



**Minutes of the Multistate Tax Commission Executive Committee Meeting
July 31, 2014
Albuquerque, New Mexico**

I. Welcome and Introductions

The Chair called the meeting to order at 8:32 a.m. The following persons attended the meeting either in person or *via telephone*.

Name	Affiliation	Name	Affiliation
Julie Magee, Chair	Alabama	Tommy Hoyt	Texas
Robynn Wilson	Alaska	Nancy Prosser	Texas
Deanna Munds-Smith	Arkansas	Bruce Johnson	Utah
Tom Atchley	Arkansas	Gil Brewer	Washington
Stephen Cordi	District of Columbia	Chris Coffman	Washington
Peter Donnelly	Georgia	Tim Jennrich	Washington
Richard Jackson	Idaho		
Steve Wynn	Idaho	Public Attendees	
Richard Cram	Kansas	Karen Boucher	Deloitte Tax LLP
J. A. Cline	Louisiana	<i>Terry Frederick</i>	Sprint
<i>Michael Fatale</i>	Massachusetts	Michael Paxton	Deloitte Tax LLP
Wood Miller	Missouri	Greg Turner	COST
John Mollenkamp	Missouri	Todd Lard	Sutherland
Lee Baerlocher	Montana	Amy Hamilton	State Tax Notes
Gene Walborn	Montana		
Demesia Padilla	New Mexico		
Lennie Collins	North Carolina	MTC Staff and Consultants	
Matt Peyeryl	North Dakota	Ken Beier	<i>Len Lucchi</i> , Patuxent
Myles Vosberg	North Dakota	Elliott Dubin	Greg Matson
<i>Donnita Wald</i>	North Dakota	Keith Getschel	Jim Rosapepe, Patuxent
Christi Daniken	Oregon	Helen Hecht	Thomas Shimkin
Gary Humphrey	Oregon	Joe Huddleston	William Six
Don Jones	Oregon	Sheldon Laskin	

II. Public Comment Period

There were no public comments during this portion of the meeting.

III. Approval of the Minutes of the Executive Committee Meeting on May 8, 2014

Mr. Jackson moved that the Minutes of the Executive Committee meeting of May 8, 2014, be approved. The minutes were approved unanimously.

IV. Report of the Chair

The Chair did not make any comments during this portion of the meeting.

V. Report of the Treasurer

Mr. Jackson referred to the financial statements for the year ended June 30, 2014, in the meeting materials, and commended the staff for the excellent and transparent job of reporting MTC finances. He also moved approval of the report which was passed by a unanimous vote.

VI. Report of the Executive Director

Mr. Huddleston asked Mr. Rosapepe and Mr. Lucchi to provide an update on federal issues. Mr. Rosapepe explained that since Congress will soon be going into recess, it is extremely unlikely that anything directly related to state and local taxes will pass prior to the general election. He added that the strong possibility of republicans gaining control of the Senate reinforces the unlikely passage of any state tax-related legislation. He added that while the Internet Tax Freedom Act (ITFA) extension may receive consideration, that other proposals—on auto rentals, hotels, and 4-R type protections have little chance of receiving serious attention.

Mr. Lucchi added that the House has passed a permanent extension of ITFA, including elimination of the grandfather clause. In the Senate, the same language has been submitted with a combined ITFA and Marketplace Fairness bill by Senator Enzi. Mr. Lucchi reminded the group that the Marketplace Fairness (MFA) bill passed the Senate last year by a wide margin. This bill has not received any action in the House—instead sales tax simplification proposals have been introduced by Representatives Goodlatte and Chavez. He added that there is still potential for a business activity tax simplification bill to be attached to the MFA or other sales tax legislation.

Mr. Huddleston deferred to Mr. Donnelly and Mr. Matson to provide an update on the Arms Length Adjustment Service (ALAS) Project. Mr. Matson reported that the group made progress at its meeting on July 28 and will meet with interested economic consultants at a meeting in Atlanta on October 6-7, 2014. At this point, there are six firms interested in participating in this one day information session for the advisory group. The group is also looking at how the project would affect the Commission's Joint Audit Program, and it is also possible that the ALAS project could make use of the Commission's Alternative Dispute Resolution program. Mr. Donnelly commented that this is a project moving at a deliberate pace, and there is much still to do—adding that the group wants to make sure this is done right. Mr. Huddleston complimented the project facilitator, Dan Bucks, for helping move this project forward, and expects that the Executive Committee will be considering a final design for approval in May so that it can be considered by the Commission at its annual meeting in July next year.

