



MULTISTATE TAX COMMISSION

To: Executive Committee  
From: Gregory S. Matson  
Date: December 2, 2015  
Subject: Report of the Executive Director

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This report is a summary of the Commission’s organizational and staff activities for the period July 1, 2015, through October 31, 2015 (unless otherwise noted).

**I. Programs & Activities**

**A. Joint Audit Program**

The Audit Program completed parts of six income tax audits for the fiscal year 2016 through October 31, 2015. The Audit Program also completed three sales tax audits and parts of seven other sales tax audits for this same period. There are 18 income and 35 sales tax audits in progress.

The MTC Audit Program has proposed assessments of \$28,927,858 for the completed income tax audits and \$4,190,984 for the completed sales tax audits through October 31, 2015, for the fiscal year end of June 2016.

The following chart summarizes hourly data for completed audits through October 31 for fiscal year end June 30, 2016:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	0	3	3
<b>Total States Audited</b>	0	29	29
<b>Total Hours</b>	0	5261	5261
<b>Average Hours per State</b>	0	181	181

We currently have an income tax audit position posted and we plan to fill that early next calendar year. This is a position will be vacated by Marie Plesko, who announced her retirement at the end of this December.

The audit program staff provided the training for a “Statistical Sampling for Sales and Use Tax Audits” class September 21—24 in Des Plaines, Illinois, and for a “Computer Assisted Audit Techniques Using Excel” class in Trenton, New Jersey, October 6<sup>th</sup> and 7<sup>th</sup>.

The MTC audit program supervisors and director met for a full day with Helen Hecht, Bruce Forte, and me on October 19, 2015 in Des Plaines, Illinois, to discuss audit issues and problems that have surfaced on some pending audits.

New Hampshire has joined the audit program effective December 1<sup>st</sup>.

## **B. National Nexus Program**

### Multistate Voluntary Disclosure

This fiscal year has started off well and signs point to a good year overall. Staff has at least one in-process disclosure that is expected to recover several million dollars. The average value of each disclosure to date has increased substantially from last fiscal year, although this too is subject to variation from year to year.

- Nexus states' collections: \$8,041,067 (\$13,850,712 in all FY 2015)
- All states' collections: \$8,060,244 (\$15,392,887 in all FY 2015)
  
- Nexus states' executed contracts: 189 (551 in all FY 2015)
- All states' executed contracts: 203 (628 in all FY 2015)
  
- Nexus states' average contract value: \$42,545 (FY 2015: \$25,137)
- All states' average contract value: \$39,706 (FY 2014: \$24,510)

These amounts include only funds actually received by the Commission before the Commission closes its file. Interest on back tax paid and the value of a new taxpayer, both substantial revenue producers, are not included. The difference between Nexus states' collections and all states' collections has narrowed from the previous year because the NNP stopped accepting applications on behalf of non-member states on July 1, 2014. The small amount collected on behalf of non-member states to date in FY 2016 comes from disclosures begun before July 1, 2014.

### Strategic Planning

Nexus staff supported a project team of the Nexus Committee that completed work on a strategic planning project to improve the multistate voluntary disclosure process. The project team will issue its report to the Nexus Committee, which will approve, amend, or reject it at its meeting on December 9 in Charleston, South Carolina. If approved, the Nexus Committee will forward it to the Strategic Planning Committee. The report identified a number of ways to decrease the time to process a multistate voluntary disclosure. These include facilitating direct taxpayer/state communication when non-routine issues arise, and periodic meetings with auditor-level state personnel to explain the Commission's voluntary disclosure process. Factors leading to delay include amending agreements to meet specific taxpayer needs and delay by the taxpayer in submitting returns. The project team identified an idea for a future project.

### Membership

There are currently thirty-seven member states (including the District of Columbia) of the National Nexus Program. Commission staff continues to reach out to non-members.

### Outreach

Staff presented at the Institute for Professionals in Taxation's Annual Meeting in San Diego, California on July 1, 2015 (voluntary disclosure and update of nexus); and Georgetown Law Center's annual Advanced State and Local Tax Institute in the District of Columbia on August 6, 2015 (voluntary disclosure and amnesty).

