December 2009 estimates were of greater magnitude than the most recent September estimates. We have caught up to the changes in the economy that have occurred over the last twelve months and we have seen now what the effects of the market collapse have had on the income tax and have a much better grasp of what's transpired. The good news and bad news is that the estimates did not change a whole lot because we are still expecting a decline of approximately 4.7%; a decline in general fund revenue for FY 2010 and very weak growth in 2011. This follows a decline of almost 5% in 2009; two years in row of dropping revenues, estimate now for 2011 is almost exactly the average of 2006 and 2007 general fund collections. The recession has cost us 4 ½ years of revenue growth; more than that because if you recall the 2007 Special session raised revenues substantially. If any member is interested in obtaining the December Estimated Maryland Revenues report you may visit our web site at:

http://www.marylandtaxes.com/finances/revenue/reports/estimated/2009_BRE_December_Report.pdf .

Also included with Mr. Roose presentation on the state's fiscal situation is a page from the Spending Affordability Committee's 2009 Interim Report; *Structural Imbalance between Ongoing Revenues and Ongoing Spending Ranges Between $2 Billion to $3 Billion, Fiscal 2009 – 2015.*

Chairman Raymond Wacks: Why do you think there is going to be growth in 2011?

David Roose: The growth is about 3%; typically, if we ever get back to typical, general fund growth of 5 – 6 ½ % but the expectations are that the recession has ended although we are still expecting a decline in employment through calendar year 2010.

As job growth flattens and wages begin to inch up that will provide some basis growth both for the income tax and the sales tax; some other factors such as sales taxes from construction related activity declining only 5 – 7% instead of 16%, declines are not as bad and there will be some growth in some areas.

Senator Madaleno: Comparing us to other states that have similar tax structures to what we now have; how are we performing, what are learning with respect to forecasting our revenues.

David Roose: It is very difficult to compare states estimating performance for a variety of reasons include the point in the cycle which estimates are made and other things like that. It is my impression that we have done, perhaps not the best job as good as job as most other states have, part of that is because we have a very open process; legislature, Governor, Department of Budget, are all involved.

The new individual income tax structure and also increasing the corporate income tax rate is a very volatile revenue source; the income tax is going to be more volatile than it has been in the past where effectively we have had a flat tax over the top bracket starting at $3,000. The more volatile something is, the more difficult it is to forecast. We will be spending the next two or three years trying to adjust our methodology.

Senator Madaleno: Is the Comptroller's Office looking at the various income tax forms and making alterations with regards to a forecasting standpoint?

Deputy Comptroller Linda Tanton: The Comptroller's Office looks at this every year. In recent years we have added additional data elements we are capturing off personal income tax as well as corporate income tax returns. We are preparing to go through that again as we implement MITS data warehouse. MITS will then enable us to take that information analyze it for both compliance and revenue estimating purposes.

Steven Banks: With regards to David Roose comments that in 2007 Special Session we raised taxes; obviously we did not raise taxes because revenues are down; we raised rates, raising rates does not necessarily mean raising taxes for various reasons.

More important comment, it was suggested that the structural deficit that we have, or the $2 billion revenue projected deficit going forward, that perhaps being part of the reason this commission was created and I am not operating under that assumption. I thought we were here to look at our tax structure on a going forward basis; opportunities to reform that will be a test for good times and bad times.

Secretary T. Eloise Foster: David, could you please remind the commission where revenues would be if we hadn't raised rates.

David Roose: I have actually not gone back to look at that yet but I think we will in the next few weeks. But the estimates at the time were 800 million of additional revenue and certainly that is revenue we would not have received.

There are behavioral aspects that may have played a role but the sales tax about $600 million collected, and yes the sales tax did decline last year but it would have declined even greater had we not of had a 6% rate instead of 5% rate. We would have collected less money.

Senator Madaleno: One of the things that happened during the Special Session that is often forgotten; it wasn’t just an effort to raise rates, more appropriately adjusted rates. We did raise the sales tax, but on the income tax we did a whole bunch of different things and for a large number of taxpayers their income tax bill actually went down because we lowered rates, changed the exemption for a large number of taxpayers and that has been a part of the complicating factor over the last few years; how we fundamentally altered our income tax structure into a very different structure that had been in place for many, many years.

<u>Current Tax Rates</u>

David Roose: Neither subcommittee has really spent time focusing on rates. Each member was given a handout; States Ranked by Highest 2008 Corporate Income Tax Bracket Rate, 2008 State Individual Income Tax Rates Ranked by Top Marginal Rate, States Ranked by Sales Tax Rate as of January 1, 2008.

