



# **ANNUAL REPORT**

## **FY 2020**



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# Multistate Tax Commission

## ANNUAL REPORT FOR FISCAL YEAR 2020

(July 1, 2019 – June 30, 2020)

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Compact Members	Sovereignty Members	Associate & Program Members
Alabama*†	Georgia*†	Arizona†
Alaska*	Kentucky*†	California
Arkansas*†	Louisiana*†	Connecticut†
Colorado*†	Michigan†	Delaware*
District of Columbia*†	Minnesota†	Florida†
Hawaii*†	New Jersey*†	Illinois
Idaho*†	Rhode Island*†	Indiana
Kansas*†	West Virginia*†	Iowa*†
Missouri*†		Maine
Montana*†		Maryland*†
New Mexico*†		Massachusetts†
North Dakota*†		Mississippi
Oregon*†		Nebraska*†
Texas†		New Hampshire*†
Utah*†		New York
Washington*†		North Carolina†
		Ohio
		Oklahoma†
		Pennsylvania*
		South Carolina†
		South Dakota†
		Tennessee*†
		Vermont†
		Virginia
		Wisconsin*†
		Wyoming

\*Joint Audit Program Member

†National Nexus Program Member

## Message from the Executive Director

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I am pleased to present the 2020 Annual Report of the Multistate Tax Commission covering the activities of the Commission and its various committees and staff during the time period July 1, 2019, to June 30, 2020. This annual report presents a convenient compilation of reports presented to the Commission at its 54th annual meeting, held virtually, as well as the *Financial Statements and Report of Independent Certified Public Accountants for the Years Ended June 30, 2019 and 2020*.

The Multistate Tax Commission (MTC) is an intergovernmental state tax agency whose mission is to achieve fairness by promoting compliance and consistent tax policy and practice and to preserve the sovereignty of state and local governments over their tax systems. Like other organizations and entities across the country, the MTC has had to adjust to major disruptions caused by the need to react to a global pandemic during this latter part of the fiscal year period. The MTC has navigated the challenges well by continuing its operations and maintaining high quality services. In fact, the current environment has led to positive developments such as the acceleration of virtual offerings of substantive and useful information and innovative training opportunities.

The Commission began the fiscal year with its annual meeting in August of 2019 in Boise, Idaho. The annual conference highlighted topics such as federalism and compliance issues. Throughout the year, the MTC focused on other topics such as the continued analysis of the implications of the *South Dakota v. Wayfair* decision and approaches to digital taxation. A major development for the Commission was also the adoption of by-law changes to allow for sovereignty states to vote on substantive matters. Also, changes were made to allow for Commission business to be more efficiently done in a virtual environment.

Our Uniformity work involved working to create an alternative combined filing model statute following the “Finnigan” approach as well as updating the Commission’s Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272.

The MTC continues to pursue its vision that the organization will be recognized as the preeminent organization for tax policy development; a respected authority for its knowledge of, educational programs on, and discussion of tax policy and administration; and the leading resource for ensuring equitable tax compliance by taxpayers and equitable tax administration by taxing jurisdictions.



I ask for your continued input and support as the Commission navigates these remarkable yet challenging times and continues to facilitate joint state efforts in these areas. The Annual Report of the Multistate Tax Commission — by nature, a backward look at the Commission’s activities — will provide you with information that will be helpful to you in providing us that input and support. I look forward to hearing from you.

Respectfully,

Gregory S. Matson  
Executive Director



## Overview of Actions Taken by the Multistate Tax Commission

The Commission held the Annual Business Meeting, as required by Article VI of the Multistate Tax Compact, on August 2019, in Boise, Idaho. The Commission also held a special meeting via videoconference on June 24, 2020.

The Commission took the following actions during July 1, 2019, to June 30, 2020:

- Approved the Commission Budget for 2019-2020.
- Accepted committee reports and ratified actions of the Executive Committee from the previous year.
- Elected Keith Richardson, Deputy CFO for Tax and Revenue, District of Columbia as Chair
- Elected Nia Ray, Director, Oregon Department of Revenue, as Vice Chair
- Elected Glenn Hegar, Comptroller of Public Accounts, Texas, as Treasurer
- Elected Walter Anger, Deputy Director and Commissioner of Revenues, Arkansas Department of Finance and Administration; Vernon Barnett, Commissioner of Revenue, Alabama; Vikki Smith, Washington Department of Revenue; and Gene Walborn, Director, Montana Department of Revenue, as at-large members of the Executive Committee
- Adopted changes to Bylaw 5 allowing the Executive Committee to direct that the annual meeting of the Commission be exclusively held by telephone, videoconference, or similar technological means; and that when the Executive Committee takes such action, physical presence is not required when determining a quorum.

The Commission did not accept any donation or grant, or borrow any service during the period covered by this report.



## Report of the Executive Committee

The Executive Committee met five times during the period July 1, 2019 to June 30, 2020:

- August 8, 2019, in Boise, Idaho;
- November 7, 2019, in San Antonio;
- January 15, 2020 via teleconference;
- April 23, 2020, via teleconference
- June 24, 2020, via teleconference;

The committee provided oversight and direction to the activities of the Commission throughout the fiscal year.

The following members of the Commission were elected to serve as Commission officers and members of the Executive Committee for fiscal year 2020:

- Chair: Keith Richardson, Deputy CFO for Tax and Revenue, District of Columbia Office of Tax and Revenue
- Vice Chair Nia Ray, Director, Oregon Department of Revenue
- Treasurer: Glenn Hegar, Texas Comptroller of Public Accounts
- At-large members:  
Walter Anger, Deputy Director and Commissioner of Revenues, Arkansas Department of Finance and Administration;  
Vernon Barnett, Alabama Commissioner of Revenue;  
Vikki Smith, Director, Washington Department of Revenue; and  
Gene Walborn, Director, Montana Department of Revenue.

When Walter Anger retired from the Arkansas Department of Finance and Administration in September, the chair appointed Stephanie Schardin Clarke, Secretary of Taxation and Revenue, New Mexico Taxation and Revenue Department to serve as an at-large member for the unexpired term. The Executive Committee approved this appointment at its meeting in November.

Nia Ray left the Oregon Department of Revenue in May; the chair elected to leave the position vacant for the short period of time until new officers would be elected in July.



The Executive Committee took the following actions during fiscal year 2020:

- Engaged in a discussion with the direct marketing industry on use tax collection issues.
- Approved the audited financial statements as reported in an independent auditor report for the years ended June 30, 2018, and 2019.
- Approved updates to the MTC’s mission, vision, values, and goals
- Approved the following recommended bylaw changes:
  - Bylaw 5 (Amending voting requirements and voting procedures, clarifying quorum requirements, and making technical and conforming changes)
  - Bylaws 3, 4, 6, 7, and 13 (Technical and conforming changes related to the Bylaw 5 amendments)
- Approved a proposed fiscal year 2020-2021 budget for the Commission.
- Approved a resolution changing the recordkeeper for the Commission’s defined contribution and deferred compensation plans.
- Approved that the draft amendments to the Commission’s Model Statute for Combined Reporting, *Finnigan* Method Option, proceed to public hearing.
- Approved that draft revisions to the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law 86–272 proceed to public hearing.
- Approved a recommended change to Bylaw 5 (Clarifies quorum requirements for Commission meetings; permits the annual meeting of the Commission to be exclusively held by telephone, videoconference, or similar technological means; and when determining a quorum, physical presence is not required when the annual meeting is held in such manner).
- Directed that the Commission’s 2020 annual meeting be held by telephone, videoconference, or similar technological means on Wednesday, July 29.
- Reviewed and approved the Treasurer’s financial reports during regular meetings of the committee.
- Reviewed the efforts and work of the Commission’s standing committees during regular meetings of the committee.

The Executive Committee undertook additional actions during fiscal year 2020 that are recorded in the minutes of its meetings.





## **Report of the Audit Committee**

**Frank Hales (Utah), Chair**  
**Lee Baerlocher (Montana), Vice Chair**

### **Audit Committee**

The audit committee met on August 5, 2019, in Boise, Idaho. This was the first meeting of the committee in fiscal year 2020. There were 66 members, guests and staff present during the public session and 67 members and staff present during the closed session of the meeting. There were two members of the public present during the public session, and there were 56 individuals representing 25 audit program states present during the closed session of the meeting.

The audit committee also met on November 5, 2019, in San Antonio, Texas. This was the second meeting of the committee in fiscal year 2020. There were 44 members, guests and staff present during the public session and 42 members and staff present during the closed session of the meeting. There were two members of the public present during the public session, and there were 34 individuals representing 22 audit program states present during the closed session of the meeting.

The third and final meeting of the audit committee in fiscal year 2020 was held via teleconference on April 21, 2020. There were 58 members, guests and staff present during the public session and 51 members and staff present during the closed session of the meeting. There were 11 members of the public present during the public session, and there were 39 individuals representing 23 audit program states present during the closed session of the meeting.

At each meeting the audit committee reviewed the status of all audits, in progress or recently closed. Discussions were held on income tax and sales tax audits that had significant issues. Also, MTC legal staff provided an update on state and local tax issues and cases at both in-person meetings. Due to challenges of providing a virtual meeting, the legal developments update was eliminated from the spring meeting agenda. This training was later provided in June.

During the spring meeting in April, the committee participated in a round table discussion in which member representatives compared new policies, procedures and software changes their agencies implemented to manage challenges presented by the COVID-19 pandemic.



During our meeting in San Antonio, members voted to allow taxpayer-provided audit narratives to be included, along with MTC staff narratives, in the confidential audit packet provided to Audit Committee members for discussion beginning at the upcoming meeting in July 2020.

During our meeting in Boise, the committee reviewed the companies recommended for a sales tax audit, along with the voting results by the member states of those companies. The audit committee voted to add ten of those companies to audit inventory.

The audit committee will meet for the first time in fiscal year 2021 on July 28, 2020 during the MTC annual meetings which will be held via teleconference.

## **Audit Program**

### **Productivity**

The Joint Audit Program completed one (1) corporate income tax audit and parts of ten (10) other corporate income tax audits during fiscal year 2020. Audit staff also completed seven (7) sales tax audits and parts of eight (8) other sales tax audits. Currently, there are nineteen (19) income tax audits and thirty-one (31) sales tax audits in progress.

The program proposed assessments of \$181,954,548 for completed and partially completed corporate income tax audits and \$1,625,565 for completed and partially completed sales tax audits during fiscal year 2020.