VII. Strategic Planning

Ms. Prosser reviewed the report from the Strategic Planning Steering Committee which was included in the meeting materials. Mr. Johnson noted that the Nexus Committee is has begun their strategic planning projects.

VIII. Uniformity

A. Recommended amendments to Compact Article IV [UDITPA]: Section 18(c) & (d)

Ms. Hecht explained that the Uniformity Committee convened a working group to consider two issues: modifications to the hearing officer's recommendations—as set out in Sections 18(c) and 18(d)—referred by the Executive Committee. Ms. Hecht then gave an explanation of the modification to Section 18(c). That modification would make an exception for when the tax administrator would have the burden of proof in cases where the taxpayer had changed its filing method. There were comments from the public and discussion by the Executive Committee concerning this modification. Mr. Turner of COST and Mr. Lard of Sutherland supported the adoption of Section 18(c) without the modification proposed by the Uniformity Committee.

Mr. Humphrey explained his concerns about the proposed modification in 18(c) and asked whether this was what the Executive Committee had requested. Mr. Johnson explained that he had made the motion to remand Section 18(c) to the Uniformity Committee because he thought that the burden of proof approach suggested by hearing officer was sound and appropriate and the exception suggested was also reasonable. He added that the modified language from the Uniformity Committee takes this approach to the burden of proof, noting that it does not say whether the taxpayer can or cannot return to the standard apportionment formula. He concluded by saying that he supports the modified language. Mr. Brewer asked how the burden of proof issue would work where the taxpayer had been approved to use another method of filing. Ms. Hecht responded that she read Section 18(e) (formerly approved by the Executive Committee) which prevents a taxpayer's authorized filing method from being retroactively revoked, as separate from the exception being discussed under Section 18(c).

Mr. Humphrey moved approval of Sections 18(c) with a change from “party” to “taxpayer” in the first line of 18(c) but without the modification proposed by the Uniformity Committee. Mr. Johnson then moved to amend the motion to add the modification as proposed by the Uniformity Committee. Mr. Johnson's amendment passed on a vote of 10 (Yes) to 2 (No).

The original motion, as amended, then passed on a vote of 11 (Yes) to 2 (No). The Executive Committee also briefly considered and approved the modification of Section 18(d) as proposed by the Uniformity Committee in response to the Executive Committee's charge. Finally, the Executive Committee also considered and approved a minor change proposed by the Uniformity Committee to Section 18(e), which the Executive Committee had previously

approved. The Chair thanked the Uniformity Committee and the hearing officer for the considerable work on these changes. Mr. Huddleston added that the Executive Committee can consider directions to the Uniformity Committee as it proceeds with rules on Section 18. In response to a question from Mr. Johnson, the Chair confirmed that this vote moves these changes to Sections 18 to a bylaw 7 survey.

B. Hearing Officer report on proposed draft amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions

The chair explained the options before the committee, now that it has received the hearing officer's report. Mr. Jackson moved adoption of the hearing officer's recommendations, recommending their adoption by the Commission, and proceeding with a bylaw 7 survey. This was passed by a unanimous vote.

C. Model Sales and Use Tax Notice and Reporting Statute—Status of Litigation Report

The chair explained that the committee has retained this proposal pending the outcome of *Direct Marketing Association v. Barbara Brohl* case in the U.S. Court of Appeals for the 10th Circuit. Ms. Hecht added that the *DMA* case has been granted cert at the U.S. Supreme Court. In addition, another Colorado case is on hold pending Supreme Court action.

D. Other Uniformity Matters

There were no other uniformity matters before the committee.

IX. Other Reports

There were no other reports from committees or programs.

X. Upcoming Meetings and Events

Mr. Huddleston noted that the annual meeting of the Commission will be in Spokane, Washington, in 2015 and Missouri in 2016. He added that he is talking to interested states about hosting the 50th anniversary meeting of the Commission in 2017.

----- **CLOSED SESSION** -----

The meeting recessed for a closed session at 10:12 AM.

Reports on the following closed sessions are reported separately:

- I. Nexus Committee & National Nexus Program
- II. Audit Committee & Joint Audit Program
- III. Items Related to Pending Litigation & Commission Personnel Matters

XI. Resumption of Public Session and Reports from Closed Session

The open session resumed at 10:30 a.m. There were no reports from the closed session.

XII. Adjournment

The Chair thanked Ms. Padilla and MTC staff members for support of the meetings. The meeting was adjourned at 10:35 a.m.