In some respects there is not a whole lot to say about rates; they are what they are. There may be some issues that the Business Tax Reporting Subcommittee will get into about the desirability of graduated rates for the corporate income tax for example. Rates are a pretty straight forward issue but they do tie into a number of principles of a good tax structure including obviously revenue sufficiency but also issues of equity and economic competiveness.

David Roose: I would also like to note that these tables on income tax brackets, income tax rates, etc are obviously extraordinarily simple. These are just the rates and there are all sorts of issues when you are comparing one state to the other. This is something that should be kept in the back of your mind when the subcommittees are going through their work. The first explicit task of the commission or suggested recommendation does relate to rates.

Karen Syrylo: The 2008 State Individual Income Tax Rates Ranked by Top Marginal Rate handout regarding the importance of the footnote; Maryland Counties have a mandatory local income tax at rates of 1.25% to 3.2%. When you look at the result of the local rate when added to the state rate; 6.25% + 3.2% = 9.25% rate. This is something we do need to focus on.

Deputy Comptroller Linda Tanton: On the sales tax you just have the state rates here and there are a number of states that have local rates that can vary tremendously.

David Roose: There are also issues here with groceries being exempted in some states but not others.

Senator Madaleno: From an income tax standpoint how many states allow local governments to have an income tax?

David Roose: Maryland is the only state that has a mandatory local income tax rate. I believe Iowa is the only other state that has one statewide but the rate would be zero. Many cities have and other types of jurisdictions across the country have income taxes or wages taxes or other things that amount to an income tax, probably most of the big cities in the country.

Karen Syrylo: There are a handful of states where there are cities that have a separate wage tax or income tax on either workers or the residents; New York, Pennsylvania, several jurisdictions in Ohio. It is a short list of the states that have separate income taxes imposed by their cities or counties. The majority of the states have a single state rate and then they have the revenue sharing after the income tax is collected so we don't see the rate or the amount of revenue that goes to the localities from the state. Maryland is the only state that has the piggyback tax the way it is shown. Most states combine their state and local tax revenue on a single form.

Martin Lobel: A lot of the states now increasing the importance of interstate sales on the internet are now going to the Amazon type nexus and claiming sales tax collections and are being very successful. A lot of states have realized their missing a huge amount of sales taxes.

Karen Syrylo: There are significant constitutional questions about the validity of the Amazon type tax and that would take a whole day of discussion.

Apportionment

Chairman Wacks: Next item on our agenda is Apportionment which Paul Nolan, member of our commission, will give a presentation on.

Paul Nolan: I wanted to thank the commission for the opportunity to speak on apportionment this afternoon. Please refer to the link entitled "Apportionment" on the Maryland Business Tax Reform Commission website at http://btrc.maryland.gov/archive.asp *January 7, 2010 meeting*.

Please note that page 14 of the Apportionment handout is the opinion of the speaker and not that of the Maryland Business Tax Reform Commission.

Chairman Raymond Wacks: Mark Vulcan; when you made your presentation to the commission, you discussed single sales factor as being an incentive?

Mark Vulcan: Yes, we did.

Chairman Raymond Wacks: Paul, do you consider that an incentive?

Paul Nolan: Absolutely.

Martin Lobel: Revenues decline after they go to single sales factor.

Steven Banks: I think Jay Biggins, Executive Managing Director – Biggins, Lacy, Sharpiro & Company when he did his site selection presentation in December (Business

Incentives in the Tax Code Subcommittee meeting held on 12/3/2009) also reiterated that was an enticing element as they go across the country.

Chairman Raymond Wacks: Are there specific industries that you would expand it to?

Paul Nolan: No chairman, I looked at the other states; California, New York, Illinois; no, that was across the board. The other issue here is that some economists have already testified before this commission that there is this game to race to the bottom; "stop it states" attitude.

Chairman Raymond Wacks: Comments or questions?

Paul Nolan: Thank you for your time.

Senator Madaleno: On page 12; when you compare the Maryland company with the out of state company, where would we have nexus for the out of state company?

Karen Syrylo: Sales people coming into the state during certain kinds of activities and creating nexus, people doing services in the state that are not protected.

Senator Madaleno: The problem with that model is the Amazon model; that we now live in a world where in 1980 you needed someone to come into the state to do sales, encyclopedia salesman came to you door to sell you encyclopedia's; now you don't have to do that; we have the computer.