### **Staffing**

The Joint Audit Program added two new income tax auditors in the 2020 fiscal year. Brian Staley and Melissa Kopp having many years of experience at the Montana Department of Revenue have been a great addition to the MTC audit team.

The Chicago Audit Office officially closed in June 2020. With this closing, the Joint Audit Program lost Michelle Becker, the program's administrative assistant for the last seven years. Michelle's replacement will report to the Washington DC office, but the hiring process has been placed on hold due to COVID-19 pandemic.



## **Audit Committee**

The audit committee last met via teleconference on April 21, 2020. This was the third and final meeting for the audit committee in fiscal year 2020. The first meeting was held in Boise, Idaho, on August 5, 2019 and the second meeting was held in San Antonio, Texas on November 5, 2019.

## **Training**

The Joint Audit Program staff provided instruction at five trainings during the 2020 fiscal year.

- Focused Corporate Income Tax Class  
September 27-28, 2019 in Columbia, SC  
Larry and Holly were instructors at this training.
- Corporate Income Tax Class  
September 24-27, 2019 in Itasca, Illinois  
Cathy, Jeff and Holly were instructors at this training.
- Statistical Sampling Class for Sales and Use Tax Audits  
October 8-11, 2019, in Portland, Maine  
Bob and Jantha were instructors at this training.
- Partnership State Tax Webinar  
March 12, 2020  
Cathy was an instructor for this training.
- Basics of Transfer Pricing Practice and Theory for State Tax Lawyers and Auditors  
Part I- May 12, 2020  
Part II- May 19, 2020  
Part III- May 28, 2020  
Holly was an instructor for these trainings.





**TRENDS IN PRODUCTIVITY**  
**MTC JOINT AUDIT PROGRAM**  
**AUDIT HOUR ANALYSIS**  
**6/2003- 6/2020**

	6/03	6/04	6/05	6/06	6/07	6/08	6/09	6/10	6/11	6/12	6/13	6/14	6/15	6/16	6/17	6/18	6/19	6/20
Income Tax Total Audits	8	7	7	9	7	7	3	6	6	4	5	6	5	4	4	2	6	1
Total States Audited	165	266	196	175	141	209	79	152	309	131	150	103	79	64	76	35	113	21
Total Hours	10556	12012	12617	12514	9361	17570	6440	10445	25649	11937	12836	14413	11136	12893	7925	7469	28337	3296
<b>Average Hours Per State</b>	<b>64</b>	<b>45</b>	<b>64</b>	<b>72</b>	<b>66</b>	<b>84</b>	<b>81</b>	<b>69</b>	<b>83</b>	<b>91</b>	<b>86</b>	<b>139</b>	<b>141</b>	<b>201</b>	<b>104</b>	<b>213</b>	<b>251</b>	<b>157</b>
Sales Tax Total Audits	11	10	11	6	15	9	10	12	5	5	12	6	4	11	8	6	7	7
Total States Audited	145	154	160	77	187	97	120	147	65	59	163	63	48	108	76	66	71	71
Total Hours	8792	10943	6133	4946	13296	7818	7265	10772	7200	5000	13195	6570	5121	18155	12267	8133	6307	9685
<b>Average Hours Per State</b>	<b>61</b>	<b>71</b>	<b>38</b>	<b>64</b>	<b>71</b>	<b>80</b>	<b>61</b>	<b>73</b>	<b>110</b>	<b>85</b>	<b>81</b>	<b>104</b>	<b>106</b>	<b>168</b>	<b>161</b>	<b>123</b>	<b>89</b>	<b>136</b>
Total Both Taxes Total Audits	19	17	18	15	22	16	13	18	11	9	17	12	9	15	12	8	13	8
Total States Audited	310	420	336	252	328	306	199	299	374	190	313	166	127	172	152	101	184	92
Total Hours	19348	22955	18750	17460	22657	25388	13705	21217	32849	16937	26031	20983	16257	31048	20192	15602	36644	12981
<b>Average Hours Per State</b>	<b>62</b>	<b>55</b>	<b>56</b>	<b>70</b>	<b>69</b>	<b>83</b>	<b>69</b>	<b>71</b>	<b>88</b>	<b>89</b>	<b>83</b>	<b>126</b>	<b>128</b>	<b>180</b>	<b>133</b>	<b>154</b>	<b>188</b>	<b>141</b>



## Report of the Litigation Committee

### Clark Snelson (Utah) and Donnita Wald (North Dakota), Co-Chairs

The Litigation Co-Chairs for fiscal year 2020 are Clark Snelson of Utah and Donnita Wald of North Dakota. During the fiscal year, the Litigation Committee met twice in person and then sponsored two online webinars and attorney trainings in April 2020 due to the COVID-19 pandemic. Meetings and training were structured to qualify for CLE and CPE credits as much as possible and featured both MTC legal staff and state attorneys.

In Boise, Idaho, on August 6, 2019, the committee hosted Jasper Cummings for a discussion entitled *What is the Anti-Deference Movement Really About?*, followed by a question and answer session. The MTC legal division developed and helped present a series of training presentations, including a skills presentation on writing a compelling brief and a discussion about the challenges of being a female attorney practicing tax law.

For the November 4-5, 2019 meeting in San Antonio, Texas, MTC legal staff presented an attorney training with an emphasis on ethics.

The Boise and San Antonio trainings were webcast with lawyers from numerous states participating.

The Litigation Committee did not meet during the online Commission meetings in April 2020 due to the COVID-19 pandemic. However, the Committee sponsored and the legal staff planned two online trainings that were both attended by hundreds of participants:

- Sourcing Receipts for Business Tax Purposes: Current Challenges (April 13, 2020)
- Recent Developments in State Sales and Use Taxation of Digital Services & Software (April 15, 2020)



## **Report of the Nexus Committee**

**Christy Vandevender (Alabama), Chair**  
**Jayne Kulberg (Wisconsin), Vice Chair**

The Nexus Committee met in person on August 5, 2019 in Boise, Idaho, on November 5, 2019 in San Antonio, Texas, and conducted teleconference meetings on April 21, 2020 and July 28, 2020.

The Committee considered at the August 5, 2019 meeting: the results of the survey dated November 28, 2018 regarding participating states' treatment of voluntary disclosure agreements involving pass-through entities; and the results of the lookback period calculation survey dated June 3, 2019.

The Committee considered and approved at the November 5, 2019 meeting: a proposed amendment to the standard agreement form used with taxpayers claiming sales/use tax economic nexus in states that have implemented sales/use tax economic nexus, which provides that the state or the Commission can void the agreement if the back tax liability for the lookback period shown on the taxpayer's spreadsheets or returns is less than \$500.

The Committee considered and approved at the April 21, 2020 meeting: revisions to the language on the MTC website for the Nexus Program webpage to advise taxpayers that they could request payment plans in their applications for voluntary disclosure during the COVID-19 pandemic period, and that the state would make the determination whether to consider or grant such requests, pursuant to such state's own policies. Also, the Committee considered the results of a survey of participating states concerning the degree of discretion that MTC staff should exercise in voiding an agreement whenever the final amount of back taxes due to the state is less than \$500. Based on the survey results, MTC staff will plan to refer to the state for the state's determination as to whether to void such an agreement when the back tax liability owed is any amount below \$500.

Randy Tilley, Idaho, has retired from the Idaho Tax Commission, and Jayne Kulberg, Wisconsin, has replaced Randy as Vice Chair of the Committee.



The Nexus Program FY 2020 results (July 1, 2019, through June 30, 2020) are provided below.

- Nexus states' collections: \$21,551,287 (\$14,695,429 FY 2019)
- Non-Nexus states' collections: \$0 (\$48,892 FY 2019)
- Nexus states' executed agreements: 544 (379 FY 2019)
- Nexus states' average contract value: \$39,616 (FY 2019: \$38,774)

The above amounts include checks received by the Commission or amounts paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the value of a new taxpayer are not included. Applications continue to increase in the post-*Wayfair* era. The Commission received applications from 208 taxpayers in calendar year 2019. For calendar year 2020 to date, 150 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.



## **Report of the State Intercompany Transactions Advisory Service Committee** (Chair vacant)

The State Intercompany Transactions Advisory Committee continues to encourage discussions among Committee member states, and other states pursuant to other information exchange agreements and authorizations. Further activities of the Committee and next steps for the Committee to consider continue to be discussed.





## Report of the Strategic Planning Committee

### John Ficara (New Jersey), Chair



The Multistate Tax Commission met three times during the 2020 Fiscal year. The MTC began its strategic planning process in May 2011. During the period of 2011-2012, the Commission developed its statements of Mission, Values, Vision, and Goals.

MTC includes in its vision the aspiration that the organization “will be recognized as the ‘gold standard’ for tax policy development, the primary authority for the public and public officials on issues of state and local tax

uniformity and fairness, and the leading resource for ensuring equitable tax compliance.”

The Committee met on August 6, 2019, in Boise, Idaho. Proposed updates to the Commission’s mission, vision, values, and goals were approved by the committee and referred to the Executive Committee for further action. A presentation was made regarding information on performance measures and data. Information was presented on a project to update the Commission’s bylaws. The project is intended to update the bylaws to better encourage participation and engagement of sovereignty members.

The committee continues to be committed to integrating strategic planning tools and practices into the operations of the Commission and the MTC permanent staff continues to integrate strategic planning into the daily work of the Commission. In addition, the committee continues to evaluate the Commission’s progress with strategic planning. These discussions will continue and the committee will report to the Executive Committee on progress and future direction.

The Committee next met on November 6, 2020 in San Antonio, Texas. Executive Director Greg Matson went over the purpose for the proposed bylaw amendments which had been presented to the committee at its previous meeting. He noted that since that meeting, no additional comments had been submitted regarding the proposed



amendments. The committee unanimously adopted the package of proposed bylaw amendments and recommend them to the Executive Committee.

The Strategic Committee Meeting was held virtually on April 28, 2020. There was a discussion about the current situation involving necessary reactions to the pandemic. States expressed that it would likely be difficult for them to travel for the foreseeable future and that they were cutting back on other functions, such as field audits, and also expressed that they would welcome opportunities to meet and hold discussions, training, etc., remotely for the next year.

Executive Director Greg Matson briefed the Committee on training developments and the committee asked staff to come back with a proposal for how MTC training will be done in the future. Greg Matson mentioned that with the potential change in the bylaws allowing greater participation by sovereignty states in the future, the strategic planning committee may want to further consider what projects would be of interest or would be helpful for the MTC to undertake—and where the MTC could best serve member interests. The Chair, John Ficara, is pleased that the members of the committee continue their willingness to work together on the issues assigned to the committee.