A number of states have responded to staff requests to put a link to the NNP on their voluntary disclosure web pages. These links have been the source of a small number of small disclosures. However, staff continues to believe that they are an important way to get the word out to smaller tax representatives who would not otherwise know of the program.

### Nexus Schools

NNP staff co-taught a Nexus School in Helena, Montana on November 17 and 18, 2015. Please let a member of the Commission staff know if your state would like to host a school.

### Amnesties

The NNP posts on its web page a list of upcoming and current state tax amnesties. Please inform NNP staff if you would like the Commission to post your state's amnesty. Staff has been doing this since 2009. Most or all amnesties since 2009 are listed in the archive section of the amnesties page.

### Staffing

The NNP presently has three full-time staff and one part-time staff. The assistant director/program manager position remains unfilled. The part-time employee works up to five hours per week to assist the NNP's voluntary disclosure processors to file papers, photocopy, enter data, and help with miscellaneous tasks. The current employee is a college student who will resign in early December for exams and the holiday break. She will not return in the spring due to her semester abroad. The Commission has arranged to hire a replacement who will start in early January.

### Compliance

Staff is working on a significant compliance issue.

### Nexus Information

Staff continues to answer questions from the public and state personnel about nexus law. In addition, staff has focused on a new section of the National Nexus Director's Report to the Nexus Committee that summarizes activity in nexus to date in the fiscal year. It is organized by topic rather than jurisdiction or date.

#### **C. Legal Division**

The regular duties of the legal division include:

- Providing staff support to two standing committees, uniformity and litigation, and related working groups;
- Consulting with state attorneys on litigation matters, filing amicus briefs in state and federal courts, and reviewing draft statutes, regulations, and other legal documents;
- Conducting regular state tax attorney informational and educational teleconferences, participating as speakers at conferences and symposiums, and helping teach the Commission's corporate income tax and nexus training courses; and
- Providing legal support to other parts of the organization, including administrative, audit and nexus functions and assisting with technical response to federal legislation.

### Uniformity Work

Currently, the legal division is staffing the following uniformity projects:

- Sales and Use Tax Nexus (Engaging in Business) Model Act
- Section 1 Model Definition of "Receipts" Regulations
- Section 17 Model Market-Sourcing Regulations
- Model Whistleblower Statute (Previously the Model Tax Overcollection False Claims) Project
- Model Sales and Use Tax Notice and Reporting Statute

### Litigation Committee Work

The Litigation Committee has held one in-person meeting this year – in Spokane, Washington, in July. (See separate report of the Litigation Committee.) At the same meeting, the legal division also coordinated a state attorney training session.

### Legal Assistance to States

The legal division consulted with individual states regarding significant ongoing litigation strategy and briefs, draft legislation, and draft regulations, including:

- Review of proposed regulations – Pennsylvania
- Litigation support – Indiana
- Litigation support – District of Columbia
- Amicus brief on the merits in the *California Franchise Tax Board v. Hyatt* case before the U.S. Supreme Court, Docket No. 14-1175.
- Amicus brief on the merits in the Minnesota Compact case, *Kimberly-Clark v. Commissioner*, before the Minnesota Supreme Court, Docket No. A15-1322.
- Amicus briefs on the merits in the Ohio Commercial Activity Tax cases (*Crutchfield Corp. v. Testa*, *Newegg.com v. Testa* and *Mason Companies v. Testa*).

### Commission Support

The legal division provides support for the Commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, resolving lease disputes, and filing corporate registrations and reports. The division responded to requests by the National Governors Association and the National Conference of State Legislatures on technical information related to federal legislation. The division provided legal assistance to the Commission's Joint Audit Program on a number of challenging audit related issues. The legal division also participated in the Commission training by helping teach the Nexus School in Helena, Montana, held November 17-18, 2015.

#### **D. Policy Research**

The policy research director supports Commission efforts in addressing federal legislation with implications for state and local taxation, monitors state adoption of MTC model statutes, regulations, and guidelines. He is a member of the National Tax Association Advisory Board. During this timeframe, he has been a member of the strategic planning Central Staff Project Team, who are working with consultant Elizabeth Harchenko and pursuing a project on improving internal communications.