Karen Syrylo: Nexus is a threshold where the issue that is not going to change no matter what apportionment methodology you use, because we have the constitution restrictions. Yes, there can be a discussion of what nexus should be and what the threshold is, but set that aside for a second and say, there is a threshold; that threshold has either been met or not met, whether we are using single factor or three factor. If a company does not have nexus today, they are not paying tax under the three factor. If they don't have nexus tomorrow, they are not paying tax under the single factor that is not going to change.

Chairman Raymond Wacks: For my benefit, can someone explain the nexus requirements?

Laughter.

Karen Syrylo: Mr. Chairman, you have asked a question that the U.S. Supreme Court has not answered for us.

Steven Banks: I will just give you a hypothetical response. In the service industry, lets say you are an accounting firm, law firm, investment management firm; you may not have bricks and mortar or people in a state. If you have sales people visiting that state to see potential customers or existing customers; you may trigger a nexus. New York State would say you would trigger a nexus if say, they were there for ten (10) days, five days, three days; it is a very low threshold.

People may argue that and fight it in court because there is no federal law that covers this in the service industry.

The bottom line is, under the current accounting rules and tax rules it is easy to go over the threshold establishing that. One example you could almost think of perhaps where you don't is the internet.

I think this is a very extreme example on page 12 where is shows 0% payroll, 0% property. In truth, most companies that are multinational or multistate have a little bit of sales or property and you get the same answer if you have 5% property and 10% payroll; it would still be a very dramatic shift in the liability and that is a better example.

Paul Nolan: I think your point is well taken in a sense that the new economy and the direction it's moving is putting more pressure on nexus because it is easier to not be in the state.

The nexus issue is something the commission needs to address as well and as legislatures as well; you may very well want to consider expanding nexus because the Supreme Court has not really wanted to hear nexus cases.

Senator Madaleno: Senator King tells a very interesting story about constituent and neighbor from Montgomery County who retired and decided to move to Texas. This person sold his house, bought a bigger house in Texas, no one told him about the property tax bill. Now they are sitting there with this enormous property tax bill; it is hard as we talked about the rates before because taxes are complicated.

We have made certain decisions at the state and local levels to have higher income taxes broadly speaking, and a higher corporate income tax, and lower property tax rates. I recognize it's hard to make that comparison because we have high property values in many parts of Maryland. The property tax rates in Montgomery County are lower than in Fairfax County. We have a three year assessment; they have a one year assessment. It is very hard to make the comparison because in the end, someone has to provide police protection for the business; you have to provide fire stations, etc. There are a lot of costs that go along with this. Look at the services that are provided and someone has to pay for it; we have to look at the big picture.

Paul Nolan: From a headquarters company perspective, I understand that philosophy.

Steven Banks: Early on we had a speaker who talked about a study as to whether or not businesses were paying their fair share in terms of benefits versus taxes paid and I thought the conclusion was that in Maryland they were paying more than their share. I don't know that we should be terribly concerned about that although it's certainly something we have to continually look at.

I think the idea with apportionment is that it be talked about simultaneously with combined reporting because it is a big deal. It's also provides an incentive for a company like McCormick or T. Rowe Price or any other Maryland company as they do their hiring going forward, if their disadvantaged by hiring locally versus hiring in a bordering state that has a single sales factor that is effective. That is kind of where we are right now so it's an incentive but also a bit of fairness.

As a practical matter, you cannot ignore single sales apportionment if you're neighboring states are doing it. In terms of corporate fairness, I think we need to think about that.

Michael Ettlinger: There are people who have some principal objection to single sales versus three factor. The question is; what is the revenue impact of this? My understanding is we really don't have a good handle on that right now; is this correct?

David Roose: Yes.

Michael Ettlinger: There were studies earlier but nothing recent.

David Roose: That was strictly with respect to the single sales for manufacturers.

Michael Ettlinger: Well that is sort of what I was meaning; the revenue impact of what's been done.

David Roose: The first year was about a 6 million revenue loss and the second year was about 20-25 million although there were some extraordinary issues that year. Those were for 2001 and 2004; we did the study for tax year 2007 and it was 19 million revenue losses.

Michael Ettlinger: In terms of the economic impact on this, there have been econometric studies on this. It is fair to characterize them as either no significant impact on the economy or very modest positive impact.