## **Report of the Training Program**

### **Sherry Tiggett, MTC Events and Training Manager**

The training staff supported the following activities since July 1, 2019:

Corporate Income Tax training September 24 – 27, 2019, in Itasca, Illinois for 53 participants from the Alabama Department of Revenue, Arizona Department of Revenue, District of Columbia Office of Tax and Revenue, Idaho Office of the Attorney General, Idaho State Tax Commission, Iowa Department of Revenue, Kansas Department of Revenue, City of Kansas City, Missouri, Louisiana Department of Revenue, Maine Revenue Services, Minnesota Department of Revenue, Nebraska Department of Revenue, New York City Department of Finance, North Dakota Office of State Tax Commissioner, South Carolina Department of Revenue, Virginia Department of Taxation, and Washington Department of Revenue. Statistical Sampling for Sales and Use Tax Audits October 8 – 11, 2019, in Portland Maine for 24 participants from Maine Revenue Services, Minnesota Department of Revenue, and Mississippi Department of Revenue. Attorney Training with an emphasis on Ethics November 4 - 5, 2019, in San Antonio for 38 in-person attendees; and 40 people participating virtually.

On March 12, 2020, Commission staff held its first webcast training event, an in-depth look at partnership taxation and audits. Presenters Helen Hecht, Richard Cram, and Cathy Felix discussed federal tax developments, nexus issues, and common audit questions. The training was structured specifically so that attendees could claim CPE/CLE credits for tuning in and participating. Despite some initial technical issues, the training received strong reviews. Based on the need states have expressed for remote instruction and continuing professional education credits, staff presented a series of new webcast training events, some in conjunction with the Litigation and Audit Committees as explained in Section 1. C. of this report. We welcome topic recommendations and volunteer presenters. Amid the COVID-19 pandemic and the restrictions on in-person meetings, events and training staff negotiated to re-book several in-person meetings scheduled for 2020 to mitigate any penalties that would have resulted in cancelling events.

- 2020 Spring Committee Meetings scheduled to occur April 26 – 29, 2020 were held via teleconference. Events staff negotiated to have the physical event rebooked with the Westin in Old Town Alexandria, VA for Spring 2021.



- 2020 Annual Conference and Committee Meetings scheduled to occur in-person in Little Rock, AK will occur via teleconference. Staff was able to rebook the space with the DoubleTree for the 2022 Annual Conference and Committee Meetings.
- 2020 Fall Committee Meetings scheduled to occur in-person in Albuquerque, NM will be conducted via teleconference. The space has been rebooked for an in-person meeting for our Fall 2021 Committee Meetings to occur Nov. 14 – 19, 2021.



## Report of the Uniformity Committee

Tommy Hoyt (Texas), Chair

Maria Sanders (Missouri), Vice Chair

In the fiscal year ending June 30, 2020, the Uniformity Committee held three meetings. The two in-person meetings were held August 6, 2019, in Boise, Idaho and November 6, 2020 in San Antonio, Texas. The Committee Meeting was held virtually on April 22, 2020. Tommy Hoyt, Texas, has served as the chair and Maria Sanders, Missouri has served as vice chair.

Below is a summary of the committee work groups and projects.

### *Finnigan-Combined Filing Work Group*

*Phil Skinner, Idaho; Bruce Fort and Helen Hecht, MTC Staff*

This work group was tasked with creating an alternative combined filing model statute following the “Finnigan” approach. (The commission’s existing model follows the “Joyce” approach). Early in 2020, the work group completed its work and recommended a proposed draft to the Uniformity Committee, which approved that draft and recommended it to the Executive Committee in April. That committee approved the draft for public hearing. A public hearing was held on June 9, 2020 and the hearing officer, Bruce Fort, provided a report.

### *PL 86-272*

*Laurie McEllhatton, California, and Brian Hamer, MTC staff*

This work group was tasked with updating the Commission’s Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272 (the Statement). The work group completed its work and recommended revisions to the Statement to the Uniformity Committee in April, 2020. The Committee approved the draft and recommended it to the Executive Committee in April. That committee approved the draft for public hearing. A public hearing was held on August 5, 2020, with Robert J. Desiderio, esq., presiding.

### *Wayfair and Marketplace Implementation Work Group*

*Tommy Hoyt, Texas and Steven Alvarez, Georgia; Richard Cram, MTC Staff*

This work group focused on the issues that states are seeing in implementing the *Wayfair* decision, and especially on the collection and reporting requirements for marketplaces.



The work group has produced a white paper that is continuously updated, tracking what states are doing in response to various issues. The work group is currently on hold, pending a decision by Uniformity Committee to take up additional matters.

*New Project Selection Work Group*

*Maria Sanders, Missouri; Helen Hecht, MTC Staff*

The Uniformity Committee formed this work group to follow up on recommendations from the strategic planning task force to come up with a more robust process for identifying and vetting possible new projects. The work group voted to recommend the approach to the Uniformity Committee at its July 2020 meeting.



**Report of the Executive Director**  
**Gregory S. Matson, Executive Director**  
**Scott Pattison, Deputy Executive Director**

This report is a summary of the Commission’s organizational and staff activities for the period July 1, 2019, through June 30, 2020 (unless otherwise noted).

**I. Programs & Activities**

**A. Joint Audit Program**

The Joint Audit Program completed one (1) corporate income tax audit and parts of ten (10) other corporate income tax audits during fiscal year 2020. Audit staff also completed seven (7) sales tax audits and parts of eight (8) other sales tax audits. Currently, there are nineteen (19) income tax audits and thirty-one (31) sales tax audits in progress.

The program proposed assessments of \$181,954,548 for completed and partially completed corporate income tax audits and \$1,625,565 for completed and partially completed sales tax audits during fiscal year 2020.

The following chart summarizes hourly data for completed audits during the 2020 fiscal year:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	1	7	8
<b>Total States Audited</b>	21	71	92
<b>Total Hours</b>	3296	9685	12981
<b>Average Hours per State</b>	157	136	141

The Audit Committee met for the first time in fiscal year 2020 on August 5, 2019, in Boise, ID. During this meeting, the committee discussed the progress of current audits. The committee also reviewed the companies recommended for sales tax audits and voted to add ten of those companies to the sales tax audit inventory. MTC legal staff provided an update on recent state and local tax cases and the meeting ended with a round table discussion.



The Audit Committee met again on November 5, 2019, in San Antonio, Texas. During this meeting, members voted to allow taxpayer-provided audit narratives to be included, along with Commission staff narratives, in the confidential audit packet provided to Audit Committee members for discussion beginning at the July 2020 committee meeting. The committee also discussed the progress of current audits and heard a legal update from the MTC legal staff.

The final meeting of Audit Committee was held via teleconference on April 28, 2019. During this meeting, the committee discussed the progress of current audits, and participated in a round table discussion in which member representatives compared new policies, procedures and software changes their agencies implemented to manage challenges presented by the COVID-19 pandemic. Due to challenges of providing a virtual meeting, the legal developments update customarily provided by the MTC legal staff was postponed. This training was later provided on June 12, 2020.

The Joint Audit Program's Chicago office officially closed this July 2020. Audit staff have been transitioning to a work from home model over the last several years. This transition has allowed the program to recruit more experienced and talented audit staff and save money on rent and utilities. MTC staff person Chris Lane traveled to Chicago and ensured all documents and equipment was properly disposed of and/or moved to the Washington, DC MTC office.

A note about the State Intercompany Transactions Advisory Service Committee (SITAS): The State Intercompany Transactions Advisory Committee was established to encourage discussions among Committee member states and other states pursuant to other information exchange agreements and authorizations. Progression of the Committee was stymied by the COVID-19 pandemic and the exit of Joe Garrett from state service. Further activities of the Committee and next steps for the Committee to consider continue to be discussed. The Joint Audit Program director will be staffing this committee in the future.

## **B. National Nexus Program**

### Multistate Voluntary Disclosure Program

The results for fiscal year 2020 are provided below:

- Nexus states' collections:                   \$21,551,287 (\$14,695,429 in FY 2019)





- Non-Nexus state collections:                   \$0                   (\$48,892 in FY 2019)
- Nexus states’ executed contracts:           544                   (379 in FY 2019)
- Nexus states’ average contract value:   \$39,616           (\$38,774 FY 2019)

The above amounts include funds received by the Commission or paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the ongoing value of a new taxpayer are not included. Applications continue to increase in the post-*Wayfair* era. The Commission received applications from 208 taxpayers in calendar year 2019. For calendar year 2020 to date, 150 taxpayers have already applied. Most of the applications are based on sales/use tax economic nexus.

### Membership

There are currently thirty-eight participating states (including the District of Columbia) in the program. Commission staff continues to reach out to non-member states.

### Outreach

Richard Cram published an article entitled “*National Geographic*—Still Relevant After *Wayfair*?” in the January 27, 2020 issue of State Tax Notes.

Richard published a second article, this one in the March 2, 2020 issue of State Tax Notes, entitled “No More *Dilworth* Formalism After *Wayfair*.”

Staff continues to urge states to put a link to the program on their voluntary disclosure web pages.

### Nexus Schools

Please let a member of the Commission staff know if your state would like to host a Nexus School.

### Amnesties

The program posts on its web page a list of upcoming and current state tax amnesties. Please inform program staff if you would like the Commission to post your state’s amnesty.



## Staffing

The program presently has four permanent full-time staff members: Richard Cram, director, Diane Simon-Queen, voluntary disclosure program manager, Michelle Lewis, paralegal, and James Lee, program specialist.

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2019, through June 30, 2020 (unless otherwise noted).

### **C. Legal Division**

As of June 1, 2020, the legal division consists of seven attorneys, with Nancy Prosser joining the Commission as general counsel and Helen Hecht moving into her new role as uniformity counsel. Lila Disque continues as deputy general counsel, Bruce Fort continues as senior counsel, and Brian Hamer and Chris Barber continue as counsel. In addition, Tom Shimkin, legislative counsel, is now integrated within the legal division after previously reporting to the deputy executive director.

The legal division staffs the Uniformity Committee and its various work groups (including research, drafting, presentations, and reports); staffs the Litigation Committee; provides attorney and other training; offers litigation support and legal advice to states; provides legal support to the Commission and its programs and projects (including the Joint Audit and National Nexus Programs and general administrative functions); files amicus briefs on behalf of the Commission; monitors and reports on state and federal legislation; and serves as a resource on legislative matters on behalf of the Commission. Members of the legal division publish articles in tax journals and regularly speak at conferences and seminars and (as detailed elsewhere in this report). In addition, the general counsel organizes the annual Paull Mines Award, which the Litigation Committee established to recognize contributions to state tax jurisprudence by public-sector attorneys.