The policy research director had been working with Joe Garrett of the Alabama Dept. of Revenue, Don Richardson of the Kentucky Dept. of Revenue, and ALAS project facilitator Dan Bucks, in addition to me and Bruce Fort, in organizing visits with revenue agencies to recruit and develop additional state interest in implementing the ALAS program.

The policy research director organized the Tax Economists breakfast forum at the Hall of the States on July 15<sup>th</sup>, *Impact of Federal Reform of International Taxation*. He also served as a last minute substitution for a speaker at the Commission's annual conference seminar, speaking on the topic of *The State of State Finances* with Scott Pattison, the executive director of NASBO. He is writing a paper on state business taxation with Professor Joann Weiner-Martens of George Washington University for the National Bureau of Economic Research conference.

The policy research director participated in the following periodic local or online economic forums and seminars:

- Tax Economist breakfast forum at Heritage Foundation: July 1<sup>st</sup>, *Effect of Eliminating State and Local Tax Deduction from Federal Adjusted Gross Income*.
- Participated in National Association of Business Economists August 17<sup>th</sup> online seminar on Chinese currency devaluation.
- Participated in Tax Policy Center Roundtable on State Budget Choices and State Fiscal Futures on September 17<sup>th</sup>.
- Tax Economists Forum breakfast forum at Reed Smith LLC on October 5<sup>th</sup>, *What Lies Ahead for Federal Legislation Affecting States*.

Policy research intern Vishnu Jagdar of Hofstra University completed his internship in August.

### **E. Training**

The Training staff supported the following activities since July 1, 2015:

#### Statistical Sampling for Sales and Use Tax Audits

September 21-24, 2015 in Des Plaines (Chicago area), Illinois for 13 participants from Arkansas, Iowa, Kansas, New Jersey, South Dakota, Utah, and Wyoming.

#### Computer Assisted Audit Techniques Using Excel

October 6-7, 2015 in Trenton, New Jersey for 16 participants from Colorado, Michigan, and New Jersey.

The events coordinator, Sherry Tiggett, is now handling registration and venue support for all MTC meetings and training courses.

The training director was the principal coordinator of the July 29<sup>th</sup> Annual Meeting Conference in Spokane, Washington.

The events coordinator attended the National Association of State Boards of Accountancy Registry Summit in Washington, DC on September 9-11, 2015, and the Society of Government Meeting Professionals Education Day on October 8, 2015.

## **II. Administration**

Joe Huddleston resigned as executive director effective August 1, 2015, and I became the new executive director at that time, vacating the deputy executive director position.

Sherry Tiggett was hired August 3, 2015, as an events coordinator, filling the vacant training manager position.

Bartt Stucki was hired September 14, 2015, as a sales tax auditor, filling a position vacated in March, 2015. Bartt came to us from the Utah Department of Revenue.

The deputy executive director position and National Nexus Program director positions were advertised in September, and many quality applications were received. (Tom Shimkin, the current NNP director, will be changing roles to use his governmental relations skills in dealing with legislative affairs as soon as a new NNP director is on board.) Interviews for both positions were scheduled during the month of November.

### III. Outside Presentations & Events

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

- IPT Annual Conference; *A Voyage Review on the MTC* (Shimkin, panelist); San Diego, California
- SEATA 65<sup>th</sup> Annual Conference; Atlanta, Georgia (Huddleston)
- NYU Summer Institute in Taxation: State & Local Tax II; *A View From the State Tax Administrators* (Huddleston, panelist); New York, New York

#### AUGUST

- Georgetown 38<sup>th</sup> Annual Advanced State and Local Tax Institute; *On Terra Firma: State Approaches to Base Erosion and Profit Shifting* (Matson, panelist); *What's Mine is Yours: Understanding the Principles of Transfer Pricing* (Matson, panelist); *Raise the White Flag: Using Voluntary Disclosure Agreements and Tax Amnesty* (Shimkin, panelist); *Back to the future: Applying Existing Tax Laws to a New Economy* (Hecht, panelist); *Square Peg in a Round Hole: Analyzing Case Outcomes* (Hecht, panelist); Washington, D.C.
- 2015 MSATA Conference; Rapid City, South Dakota (Matson)
- Regional Economic Models, Inc. Monthly Policy Luncheon, *The Economic and Fiscal Impacts of Tax Inversions on States*; Washington, D.C. (Dubin)