It's not static in a sense that they either have nexus or they don't have nexus. There can be some ambiguity in the effects; if you have your out of state company here with no payroll and property, you can actually discourage a company from starting to develop a presence in Maryland by having single factor sales if they don't have nexus. If they don't have nexus then there in this situation with this out of state company; they don't want to put that first few employees in the state because what now would go to $18,000 in taxable income could now go to $35,000 in taxable income. There can be differing effects of this.

Because of the nexus issue, this is more prone to create no where income than other apportionment mechanisms simply because there's more get apportioned to places that don't have nexus. In terms of the global revenue effect, it's likely to reduce revenues in state taxes around the country.

Going to a single sales factor among other things puts more pressure on transfer pricing issues because it's all on sales and so combined reporting would be an obvious mechanism for addressing that consequence of going to single sales factor.

Chairman Raymond Wacks: Comments?

Martin Lobel: Most of the studies that show what would attract business to a state or location are education, great schools, theatre, good fire protection; all of that requires revenue.

An analysis of what happens with the single factor sales taxes is that revenue declines which mean you do not have the money for the kind of education, police department, fire protection, etc. that attracts businesses Most of the pressure has come not from the economists, but from the in state corporations who don't want to have to pay taxes. That is why we have had so much pressure on single factor sales taxes. If you are going to be serious about raising revenue, you use combined plus double weighted sales, triple weighted sales. I think that's bad tax policy but that is the way to maximize revenue to the state without necessarily driving business away.

Karen Syrylo: One comment that I want to make; it is absolutely true that businesses don't just focus on the income tax but all of the taxes, no matter what they are called.

The Chamber of Commerce did a study on the comparison of Maryland of all the taxes that businesses pay and the surrounding states; Virginia, North Carolina, states considered as our competitors in these economic development decisions and the study showed that Maryland's combined business tax structure was right in the middle.

I am mind boggled when I hear the economists say "when states go to single sales factor, there is no change in the overall revenue." I am puzzled by the manufacturing statistics that we do have for Maryland; single factor versus the three factor because when you look at this example that Paul Nolan did with page 12. There is no way this shouldn't be a revenue increase for Maryland's income taxes from businesses because we have only a few companies that are in this left column; Maryland headquartered companies; companies with a lot of payroll and property relative to their sales, we have a ton of businesses that have very little payroll and property but a ton of sales into the state.

Steven Banks: Along the same line as Karen, as a practioner; it seems obvious to us that this should be a revenue generator for a state like Maryland; the numbers you pointed out are pretty much flat.   Second, I would argue that the numbers are probably flat due to non compliance. Companies either had nexus as a result of some very close call or subjective criteria or perhaps were not filing. My view is it's a whole new world out there because of FIN 48 and the VDA's that the state is giving and fact that nexus from the accounting standpoint is being triggered much more easily now and companies are forced by their accounting firms to pony up and put it on their books. I think the compliance factor is moving into a new era and we all expect it because we have seen it in our industries. I think as we go forward I would be surprised if those numbers didn't start shifting.

David Roose: Thankfully the study goes on for a number of years.

Senator Madaleno: I am just trying to think of what Karen and Steven said in their comments about why you think it would bring in more money. I am looking back to the date we had when we moved forward with extending the sales tax to the computer services sector and then the arguments against it when we repealed it. Maryland based companies that said we would make sure we purchase all of our computer equipment out of the Tyson's Office then and shift it to the Bethesda Office in order to avoid having to pay the sales tax. I know this is not a very artful comparison.

Michael Ettlinger: These examples are not realistic. I am sure McCormick has far less of its sales than 35% in Maryland, right? Maryland is a small state and you sell nationally and internationally. It doesn't surprise me because Maryland is a small state and there aren't too many that have 35% of their sales in Maryland and don't have any payroll or property. Getting to more realistic examples, every federal contractor in Maryland selling into the District of Columbia, anyone who operates on a multistate level, just because we are such a small part of the national economy in Maryland the odds are if you at all operating nationally, your sales factor is going to be bigger than your property and payroll if your located here. It doesn't surprise me that this would be revenue loser.

Chairman Raymond Wacks: Mr. Mazerov would you like to join us at the table? (*Mr. Mazerov was addressed earlier by Senator Madaleno requesting his comments)*

Michael Mazerov, Center on Budget and Policy Priorities: *Mr. Mazerov attends the Maryland Business Tax Reform Commission meetings regularly and spoke at the June 9, 2009 Business Tax Reform Commission meeting.*

You have already been discussing the answer to the question and the word is "nexus." You have all these out of state manufacturer's selling into Maryland but there is a federal law that isolates them from nexus.