## Uniformity Work

This fiscal year, the legal division staffed the following uniformity projects:

- Partnership Informational Project
- Model *Finnigan* Combined Filing Approach
- Wayfair Implementation and Marketplace Facilitator Work Group\*
- Updated P.L. 86-272 Statement of Information
- New Project Selection Project



\*The primary staff for this project was Richard Cram, director of the Commission's National Nexus Program.

As of the end of the year, the Model *Finnigan* Combined Filing work group and the P.L. 86-272 work group completed their work and the Uniformity Committee approved the draft proposals of both work groups. In April 2020, the Executive Committee asked that staff conduct public hearings of both models. Bruce Fort, Senior Counsel, acted as the hearing officer for the proposed Model *Finnigan* Combined Filing statute on June 9, 2020. The public hearing for the updated P.L. 86-272 Statement is scheduled for August 5, 2020.

### Litigation Committee Support and Attorney Training

The legal division staffed and helped provide presentations at the Litigation Committee meeting in Boise, Idaho, on August 6, 2019. The committee hosted Jasper Cummings for a discussion entitled [\*What is the Anti-Deference Movement Really About?\*](#), followed by a question and answer session. The legal division also developed and helped present a series of training presentations, including a skills presentation on writing a compelling brief and a discussion about the challenges of being a female attorney practicing tax law. For the November 4-5, 2019 meeting in San Antonio, Texas, legal staff presented an attorney training with an emphasis on ethics. The presentations were webcast, with lawyers from numerous states participating.

The Litigation Committee did not meet during the online Commission meetings in April 2020 due to the COVID-19 pandemic. However, the Committee sponsored and the legal staff planned two online trainings that were structured whenever possible to qualify for CLE and CPE credits and that featured staff from various departments of revenue and the practitioner community:

- Sourcing Receipts for Business Tax Purposes: Current Challenges (April 13, 2020) (160 registrants; 128 attendees)
- Recent Developments in State Sales and Use Taxation of Digital Services & Software (April 15, 2020) (172 registrants; 140 attendees)

### Other Legal Training

The legal division plans and participates in two main types of Commission-sponsored training—structured courses on topics related to multistate taxation and facilitated roundtable discussions for particular states. The structured courses may cover



both legal and audit topics and the facilitated roundtable discussions are customized for states based on the cases or issues they would like to discuss.

The legal division often works in conjunction with Commission audit staff to develop and present training. In May 2020, MTC legal and audit staff presented a three-session course titled “Basics of Transfer Pricing Practice and Theory for State Tax Lawyers and Auditors.” The registration and attendee statistics for each date were as follows:

- May 12 – 336 registrants / 292 attendees
- May 19 – 317 registrants / 274 attendees
- May 28 – 262 registrants / 217 attendees

On June 12, 2020, members of the legal division provided a “Joint Audit Committee SALT Update” for 54 representatives of states that participate in the joint audit program, which focused on recent court cases that are relevant to state tax audits.

The legal division also developed and presented the following online programs that featured MTC staff, state department of revenue staff, and members of the practitioner community, which were well-received and each attended by hundreds of participants:

- The Future of Business Taxation by the States (June 2, 2020)  
(443 registrants / 357 attendees)
- Three States’ Experiences with “Top Ten” Wayfair Implementation Issues (June 18, 2020) (346 registrants / 252 attendees)
- Perspectives of Private Sector State Tax Practitioners (June 24, 2020)  
(228 registrants / 174 attendees).

In August 2019, the legal division conducted a two-day facilitated corporate income tax training in South Carolina for 36 attendees. It was also heavily involved in planning and presenting an in-person general corporate income tax training course September 24-27, 2019 in Itasca, Illinois for 56 attendees. It was not state-specific, but offered a comprehensive look at corporate taxation for auditors and lawyers, along with breakouts tailored to attendees’ experience level. The training was well-received, and Commission staff plans to provide a second comprehensive training before the end of 2020 with amendments to the content based on feedback received from the inaugural course and in an online format due to the COVID-19 pandemic.



## Litigation Support and Legal Advice

The legal division regularly consults with state attorneys by request on litigation matters – including strategy, issues, arguments, and moot courts – and on legislative and policy issues. The legal division has provided substantial legal consultation during this fiscal year to the states of South Carolina, Colorado, Pennsylvania, Washington, Kansas, New Jersey, Vermont, Arkansas, and Illinois. Topics included alternative apportionment, banking apportionment, audit issues, income taxation, market-based sourcing, business income, best practices for adopting combined filing, and applying exemptions when imposing tax on marketplaces. With respect to implementation of *Wayfair*, the legal division has been assisted by National Nexus Program Director Richard Cram.

The legal division also works with a group of state tax attorneys and with the National Association of Attorneys General to make sure that state attorneys general are aware of state cases in which the states may want to file joint amicus briefs.

## Legal Support for the Commission’s Programs and Projects

The legal division supports the Commission’s Joint Audit and National Nexus Programs and other Commission programs and projects as requested. For example, the legal division has recently been consulting with the Joint Audit Program on waivers and the issuance and enforcement of administrative subpoenas. The legal division also provides support for the Commission’s general administration by addressing open meetings issues, maintaining confidentiality policies, handling records requests, researching and making recommendations for record retention policies, resolving lease disputes, reviewing contracts, and filing corporate registrations and reports.

## Amicus Briefs Filed on Behalf of the Commission

The legal division filed briefs in *Steiner v. Utah State Tax Commission*, Utah Supreme Court Case No. 20180223-SC. The case was decided in the state’s favor.

## Publications

Helen Hecht authored an article entitled “Fifty Years of MTC Uniformity Efforts: The Not-So-Obvious Lessons,” published in the July 2019 issue of the *Journal of Multistate Taxation and Incentives*.

Brian Hamer authored “Is this the Revenue Solution to Chicago’s Fiscal Challenges?” in the August 5, 2019 issue of *State Tax Notes* and “The Surprise Road



to Combined Reporting in Illinois” in the Special Fall 2019 Supplement to State Tax Notes published in connection with the 26<sup>th</sup> Annual Paul J. Hartman State and Local Tax Forum.

### Legislative Activities and Resources

The MTC legislative counsel:

- Monitors and analyzes federal legislation that affects states and sends alerts and analyses to member states as needed;
- Coordinates Commission responses to federal legislation which includes the preparation, in coordination with other Commission staff, of materials on preemption and leverages the greater lobbying power of other state organizations by being a subject-matter resource;



- Educates congressional members and staff about the negative effects of preemption generally and with respect to specific bills;
- Answers questions from member states about federal bills and trends in state legislation;
- Monitors state legislation and consults with states when requested;
- Increases the visibility and reputation of the Commission through relationships with legislators and their staff, taxpayer organizations, other multistate,

governmental organizations, the public, and other stakeholders in federal and state legislation that preempts or substantially affects state taxation;

- Maintains a list of federal and state bills with summary and status information at <http://www.mtc.gov/Resources/Legislation>; and
- Answers questions about the Commission’s *Uniform Sales & Use Tax Exemption/Resale Certificate — Multijurisdiction*. We received an average of two contacts per day and explanations about the certificate are usually lengthy. Many of these contacts are from small remote sellers who are dealing with compliance issues they face in a post-*Wayfair* world.

Throughout fiscal year 2020 the legislative counsel has continued to increase the visibility of the Commission and promote the MTC as the “gold standard” for tax policy development. Counsel focuses on state and federal legislators and their staffs; the



Congressional Budget Office; and multistate organizations such as the National Governor’s Association, the Federation of Tax Administrators; the Streamlined Sales Tax Governing Board; and the National Conference of State Legislatures (NCSL) Executive Committee Task Force on State and Local Taxation. Awareness of the Commission among state legislators who serve on tax committees has historically been low; counsel is working with the NCSL to develop awareness and relationships among these legislators.

Legislative counsel is monitoring the following federal issues, among others —

#### Response to *Wayfair*

The federal response to *Wayfair* has been muted. Members from non-sales-tax states have introduced 11 anti-*Wayfair* bills this congressional session. Chairman Jerry Nadler (D-N.Y. 10<sup>th</sup>) of the House Committee on the Judiciary, which has jurisdiction over state tax bills, has demonstrated understanding of the dangers of state tax preemption. He is unlikely to allow the committee to consider preemption bills. No such bill has gained much support. One non-sales-tax state has mobilized state resources to discourage enforcement of other states’ use-tax laws within its borders.

A subcommittee of the House Committee on Small Business held a hearing on March 3, 2020, to hear three representatives of small remote sellers and one from the American Institute of Certified Public Accountants (AICPA). The witnesses asked Congress to reduce the burden on “Main Street” [remote] businesses of having to comply with multiple state sales tax regimes, especially the multiplicity of local sales tax regimes. This hearing and other advocacy is unlikely to lead to any congressional action in this author’s view because: 1) House Small Business does not have jurisdiction over state tax preemption; 2) Chairman Nadler of the House Committee on the Judiciary, which does have jurisdiction, is disinclined to preempt state taxation; 3) the Senate Committee on Finance, which does have jurisdiction, has no known plans to hold a similar hearing; 4) most physical presence retailers and their associations still want to prevent remote sellers from having a price advantage; and 5) not having witnesses with other views suggests that it was an opportunity for the small, remote seller community to be heard more than an exploration of the remote collection issue.

Legislative counsel also is monitoring bills that preempt state jurisdiction over remote collection, especially one targeted to small, remote sellers.

Forty-four of 46 states (includes D.C.) with sales taxes have completed their legislative changes to require collection from remote vendors that exceed a de minimis threshold, usually more than \$100,000 sales per year. Some states include “or 200 or



more transactions” per year. Forty-two states out of 46 with sales taxes have passed bills to require marketplace facilitators to collect.

### Digital Goods

Senator John Thune (R-South Dakota) and Senator Ron Wyden (D-Oregon) introduced S. 765 (3 cosponsors currently). Representative Steve Cohen (D-Tennessee 19<sup>th</sup>) and Representative John Ratcliffe (R-Texas 4<sup>th</sup>) introduced companion bill H.R. 1725 (4 cosponsors currently). Both bills were introduced on March 13, 2019. S. 765 has been referred to the Senate Committee on Finance, on which Mr. Thune serves. Senator Wyden is the ranking member. H.R. 1725 has been referred to the House Committee on the Judiciary, on which Mr. Cohen serves.