#### SEPTEMBER

- NYU Law School's State and Local Tax Career Night; New York, New York (Hecht, panelist)
- COST Fall State Tax Workshop; Long Branch, New Jersey (Matson, Shimkin, Disque)
- 2015 WSATA Conference; *Updates from FTA and MTC* (Matson, panelist); Denver, Colorado

- 2015 NESTOA Conference; *Corporate - Transfer Pricing and Intercompany Transactions* (Dubin, panelist); *What Have We Done for You Lately: MTC/FTA* (Matson, panelist); *Sales & Use Tax Nexus, Developments, Outlook, and Enforcement Initiatives* (Hecht, moderator); *Legal Roundtable - Key State Tax Cases, Legislation, and Trends for 2016* (Hecht, panelist); Mystic, Connecticut (Getschel)
- ABA Tax Section 2015 Joint Fall CLE Meeting; *State Resident Tax Credits After the Supreme Court's Wynne Decision* (Fort, panelist); Chicago, Illinois

#### OCTOBER

- Crowell & Moring's Managing Tax Audits & Appeals Seminar; *A Primer on Multistate Tax Audits* (Matson, panelist); Washington, D.C.
- COST's 46th Annual Meeting; *Radical Views on the Nation's Most Significant Tax Policy Issues: Debate Forum* (Matson, panelist); Chicago, Illinois
- D.C. Bar Tax Section Luncheon on Inbound Transactions; Washington, D.C. (Shimkin)
- 22nd Annual Paul J. Hartman State and Local Tax Forum; *The State of So-Called Tax Havens - The Federal, International and State Response* (Hecht, panelist); Nashville, Tennessee

### **Technology Addendum**

The Commission's new Exchange 2010 email server is providing all email services for the Commission. The Exchange 2003 server and all supporting servers have been gracefully decommissioned, without incident.

The Commission continues to work with a vendor to develop a state contact portal. The vendor and the Network Administrator are working through some final fixes brought on by the network changes. All network changes that affect the state contact portal are complete and the final testing of the final fixes should take place soon.

The software vendor that worked on the voluntary disclosure application system was contracted to migrate the Audit History database. The Audit history application import and reporting issues have been resolved and the application is operational.

An attempt to migrate the NNP to Windows Server 2008 r2 will be made before enlisting the assistance of a vendor. A test migration will occur in a virtual environment and there will be testing there before actually migration.

All virtual machines that were residing on the VMware environment have been temporarily migrated in order to rebuild the data storage. The memory upgrade in each of the host servers has been completed.

The testing of file sharing/syncing software has been completed. Although in theory the software did fulfill some of the functionality that we are looking for, there were other features it did not provide. The Network Administrator is in the process of contacting another vendor for a demo of a similar product.

The gateway router into the DC office was replaced with a newer, more robust model, nearly doubling the throughput speed of internet connectivity.

The SSL-VPN appliance is nearing end of life and needs to be replaced. The Network Administrator is looking into replacement possibilities.

The normal maintenance of server hardware in the various offices occurs on a regular basis through regular on-site visits by the network administrator.

The website serves as an essential destination for news and information about the Commission. We have increased our website database size to accommodate the website's growth. This will increase the database performance for our hosted content, documents, and images.

During the 48<sup>th</sup> Annual Conference and Committee Meeting in Spokane, Washington, our online registration process supported 119 registrants. On July 28<sup>th</sup>, during the annual conference and meetings, we received a total of 3,972 page views.

**Most Popular Pages of the Website**

	<b>Page Title</b>	<b>Total Page Views</b>	<b>Average Time on Page in minutes</b>
1	Homepage	10,348	0:00:36
2	Resources	7,656	0:00:35
3	Sales and Use Certificate	5,914	0:00:59
4	Uniformity	1,948	0:00:27
5	Member States	1,513	0:01:22
6	Multistate Tax Compact	1,204	0:01:32
7	Search	1014	0:00:27
8	Nexus -Voluntary Disclosure Program	911	0:01:22
9	Uniformity – Section 17 Model Market Sourcing Regulations	868	0:03:12
10	Employment Opportunities	678	0:00:34