Manufacturers are perfectly capable of making substantial sales into Maryland with only sales people and there is a federal law that says "solicit ting sales through in-state sales people does not establish nexus." The in-state companies are getting an immediate benefit by being able to apportion all their income out based on sales and all the out-of-state companies with substantial sales in the state and very little physical presence and therefore would be paying substantially more under single sales factor can avoid nexus in the state. If they are doing something, this is where is does interact with combined reporting, in the state that does create nexus, lets say providing after sales service in the state, then they can separately incorporate a subsidiary to perform that service and then make sure that the profit on the sale of the manufacturer item itself is protected by the public law.

The absence of combined reporting interacts with single sale factor in a way that reduces revenue. There are less likely to pay taxes.

Paul Nolan: In the combined reporting requirement, what do you think of that?

Michael Mazerov: In combined reporting requirement then if they don't have physical presence in the state; if they don't have nexus, they don't have nexus. If they have a physical subsidiary in the state then that creates nexus, you tax the combined income of the entity and so they do pay additional revenue and that is to the question that is on your agenda for future discussion; Finnegan versus Joyce. If you go the so called Joyce approach to dealing with apportionment then you are not going to get much revenue even if you get nexus over that sales office. If you go Finnegan approach you're basically going to effectively treat that as entirely an in-state business.

I think nexus is the primary answer.

Steven Banks: If your surrounding states have single sales factor you have to consider that in your state as well.

Michael Mazerov: In theory you are just incenting.

Maryland is still in the bottom three states in manufacturing job retention since it enacted the single sales factor.

State corporate income taxes are a very insignificant expense for corporations. It does not drive the location decisions.

Karen Syrylo: Yet we have business people and economic development people say that it is important.

Maryland's major economic drivers are not sales of property; they are the service industries that are not subject to 86-272. The minute they have a person in the state, they have nexus and that is where the majority of our revenues are coming from now.

What is your reaction to that Mr. Mazerov?

Michael Mazerov: I was asked to try and explain your inability to understand why

Interrupted

Karen Syrylo: I'm thinking that there are more businesses that are going to have nexus, who are going to be in this second column, and who are not

Interrupted

Michael Mazerov: So what you are saying, if you were to in fact expand single sales factor, including the service sector, what would the implications be?

In percentage terms, the revenue loss would probably be lower, in dollar terms it would still be significant because the service sector is so much greater a share of the Maryland economy. Because of the lack of certainty over what nexus is for service businesses outside of 86-272, there is still a lot of potential for companies in the absence of combined reporting in Maryland, there would still be substantial opportunities for service businesses to separately incorporate the activities that do create nexus and to provide certain activities from an out-of-state location without clear nexus.

Paul Nolan: Imagine that same world with combined reporting. Single sales factor across the board with combined reporting.

Michael Mazerov: Sure, single sales factor with combined reporting and an approach to apportionment and you have a good system that overcomes a lot of limitations that you have now without nexus.

Senator Madaleno: What is the impact on the small businesses that continue to file under the personal income tax as opposed to the corporate income tax? Are we giving such a great deal to the companies paying corporate income tax while disadvantaging small businesses that are paying the personal income tax?

Karen Syrylo: When you are talking about a flow through business in Maryland, the non resident owners of a flow through business are currently required to apportion their income that is contributable to Maryland using the same formula that is in the corporate tax apportionment section. The same kind of thing would happen here and be based on whether the owner of that business is a resident or a non resident. If you have a lot of non residents that are paying apportion of their tax to Maryland, they are going to apportion it based on single factor or three factor.

Raymond Wacks: So you are saying there is no real difference?

Karen Syrylo: There could be a calculation difference. The apportionment is going to impact the non residents but not the residents.

Senator Madaleno: Does any of the in state talent have any comments, Linda Tanton or Mike Yaraborough?

Mike Yaraborough: The residents are taxed on all their income. They get credit for what they paid to other states.

Linda Tanton: And they are taxed at the rate of the personal income tax not the corporate.

Karen Syrylo: So residents are going to have no change in their Maryland tax based on change in the corporate apportionment methodology?

Linda Tanton: Right.

Paul Nolan: If you are imagining a business like a landscaping business that is just operating in Howard County and it's an S Corp for a partnership, these factors are almost meaningless. There is no out of state sales, its all payroll and property in the state, so whatever the mechanism you are working on the question is are they disadvantage versus the other, then you get into the policies and the judgments about what was the level playing field and what should it look like? If there is a perceived disadvantage for that type of business, there are other ways of adjusting other than moving the whole mechanics of the rule regimes. You can always insert a progressive rate as well and that is before you have taken into account the different corporate tax rates and loophole rates. The level of playing field; little business versus big business is really a complicated question and it is not easy to answer.