Both bills prohibit a state from taxing a digital good unless the state also taxes its tangible equivalent. They also require that the incidence of the tax be on the end user. States with digital goods laws already generally comply with these rules. Interestingly, neither bill creates original jurisdiction in federal district courts, a provision that has been included in previous state tax preemption bills.

### Mobile Workforce

Senator John Thune (R-South Dakota) introduced S. 604 (38 cosponsors, roughly bipartisan). It prevents a state from taxing the income of a non-resident worker unless the worker engages in employment duties in the state for more than thirty days in the relevant tax year. However, Senator Chuck Schumer (D-New York) is the minority leader and has influence. He opposes the bill fiercely. New York estimates that the bill would reduce its revenue by \$100 million annually. A state and a city within that state have announced that they choose to tax the income of healthcare providers who sacrificed to help the state and city mitigate its horrific outbreak of COVID-19. It will be politically attractive to slip this act into an omnibus COVID-19 stimulus/relief bill or pass it stand-alone on the theory of justice for the healthcare workers. Thus the MWF that has not been approved in almost two decades of trying has a chance to become law.

Proponents are making this attempt in the form of S. 3995, the Remote and Mobile Workforce Act. This bill has the same provisions as the perennial Mobile Workforce Act, but extends the 30-day tax exemption in a nonresident state to 90 days when the worker earns income in the nonresident state on account of providing medical assistance related to COVID-19. Proponents will try to wiggle this bill into the text of the next relief/stimulus bill, but have a heavy lift due to the opposition of the New York delegation.





## BATSA

Rep. Steve Chabot (R-Ohio-1st) introduced H.R. 3063 (3 cosponsors), the Business Activity Tax Simplification Act, on June 3, 2019. The text is the same as last Congress' iteration except for the effective date. Supporters promote it as an update of P. L. 86-272 designed to reflect the contemporary economy. In reality it would hollow-out state taxation of multistate businesses. H.R. 3063 prohibits almost all state business-activity taxes (including net income, gross receipts, commercial activity, and business and occupation taxes) on entities doing business in a state by expanding protection to include intellectual property and services, allowing nexus-free physical presence in a state of fewer than 15 days (in contrast, the Mobile Workforce Act requires 30 days), exempting digital goods from taxation, and requiring states using combined or consolidated filing to use the *Joyce* apportionment method. A transliteration of the bill may be found on the MTC website in the Legislation portion of the Resources area.

## SALT Deduction

This is a personal income tax issue. Legislators from states whose residents are heavily burdened by the Tax Cuts and Jobs Act's \$10,000 cap on state and local taxes that may be deducted federally have introduced at least eleven bills to either remove the cap or allow their states to employ work-arounds. States also have tried litigation and a number of workarounds. These efforts have largely failed. The latest work-around some states have adopted is one that is available to members of passthrough entities; the IRS has conspicuously not disallowed it.

A summary of other matters of note:

- Congress and the President signed legislation to Extend the Authority for Commitments for the Paycheck Protection Program and Separate Amounts Authorized for Other Loans under Section 7(a) of the Small Business Act and for Other Purposes, [S. 4116](#). The legislation extends the Paycheck Protection Act until August 8, 2020. [07/08/2020 Became Public Law No: 116-147]
- INVEST in America Act, [H.R. 2](#), creates a pilot program for a national, per-mile user fee for automobiles to be used in part for infrastructure measures. However, it is also a Christmas tree of expensive, non-infrastructure provisions that make it DOA in the Senate. [Passed House July 1]
- The Heroes Act, [H.R. 6800](#). Passed House as of July 2, 2020. With few strings attached, gives \$540 billion to states, and \$375 billion to larger localities, tribes, and territories. DOA in Senate in current form; some provisions may make their way into subsequent legislation
- The Paycheck Protection Program Flexibility Act of 2020, [H.R. 7010](#), allows employers greater flexibility in how to use loans under the Paycheck Protection



Program and extends the time for repayment from two to five years. Introduced as [H.R. 6886](#), it passed in the vehicle of [H.R. 7010](#). It is now [Pub. Law 116-142](#).

Resources:

- MTC Legislative Newsletters (Federal and State versions) are emailed to subscribers each Monday and available a day or two later at [MTC Legislative Division](#). Please contact [tshimkin@mtc.gov](mailto:tshimkin@mtc.gov) to subscribe.
- [Bloomberg Tax announced that it has removed its paywall for some news regarding COVID-19.](#)
- The Congressional Research Service (CRS) reports on [tax provisions of various COVID acts:](#)
- The CRS published a report on the [SALT deduction](#) (federal deduction on state and local tax)
- The Joint Committee on Taxation released a corrected copy of its [summary of P.L. 116-136, the CARES Act](#)

## D. Policy Research

Policy Research Director Elliott Dubin retired effective August 31, 2019. The policy research director had supported Commission efforts in addressing federal legislation with implications for state and local taxation and kept track of state adoption of Commission model statutes, regulations, and guidelines. He monitored research on the economic and fiscal impacts on the states resulting from the passage of the Tax Cuts and Jobs Act (TCJA). In addition, he participated in periodic local or online economic forums and seminars as well as in Commission working group teleconferences on *Wayfair* Implementation and Marketplace Facilitator Work Group and Combined Filing Model Working Group.

He and former Policy Research Intern Emma Snyder updated information on current economic conditions and trends in state and local government finance for the Commission's 52<sup>nd</sup> Annual Conference. Other work undertaken by the policy research director included consulting with the American Economics Group on evaluation of data models and data sources for estimating revenue impact of the *Wayfair v. South Dakota* decision, monitoring current economic conditions, and providing comments on Charles McLure's articles for State Tax Notes on aspects of the *Wayfair* decision.

Policy Research Intern Emma Snyder completed her internship in August 2019.



## E. Training

The training staff supported the following activities since July 1, 2019:

### Corporate Income Tax training

September 24 – 27, 2019, in Itasca, Illinois for 53 participants from the Alabama Department of Revenue, Arizona Department of Revenue, District of Columbia Office of Tax and Revenue, Idaho Office of the Attorney General, Idaho State Tax Commission, Iowa Department of Revenue, Kansas Department of Revenue, City of Kansas City, Missouri, Louisiana Department of Revenue, Maine Revenue Services, Minnesota Department of Revenue, Nebraska Department of Revenue, New York City Department of Finance, North Dakota Office of State Tax Commissioner, South Carolina Department of Revenue, Virginia Department of Taxation, and Washington Department of Revenue.

### Statistical Sampling for Sales and Use Tax Audits

October 8 – 11, 2019, in Portland Maine for 24 participants from Maine Revenue Services, Minnesota Department of Revenue, and Mississippi Department of Revenue.

### Attorney Training with an emphasis on Ethics

November 4 - 5, 2019, in San Antonio for 38 in-person attendees; and 40 people participating virtually.

On March 12, 2020, Commission staff held its first webcast training event, an in-depth look at partnership taxation and audits. Presenters Helen Hecht, Richard Cram, and Cathy Felix discussed federal tax developments, nexus issues, and common audit questions. The training was structured specifically so that attendees could claim CPE/CLE credits for tuning in and participating. Despite some initial technical issues, the training received strong reviews. Based on the need states have expressed for remote instruction and continuing professional education credits, staff presented a series of new webcast training events, some in conjunction with the Litigation and Audit Committees as explained in Section 1. C. of this report. We welcome topic recommendations and volunteer presenters.

Amid the COVID-19 pandemic and the restrictions on in-person meetings, events and training staff negotiated to re-book several in-person meetings scheduled for 2020 to mitigate any penalties that would have resulted in cancelling events. While many of the meetings may be conducted via teleconference, the MTC is still obligated to fulfill the terms on existing hotel contracts.



- 2020 Spring Committee Meetings scheduled to occur April 26 – 29, 2020 were held via teleconference. Events staff negotiated to have the physical event rebooked with the Westin in Old Town Alexandria, VA for Spring 2021.
- Space for a Corporate Income Tax training at the National Conference Center in Leesburg, VA had been rebooked for June 2020, and then rebooked again for October 2020. Given that restrictions on travel and public gatherings are still in place, events staff will negotiate with the venue to rebook this training for some time in 2021.
- 2020 Annual Conference and Committee Meetings scheduled to occur in-person in Little Rock, AK will occur via teleconference. Staff was able to rebook the space with the DoubleTree for the 2022 Annual Conference and Committee Meetings.
- 2020 Fall Committee Meetings scheduled to occur in-person in Albuquerque, NM will be conducted via teleconference. The space has been rebooked for an in-person meeting for our Fall 2021 Committee Meetings to occur Nov. 14 – 19, 2021.

## II. Administration

The following MTC staff changes have occurred this fiscal year 2020:

**Marshall Stranburg**, deputy executive director, retired on April 30, 2020. Marshall had held that position since coming on board with the MTC on April 1, 2016.

**Michelle Becker**, administrative assistant for the Joint Audit Program, terminated her employment on May 29, 2020. Michelle’s termination coincided with the closing of MTC’s Des Plaines, Illinois office. Michelle had worked with the Commission since January 2013.

**Scott Pattison** joined the MTC staff on May 18, 2020 as deputy executive director. Previously Scott had served as executive director and CEO of the National Governors Association (NGA), and as executive director of the National Association of State Budget Officers (NASBO). Scott has held various position with the state of Virginia.



On June 1, 2020 **Helen Hecht** moved into the role of uniformity counsel and out of the general counsel position.

On June 1, 2020 **Nancy Prosser** started with the MTC as general counsel. Nancy had served with the Texas Comptroller of the Public Accounts since 2004 and since early 2018 as its general counsel. Prior to that, Nancy was with the law firm Vinson & Elkins LLP in Austin, Texas.

**Elliott Dubin**, director of policy research, retired August 31, 2019. Elliott began his employment with the Commission in March 1999.

On January 13, 2020, **Brian Staley** and on March 16, 2020, **Melissa Kopp** began employment with the Commission as income tax auditors. Both Brian and Melissa were long time employees of the Montana Department of Revenue.

**Parker Allen** was the legal division intern for the summer of 2020. A University of Richmond School of Law student, he received his undergraduate degree from Southern Methodist University in 2018.

Policy Research Intern **Emma Snyder** completed her internship in August 2019.

As was noted in the Joint Audit Program section of this report, the Commission has closed the Chicago audit office, located in Des Plaines, Illinois, the lease for which expires July 31, 2020. This office closure was contingent upon having successfully transitioned to file back-up in the cloud via Azure, which has occurred.

### Technology Addendum

In response to the coronavirus pandemic, beginning in March 2020 most D.C. staff have been working remotely. The network administrator continues to support the remote users to ensure they have authorized access to the resources that they require. During the period that D.C. staff have been working remotely, the use of Microsoft Teams has become a priority. The network administrator has met with nearly all departments to facilitate video and audio conference calls, explain how files are shared through Teams, how to set up Teams calls, and how Team apps, such as Planner, can be used to help Teams organize tasks amongst the department.

The Audit History Database application is in the process of being upgraded. Yoodle, the company that created the application, has been tasked with making changes to the audit history database that will make it more functional for the current Joint Audit Program director. Testing for this application should begin in early August.



The Chicago office has been closed. The network administrator removed all computer and office equipment and transported it back to the D.C. office. The Canon copier in the Chicago office was relocated from Chicago to D.C. The data from the Chicago servers has been migrated to the file server in D.C. The network administrator is working to ensure that access controls on that data are properly configured.

The new version of the Nexus Program's Voluntary Disclosure Application and Online Application continues to move forward. Conversations between Nexus Program Staff and Decathlon Development Corporation are ongoing to fine tune specifics about the application.

The Azure backup solution has been implemented and backups are being replicated to the Azure Gov Cloud. The Barracuda Appliance continues to run backups on two targets in the D.C. office. That data is also being backed up to Azure. The Checkpoint firewalls and firewall manager appliance in the D.C. data center remain in the process of being upgraded. The Firewall Manager appliance was successfully upgraded. The enforcement point appliances were scheduled to be upgraded in the first week of April, but due to the coronavirus pandemic on site work restrictions, that date has been pushed back.

The normal maintenance of server hardware in the D.C. office on a regular basis through on-site visits by the network administrator.

### **III. Outside Presentations & Events**

The executive director serves as a member of the following annual conference advisory boards: Georgetown University Law Center's State and Local Tax Institute, the Hartman State and Local Tax Forum, the New England State and Local Tax Forum, and New York University's State and Local Tax Institute.

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission during the reporting period:

#### JULY

- 2019 SEATA Conference; *Recent and Significant Court Cases (Including Sales and Corporate Taxes)* (Disque, panelist); *Transfer Pricing Impact on State Corporate Income Tax* (Coon, panelist); *Behind Door 4: Tax Administration Behind the Scenes* (Stranburg, panelist); Lake Buena Vista, Florida



- AICPA State and Local Tax Technical Resource Panel (Cram, Hamer, panelists); Washington, D.C.
- Washington State Tax Conference; *Great Debate* (Hecht, panelist); Pullman, Washington
- NYU Summer Institute in Taxation: State & Local Taxation; *A View From the State Tax Administrators* (Stranburg, panelist); *State Tax Implications of Federal Tax Reform: Interest Limitations and Opportunity Zones* (Stranburg, panelist); New York, New York
- Webcast presentation for The Knowledge Group; *Ensuring Compliance with Tax Laws and Minimizing Audit Risks with Sales Tax Automation* (Cram, panelist)

## AUGUST

- 2019 Texas State Taxation Conference; Houston, Texas (Mond)
- NCSL 2019 Legislative Summit and Executive Committee Task Force on State and Local Taxation meeting; Nashville, Tennessee (Shimkin)
- 2019 FTA Technology Conference and Exhibition; Detroit, Michigan (Lane, Worthington)
- 2019 MSATA Conference; *Murphy v. NCAA* (Matson, panelist); *Income Repatriation: GILTI/FDII* (Hecht, panelist); Cleveland, Ohio
- Council on State Taxation Mid-Atlantic Regional State Tax Seminar; (Matson, panelist); McLean, Virginia

## SEPTEMBER

- New Mexico Legislature Revenue Stabilization and Tax Policy Committee, *Post Wayfair Gross Receipts Tax/Compensating Use Tax Administration Issues* (Hecht, Cram presenters)
- 2019 NESTOA Conference; *Murphy v. New Jersey* (Matson, panelist); *Reviewing Wayfair and Resulting State Law and Policy Changes* (Cram, panelist); *Marketplace Facilitators* (Cram, panelist); *Court Case Round-up – Important Cases Affecting State and Local Tax Administration* (Hecht, panelist); Providence, Rhode Island.

## OCTOBER

- Streamlined Sales Tax Governing Board Meeting; Charleston, West Virginia (Cram)
- 2019 ABA Fall tax Meeting; *State Corporate Income Tax Impacts of GILTI: Challenges and Opportunities* (Fort, panelist); San Francisco, California
- 2019 WASATA Conference; *Remote Sellers Administration* (Hecht, panelist); *Murphy v. NCAA* (Matson, panelist); Eugene, Oregon



- 26<sup>th</sup> Annual Paul J. Hartman State and Local Tax Forum; *Top Ten Income Tax Cases* (Fort, panelist); *Wayfair and the Future of State Income Tax Nexus* (Cram, panelist); *Combined Reporting Trends and Possible Future Developments* (Hamer, panelist); Nashville, Tennessee

## NOVEMBER

- New England State and Local Tax Forum; *States' Reaction to the Federal Partnership Audit Regime and Other Uniformity Efforts* (Hecht, panelist); Newton, Massachusetts
- Bloomberg Tax Leadership Forum; *Aftershocks of Wayfair* (Cram, panelist); Washington, D.C.
- NCSL Executive Committee Task Force on State and Local Taxation meeting; Charleston, South Carolina (Shimkin)
- Maryland State Bar Association and Maryland Association of Certified Public Accountants 2019 Advanced Tax Institute; *State and Local Tax Developments – A National Perspective* (Disque, panelist); Baltimore, Maryland
- FTA Midwinter Commissioner Meeting; *Litigation Update* (Hecht); Washington, D.C.

## DECEMBER

- NYU 38<sup>th</sup> Institute on State and Local Taxation; *Does Wayfair Affect P.L. 82-272?* (Hamer, panelist); *What's Happening Everywhere Today?* (Matson, panelist); New York, New York
- Tax Executives Institute - New York Chapter, 56<sup>th</sup> Annual Tax Symposium; New York, New York (Silver and Shinder)
- New Mexico CPA Society Tax Seminar, *State Tax Developments* (Hecht, panelist); Albuquerque, New Mexico

## JANUARY

- American Bar Association 2020 Midyear Tax Meeting; *Through the Mists of State Tax Administration* (Hamer panelist); Boca Raton, Florida
- Testimony before the Vermont Legislative Tax Policy Committee on market-based sourcing (Fort, via telephone)
- Testimony before the Pennsylvania Senate Democratic Policy Committee on combined filing (Fort); Harrisburg, Pennsylvania

## FEBRUARY

- 2020 FTA Compliance and Education Workshop; *Finding "Hidden" Remote Sellers and Encouraging Them to Register* (Cram, panelist); *Handling Partnership*





- Return Audits in Light of Federal Tax Law Changes* (Hecht); *Digital Products and Services: What States Tax Them and How* (Cram, panelist); San Diego, California (Coon)
- Ernst & Young Quarterly Tax Webcast; *MTC P.L. 86-272 Project Update Discussion* (Hamer panelist); Washington, D.C.
  - Louisiana Bar Association, Tax Section Annual Conference; *Partnership Audits – Making the Complex “Simple”* (Hecht); New Orleans, Louisiana
  - Testimony before the Vermont Legislative Tax Policy Committee on combined filing exception for 80/20 companies, insurance companies, and *Finnigan* method combined reporting (Fort, via telephone)

### MARCH

- NYU SALT Luncheon Group; *MTC Update* (Stranburg); New York, New York
- Webinar presentation for Steptoe & Johnson LLP; *State and Local Taxation: Headline News and Trends* (Cram, panelist).
- Federal Bar Association Tax Law Conference; *Federal Limitations on State Taxation: Charitable Contributions, P. l. 86-272, and Others* (Hamer panelist); Washington, D.C.

### MAY

- *Institute for Professionals in Taxation webinar*, The Application of Public Law 86-272 to a Digital Economy (Hamer presenter)
- NCSL SALT Task Force webinar, *Impact of CARES Act on State Tax Systems* (Cram co-panelist)
- Basics of Transfer Pricing Practice and Theory for State Tax Lawyers and Auditors: Part I- May 12, 2020, Part II- May 19, 2020 and Part III- May 28, 2020

### JUNE

- AICPA SALT Technical Resource Panel (virtual) Spring Meeting; *Update from other State Organizations* (Cram, Hecht, and Prosser representing the MTC)
- Philadelphia Bar Association webinar; *The Future of Public Law 86-272* (Hamer panelist)
- Three States’ Experiences with Top Ten *Wayfair* Implementation Issues, June 18, 2020
- Tax Notes Talk podcase on post-Wayfair tax update (Cram interview by reporter Jennifer McLoughlin)



- The Knowledge Group webinar, *State Sales Tax: Trends and updates since South Dakota v. Wayfair* (Cram co-panelist)
- Uniform Law Commission Online Sales Tax Collection Study Committee teleconference (Cram, observer)
- American Bar Association, State and Local Tax Group Virtual Meeting: *The Scope of P.L. 86-272 in this Post-Wayfair, High-Tech Era* (Hecht, panelist).