Michael Ettlinger: There already getting an advantage by not being incorporated, not paying a corporate income tax whereas, their shareholders are already paying a personal income tax.

Senator Madaleno: As politicians we always hear the cry, "think about the small businesses." We are trying to balance.

Karen Syrylo: To expand on Paul's point, when we are talking about the real small business, we would have to be talking about a business that is providing multi state services or selling multi state to begin with. The real small businesses that are only providing in Maryland don't apportion so there is no impact at all.

Senator Madaleno: But for a geographically small state with one of our major metropolitan areas where it would be very easy to cross into D.C. or Northern Virginia from Montgomery or Prince George's County you could find a relatively small business moving between the jurisdictions.

Karen Syrylo: I think it is important to say from a practical perspective from those of us who do tax returns and deal with the tax directors or are the tax directors of these companies, a lot of these nexus questions have disappeared for a lot of companies because of the new pressures of the accounting rules.

In other words, the companies who used to be aggressive as saying, "I have some activities in Maryland, I am going to take the position that I don't have nexus in Maryland," they are fewer and further between.

Paul Nolan: If they are publically traded, yes.

Karen Syrylo: If they are publically traded, they are not taking any kind of risks because the accounting rules make them measure that risk, make them disclose it so that the number of questions where nexus is going to get into the domino effect that we were talking are much, much fewer than there used to be. Therefore, it would become an arithmetic issue of the apportionment numbers itself and not nexus being brought into the domino effect.

Raymond Wacks: I think you can see this is really the essence of the issue and we will have to deal with this as we go forward. Where do we go forward, or how do we go forward? I am going to let David make a presentation and then maybe we can talk about what the steps are in our process.

2010 Subcommittee Agenda

David Roose: Discussed the tentative schedules and agenda for each subcommittee. Please refer to the website http://btrc.maryland.gov/archive.asp under *January 7, 2010 - 2010 Subcommittee Agenda.*

Steven Banks: In light of the 90 minute discussion we just had on apportionment, I think we should include a discussion on single sales apportionment and discussions on combined reporting, perhaps both.

Raymond Wacks: Which meeting do you think is most appropriate?

Steven Banks: March 8th Advantages and Disadvantages of Combined Reporting. I think this was also on the Business Incentives list of items as well so I think we should continue to talk about it.

Raymond Wacks: Are there any other comments or suggestions? As David and I were discussing, obviously what happens after March 8th? At some point we will compile lists of pros and cons of each of these because we are not going to reach a consensus it appears to me. So then once we compile our list of pros and cons for each of these issues, then David, what do you think is our next step?

David Roose: I think we had discussed this in the fall but I the idea would be that the subcommittees compile a document with the pros and cons and various issues, without making recommendations and then I believe public hearings sometime in May. Then the full commission would do something after that. It may be further investigation into some of these issues. A number of these issues could be flushed out quite a bit more and I think we need to just look again in early May/June to see where we are.

Paul Nolan: The commission itself has a preliminary report/draft due; when is that due?

Raymond Wacks: December 1st.

Paul Nolan: Well I think we should certainly engineer whatever timeframe on the calendar from that date.

The pros and cons should be developed from the subcommittees and those pros and cons will be pretty well written pieces and a lot of the work from the commission itself may not be that hard. There may or may not be a minority view.

Karen Syrylo: One quick comment on the context of the details that we need to get into. It seemed to me we need to be prepared for the agenda items that are currently listed for February 22nd Business Tax Reporting Subcommittee to be touching the surface but needing further meetings on some of those topics because a number of very meaty topics there that I would expect are going to need more time than just one meeting for all of them.

Raymond Wacks: Well like David said**,** this is a work in progress. If after we complete this series of meetings and we need another round. Again, we have to keep moving forward. I would like to try and finish most of our work in the summer or early fall at the very latest. We can continue to debate these issues over and over again. We need to get to a point to where we start to get into a point of discussion.

Again, as you look over the agenda please feel free to give us your suggestions on what you would like to see. If you have suggestions on people you would like to bring in as speakers, let us know.

Meeting adjourned at 4:01 p.m.

Next meeting: January 25, 2010 - Business Incentives in the Tax Code Subcommittee.

ML/SB/PN/liv