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**MULTISTATE TAX COMMISSION**

**Financial Statements,  
Supplementary Information and  
Independent Auditor's Report**

**For the Years Ended  
June 30, 2020 and 2019**

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**LSWG**

**CERTIFIED PUBLIC ACCOUNTANTS  
& BUSINESS ADVISORS**

**MULTISTATE TAX COMMISSION**  
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**For the Years Ended June 30, 2020 and 2019**

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## **Independent Auditor's Report**

To the Executive Committee of  
Multistate Tax Commission

We have audited the accompanying financial statements of Multistate Tax Commission, which comprise the balance sheets as of June 30, 2020 and 2019, and the related statements of revenue and expenses and changes in fund balance; unappropriated funds, changes in fund balance; appropriated funds, changes in fund balance; restricted funds, and cash flows for the years then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Multistate Tax Commission as of June 30, 2020 and 2019, and the changes in its fund balances and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Linton Shafer Warfield & Garrett, P.A.*

Rockville, Maryland  
October 27, 2020

**MULTISTATE TAX COMMISSION**

**MULTISTATE TAX COMMISSION**

**Balance Sheets**

**June 30,**

**ASSETS**

	<u>2020</u>	<u>2019</u>
<b>Current Assets</b>		
Cash and cash equivalents	\$ 590,154	\$ 1,396,280
Accounts receivable	1,550	24,695
Prepaid expenses	173,013	144,456
Total Current Assets	<u>764,717</u>	<u>1,565,431</u>
<b>Property and Equipment - at Cost</b>		
Office furniture and equipment	601,929	593,813
Leasehold improvements	429,396	429,396
Less: accumulated depreciation and amortization	<u>(654,287)</u>	<u>(631,248)</u>
Property and Equipment - Net	<u>377,038</u>	<u>391,961</u>
<b>Other Assets</b>		
Investments	6,138,083	4,785,643
Expense account advances	5,600	5,600
Deposits	2,200	2,200
Total Other Assets	<u>6,145,883</u>	<u>4,793,443</u>
<b>TOTAL ASSETS</b>	<u>\$ 7,287,638</u>	<u>\$ 6,750,835</u>

Continued



**MULTISTATE TAX COMMISSION**

**Balance Sheets**

**June 30,**

**LIABILITIES**

	<u>2020</u>	<u>2019</u>
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 161,887	\$ 67,665
Accrued salaries and vacation pay	493,793	446,325
Unearned membership, program and registration fees	185,602	232,183
Deferred lease liability - current portion	<u>23,238</u>	<u>23,238</u>
Total Current Liabilities	<u>864,520</u>	<u>769,411</u>
<b>Long-Term Liabilities</b>		
Deferred lease liability - net of current portion	<u>127,807</u>	<u>151,044</u>
Total Long-Term Liabilities	<u>127,807</u>	<u>151,044</u>
<b>TOTAL LIABILITIES</b>	<u>992,327</u>	<u>920,455</u>
<b>Fund Balances</b>		
Unappropriated	4,331,653	3,854,717
Appropriated	675,921	669,921
Restricted	<u>1,287,737</u>	<u>1,305,742</u>
Total Fund Balances	<u>6,295,311</u>	<u>5,830,380</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<u>\$ 7,287,638</u>	<u>\$ 6,750,835</u>

The accompanying notes are an integral part of these statements.

**MULTISTATE TAX COMMISSION**  
**Statements of Revenue and Expenses**  
**and Changes in Fund Balance**  
**Unappropriated Funds**  
**For the Years Ended June 30,**

	<u>2020</u>	<u>2019</u>
<b>Revenue - Unappropriated and Appropriated</b>		
Membership assessments and program fees	\$ 6,544,101	\$ 6,376,665
Interest and dividends	130,561	162,194
Realized loss on sale of investments	-	(808)
Unrealized gain on investments	74,286	49,810
Other income (loss)		
Training fees	126,010	152,455
Conference fees	26,355	35,290
Gain (loss) on sale of equipment	(1,418)	804
Miscellaneous	-	16
Total Revenue	<u>6,899,895</u>	<u>6,776,426</u>
<b>Expenses - Unappropriated and Appropriated</b>		
Advertising	250	-
Auditing and payroll services	19,077	17,660
Business insurance	17,453	17,254
Conferences and training schools	116,236	210,880
Depreciation	98,750	97,058
Bond amortization	-	2,808
Employee benefits	890,056	877,501
Payroll taxes	143,552	113,207
Miscellaneous	14,581	12,695
Consumable and durable supplies	48,864	50,417
Postage	9,488	6,729
Printing and duplicating	1,019	9,483
Professional services	97,826	92,842
Internet access	55,599	48,850
Rent	358,767	309,440
Repairs and maintenance	15,566	18,291
Defined contribution plans	406,068	423,522
Salaries	3,869,166	3,850,242
Software licenses	64,084	27,503
Staff training	9,174	25,914
Subscriptions, publications, dues	104,903	82,198
Telephone	46,103	42,850
Travel	180,028	360,216
Allocation of administrative expenses	(149,651)	(128,366)
Total Expenses	<u>\$ 6,416,959</u>	<u>\$ 6,569,194</u>

(continued)

**MULTISTATE TAX COMMISSION**  
**Statements of Revenue and Expenses**  
**and Changes in Fund Balance**  
**Unappropriated Funds**  
**For the Years Ended June 30,**

	<u>2020</u>	<u>2019</u>
<b>Excess of Revenue Over Expenses</b>	\$ 482,936	\$ 207,232
Transfer (to) from Appropriated Fund Balance	<u>(6,000)</u>	<u>(15,000)</u>
Total Amount Transferred	<u>(6,000)</u>	<u>(15,000)</u>
 <b>FUND BALANCE - Unappropriated - Beginning of Year</b>	 <u>3,854,717</u>	 <u>3,662,485</u>
 <b>FUND BALANCE - Unappropriated - End of Year</b>	 <u>\$ 4,331,653</u>	 <u>\$ 3,854,717</u>

The accompanying notes are an integral part of these financial statements.

**MULTISTATE TAX COMMISSION**  
**Statements of Changes in Fund Balance**  
**Appropriated Funds**  
**For the Years Ended**  
**June 30, 2020 and 2019**

	<b>Equipment Reserve</b>	<b>Enterprise Automation Project</b>	<b>Total</b>
Fund Balance - June 30, 2018	\$ 99,206	\$ 555,715	\$ 654,921
Transfer from Unappropriated Fund Balance	15,000	-	15,000
Transfer to Unappropriated Fund Balance	<u>-</u>	<u>-</u>	<u>-</u>
Net Amount Transferred (To) From Unappropriated Fund Balance	<u>15,000</u>	<u>-</u>	<u>15,000</u>
Fund Balance - June 30, 2019	<u>114,206</u>	<u>555,715</u>	<u>669,921</u>
Transfer from Unappropriated Fund Balance	6,000	-	6,000
Transfer to Unappropriated Fund Balance	<u>-</u>	<u>-</u>	<u>-</u>
Net Amount Transferred (To) From Unappropriated Fund Balance	<u>6,000</u>	<u>-</u>	<u>6,000</u>
Fund Balance - June 30, 2020	<u>\$ 120,206</u>	<u>\$ 555,715</u>	<u>\$ 675,921</u>

The accompanying notes are an integral part of these statements.

**MULTISTATE TAX COMMISSION**  
**Statements of Changes in Fund Balance**  
**Restricted Funds**  
**For the Years Ended**  
**June 30, 2020 and 2019**

	<b>National Nexus Program</b>	<b>Total</b>
Fund Balance - June 30, 2018	\$ 1,322,614	\$ 1,322,614
Revenue	807,030	807,030
Expenses	<u>823,902</u>	<u>823,902</u>
Revenue Over (Under) Expenses	<u>(16,872)</u>	<u>(16,872)</u>
Fund Balance - June 30, 2019	1,305,742	1,305,742
Revenue	810,417	810,417
Expenses	<u>828,422</u>	<u>828,422</u>
Revenue Over (Under) Expenses	<u>(18,005)</u>	<u>(18,005)</u>
Fund Balance - June 30, 2020	<u>\$ 1,287,737</u>	<u>\$ 1,287,737</u>

The accompanying notes are an integral part of these statements.

**MULTISTATE TAX COMMISSION**  
**Statements of Cash Flows**  
**For the Years Ended June 30,**

	<u>2020</u>	<u>2019</u>
<b>Increase (Decrease) in Cash and Cash Equivalents</b>		
<b>Cash Flows From Operating Activities</b>		
Excess of revenue over expenses	\$ 464,931	\$ 190,360
Adjustments to reconcile excess of revenue over expenses to net cash provided by operating activities		
Depreciation	98,750	97,857
Bond amortization	-	2,808
Unrealized (gain) on investments	(74,286)	(49,810)
Realized loss on sale of investments	-	808
(Gain) loss on sale of equipment	1,418	(804)
Changes in assets and liabilities		
Accounts receivable	23,145	(23,250)
Prepaid expenses	(28,557)	74,303
Expense account advances and deposits	-	400
Accounts payable and accrued expenses	94,222	30,774
Accrued salaries and vacation pay	47,468	(1,061)
Deferred lease liability	(23,237)	174,282
Unearned membership, program and registration fees	(46,581)	26,478
Net Cash Provided by Operating Activities	<u>557,273</u>	<u>523,145</u>
<b>Cash Flows From Investing Activities</b>		
Purchase of property and equipment	(85,245)	(256,426)
Proceeds from sale of equipment	-	3,580
Purchase of investments	(1,288,154)	(115,706)
Proceeds from sale of investments	10,000	232,375
Net Cash (Used in) Investing Activities	<u>(1,363,399)</u>	<u>(136,177)</u>
Net Increase (Decrease) in Cash and Cash Equivalents	(806,126)	386,968
Cash and Cash Equivalents - Beginning of Year	<u>1,396,280</u>	<u>1,009,312</u>
Cash and Cash Equivalents - End of Year	<u>\$ 590,154</u>	<u>\$ 1,396,280</u>
<b>Supplemental Disclosures</b>		
Income taxes paid	<u>\$ -</u>	<u>\$ -</u>
Interest paid	<u>\$ -</u>	<u>\$ -</u>

The accompanying notes are an integral part of these financial statements.

**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**1. Summary of Significant Accounting Policies**

The Multistate Tax Commission (the Commission) was organized in 1967. It was established by the Multistate Tax Compact, which became effective August 4, 1967. The Commission is an intergovernmental state tax agency working on behalf of states and taxpayers to administer, equitably and efficiently, tax laws that apply to multistate and multinational enterprises.

**Cash Equivalents**

For purposes of the statement of cash flows, the Commission considers all highly liquid instruments purchased with a maturity of three months or less to be cash equivalents.

**Accounts Receivable**

Accounts receivable are stated at the amount management expects to collect from outstanding balances. The Commission considers accounts receivable to be fully collectible; accordingly, no allowance for doubtful accounts is required. If amounts become uncollectible, they will be charged to operations when that determination is made.

**Property and Equipment**

Property and equipment are defined as assets with an initial, individual cost of more than \$1,000 and an estimated useful life of one year or more. All property and equipment is stated at cost and depreciated using the straight-line basis based upon estimated useful lives as follows: Leasehold Improvements – 5 to 7 years and Office Furniture and Equipment - 5 to 7 years.

Expenditures for maintenance and repairs are charged to the appropriate expense accounts as incurred. Expenditures for renewals or betterments which materially extend the useful lives of assets or increase their productivity are capitalized at cost. The costs and related allowances for depreciation of assets retired or otherwise disposed of are eliminated from the accounts. The resulting gains or losses are included in the determination of excess of revenue over expenses.

**Income Taxes**

In the opinion of legal counsel, the Commission is exempt from Federal income taxes as well as from other Federal taxes as an organization of a group of states or as an instrumentality of those states. Therefore, no provision has been made in the financial statements for Federal income taxes.

**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**1. Summary of Significant Accounting Policies (continued)**

**Revenue Recognition**

Membership assessments and program fees are due from the respective states on July 1st of each year (unless other specific arrangements are made with a State) and cover the following twelve-month period. Membership assessments and program fees received prior to July 1st for the following year are unearned and considered deferred income until recognized as revenue in the following year. Training program and conference fees are recognized as revenue when the event takes place. Training program and conference fees received in advance are unearned and considered deferred until the event takes place.

**Fair Value**

Financial Accounting Standards Board (FASB) Codification Standards defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements and establish a hierarchy for valuation inputs.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value measurement assumes that the transaction to sell the asset or transfer the liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market. Valuation techniques that are consistent with the market, income or cost approach are used to measure fair value.

The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels:

- Level 1 - inputs are based upon unadjusted quoted prices for identical instruments traded in active markets.
- Level 2 - inputs are based upon quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 - inputs are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability. The fair values are therefore determined using model-based techniques that include option pricing models, discounted cash flow models, and similar techniques.



**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**2. Defined Contribution Plans**

Effective June 30, 1986, the Commission adopted the Multistate Tax Commission Defined Contribution Plan to be funded at a rate of 12.4% of each participating individual's annual salary. To participate in this plan, employees are required to work more than certain pre-determined hourly and monthly levels throughout the plan year. Effective January 1, 2018, this Plan was closed to any newly hired employees.

On January 1, 2018, the Commission adopted the Multistate Tax Commission Social Security Participant Defined Contribution Plan, coincident with the Commission's participation in Social Security. To participate in this plan, participants must be hired after January 1, 2018 and work at least 1,000 hours per year. The Plan also includes certain employees from the Commission staff who opted to be covered by Social Security during an election process held in late 2017. The Plan is to be funded at the rate of 6.2% of each participant's individual annual salary.

The total expense relating to the defined contribution plans for the years ended June 30, 2020 and 2019 was \$453,357 and \$469,119, respectively.

**3. Commitments**

The Commission rents its office facilities in Washington, D.C., and Illinois under lease agreements with terms expiring on various dates through December 31, 2026. In March 2018, the Commission amended its Washington D.C. lease to increase the office space and extend the lease to December 31, 2026. In addition, the landlord provided the Commission with \$185,901 of tenant improvement allowance, which is accounted for in leasehold improvements and deferred lease liability on the balance sheet. These leases provide for the following minimum annual base rentals exclusive of utility charges and certain escalation charges:

<u>Fiscal Year Ended:</u>	<u>Minimum Annual Payment</u>
2021	\$ 401,060
2022	398,636
2023	398,636
2024	398,636
2025	398,636

The leases include certain escalation charges based on various factors including utility, operating expense and property tax increases from a base year. Rent expense, exclusive of utility charges and real estate taxes, for the years ended June 30, 2020 and 2019 was \$457,852 and \$428,642, respectively.

**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**4. Appropriated Fund Balances**

The Commission's Executive Committee authorized the Enterprise Automation Project fund in the amount of \$73,000 during the year ended June 30, 1997. An additional \$882,218 has been authorized in subsequent years. The purpose of this fund is to provide support, through professional services, for developing enterprise-wide applications for managing the Commission information resources in a manner that enhances its operations. As of June 30, 2020 and 2019, the Enterprise Automation Project fund balance was \$555,715.

The Commission's Executive Committee authorized the Equipment Reserve fund in the amount of \$17,500 during the year ended June 30, 2009. An additional \$116,000 has been authorized in subsequent years. The purpose of this fund is to provide support for purchases of computer equipment for the Commission's audit program and information technology department. As of June 30, 2020 and 2019, the Equipment Reserve fund balances were \$120,206 and \$114,206, respectively.

**5. Restricted Fund Balances**

During the year ended June 30, 1992, the National Nexus program was established. This program, funded by participating states, aims to encourage and secure taxpayer compliance with current state laws, a liability resolution process, and information sharing among member states. The contributions received from the participating states are restricted for this purpose. As of June 30, 2020 and 2019, the National Nexus program fund balances were \$1,287,737 and \$1,305,742, respectively.

**6. Deferred Compensation Plan**

The Commission offers employees a deferred compensation plan in accordance with Internal Revenue Code Section 457. The plan permits employees to defer a portion of their salary until future years. Participation in the plan is optional. The deferred compensation is not available to employees until termination, retirement, death or unforeseeable emergency. In accordance with federal law, participants' deferred compensation under the plan is trusteed and thus shielded against the claims of the creditors of the Commission and therefore, not included in these financial statements.

The Commission believes it has no liability for losses under the plan but does have a duty of due care that would be required of an ordinary prudent investor. The plan provides approximately fifteen investment options or a combination thereof. The participants make the choice of the investment option(s).

**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**7. Investments**

The following is a summary of investments along with their respective fair values, all of which are considered level one:

	<b>Cost 2020</b>	<b>Market 2020</b>	<b>Cost 2019</b>	<b>Market 2019</b>
<b>Investments</b>				
Mutual funds	\$ 4,056,667	\$ 4,128,792	\$ 2,547,160	\$ 2,544,999
Money market funds	<u>2,009,290</u>	<u>2,009,290</u>	<u>2,240,644</u>	<u>2,240,644</u>
<b>Total Investments</b>	<u>\$ 6,065,957</u>	<u>\$ 6,138,082</u>	<u>\$ 4,787,804</u>	<u>\$ 4,785,643</u>

The Commission invests in an investment portfolio that consists of a mutual fund and a money market fund. Such investments are exposed to various risks such as interest rates, market and credit. Due to the level of risk associated with such investments and the level of uncertainty related to changes in the value of such investments, it is at least reasonably possible that changes in risks in the near term could materially affect investment balances and the amounts reported in the financial statements. For the years ended June 30, 2020 and 2019, the Commission paid investment fees of \$0 and \$305, respectively.

**8. Allocation of Administrative Expenses**

The administrative costs of providing the various programs and other activities have been allocated among the programs and supporting services, based on total operating costs.

**9. Use of Estimates**

In preparing financial statements in conformity with U.S. generally accepted accounting principles, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the reported amounts of revenues and expenses during the reporting period, and disclosures. Actual results could differ from those estimates.

**MULTISTATE TAX COMMISSION**  
**Notes to Financial Statements**  
**June 30, 2020 and 2019**

**10. Concentration of Credit Risk**

Cash held by the Commission in bank accounts may at times exceed the Federal Deposit Insurance Corporation (FDIC) coverage limit. Management believes the Commission is not exposed to any significant credit risk related to cash. The Commission maintains a money market account with an investment company that is not insured by FDIC. The balance of the money market account at June 30, 2020 and 2019 was \$0 and \$1,179,509, respectively.

**11. Subsequent Events**

Management has evaluated subsequent events through October 27, 2020, the date that the financial statements were available to be issued. There were no significant events to report.

**SUPPLEMENTARY INFORMATION**



## **Independent Auditor's Report on Supplementary Information**

To the Executive Committee of  
Multistate Tax Commission

We have audited the financial statements of Multistate Tax Commission as of and for the year ended June 30, 2020, and our report thereon dated October 27, 2020, which expressed an unmodified opinion on those financial statements, appears on pages 1 and 2. Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole.

The schedule of expenses is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*Linton Shafer Warfield & Garrett, P.A.*

Rockville, Maryland  
October 27, 2020

**MULTISTATE TAX COMMISSION**  
**Schedule of Expenses**  
**For the Year Ended June 30, 2020**

	<u>Unappropriated and Appropriated Funds</u>				<b>Total</b> <b>Unappropriated</b> <b>and Appropriated</b> <b>Funds</b>	<u>Restricted Funds</u>		<b>Total</b> <b>All</b> <b>Funds</b>
	<b>General</b> <b>Expenses</b>	<b>Audit</b> <b>Program</b>	<b>Administrative</b> <b>Expenses</b>	<b>Training</b> <b>and</b> <b>Education</b>		<b>National</b> <b>Nexus</b> <b>Program</b>	<b>Total</b> <b>Restricted</b> <b>Funds</b>	
Advertising	\$ -	\$ 250	\$ -	\$ -	\$ 250	\$ -	\$ -	\$ 250
Auditing and payroll services	14,300	-	4,777	-	19,077	-	-	19,077
Business insurance	-	-	17,453	-	17,453	-	-	17,453
Conferences and training schools	64,540	6,407	2,849	42,440	116,236	10,304	10,304	126,540
Depreciation	-	-	98,750	-	98,750	-	-	98,750
Employee benefits	135,375	626,044	117,359	11,278	890,056	65,206	65,206	955,262
Payroll taxes	24,801	97,722	19,310	1,719	143,552	11,336	11,336	154,888
Miscellaneous	1,230	5,078	5,048	3,225	14,581	-	-	14,581
Consumable and durable supplies	2,714	8,631	35,703	1,816	48,864	513	513	49,377
Postage	2,162	2,938	3,908	480	9,488	6,958	6,958	16,446
Printing and duplicating	49	-	-	970	1,019	-	-	1,019
Professional services	-	-	97,826	-	97,826	-	-	97,826
Internet access	5,904	30,756	18,411	528	55,599	-	-	55,599
Rent	123,857	58,241	176,669	-	358,767	99,085	99,085	457,852
Repairs and maintenance	-	1,413	14,153	-	15,566	976	976	16,542
Defined contribution plans	75,807	265,820	59,132	5,309	406,068	47,289	47,289	453,357
Salaries	704,854	2,589,810	523,757	50,745	3,869,166	420,219	420,219	4,289,385
Software licenses	297	878	62,909	-	64,084	-	-	64,084
Staff training	4,413	3,966	795	-	9,174	1,363	1,363	10,537
Subscriptions, publications, dues	85,604	17,679	547	1,073	104,903	4,970	4,970	109,873
Telephone	15,954	21,383	8,766	-	46,103	4,616	4,616	50,719
Travel	60,242	80,877	14,752	24,157	180,028	5,936	5,936	185,964
Allocation of administrative expenses	291,486	841,737	(1,282,874)	-	(149,651)	149,651	149,651	-
<b>Total Expenses</b>	<b>\$ 1,613,589</b>	<b>\$ 4,659,630</b>	<b>\$ -</b>	<b>\$ 143,740</b>	<b>\$ 6,416,959</b>	<b>\$ 828,422</b>	<b>\$ 828,422</b>	<b>\$ 7,245,381</b>

The accompanying notes are an integral part of this schedule.

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