



Minutes of the Executive Committee
 May 7, 2015
 Washington, D.C.

I. Welcome and Introductions

The Chair called the meeting to order at 8:30 a.m. Eastern and asked members and participants to introduce themselves. The following is a list of members and participants:

Julie Magee	Alabama	Jim Rosapepe	Patuxent
Steve Cordi	D.C.	Len Lucchi	
Elliott Werk	Idaho	Karl Friedan	COST
Rich Jackson	Idaho	Todd Lard	Sutherland
Tom Katsilometes	Idaho	Michael Bryan	Deloitte
Demesia Padilla	New Mexico	Shirley Sicilian	KPMG
Ryan Rauschenberger	North Dakota	<i>On Telephone:</i>	
Nancy Prosser	Texas	John Maddox	Sutherland
John Valentine	Utah	Mike Kadis	Montana
Gil Brewer	Washington	Wood Miller	Missouri
Ben Abalos	MTC	Matt Peyerl	North Dakota
Bill Six		Miles Vossberg	
Elliott Dubin		Dolores Gregory	BNA
Greg Matson		Karen Boucher	Deloitte
Helen Hecht		Inaudible	Ernest & Young
Joe Huddleston		Gary Humphrey	Oregon
Lila Disque		Deborah Bierbaum	AT&T
Sheldon Laskin		Amy Hamilton	Tax Analysts
Thomas Shimkin		Keith Getschel	MTC
Dan Bucks		Ken Beier	

II. Public Comment

There was no public comment.

III. Approval of Minutes of the Prior In-Person Meeting

Mr. Jackson moved for approval of the minutes. The minutes were approved by voice vote.

IV. Report of the Chair

A. Election of Executive Committee At-large Members for Unexpired Term Due to Vacancy

When Carol Nelson returned to the private sector in January, this created a vacancy in one of the committee's four at-large positions. The Chair appointed John L. Valentine, Chair of the Utah State Tax Commission, to complete the unexpired term. This requires approval by vote. Ms. Padilla moved to elect Mr. Valentine. The motion passed by voice vote.

When Susan Combs' term of office expired at the end of the year, this created a vacancy in one of the committee's four at-large positions. The Chair recommended that the newly elected Texas Comptroller of Public Accounts, Glenn Hegar, complete the unexpired term.

Mr. Jackson moved to elect Mr. Hegar. The motion passed by voice vote.

B. Resolutions Committee

The Chair requested one or more persons to volunteer to work with the MTC legal division on reviewing resolutions and making recommendations to the Commission on renewal. Mr. Cordi volunteered.

C. Nominating Committee

The Chair requested a volunteer to work with her and Joe Huddleston to develop a slate of officers and at-large members of the Executive Committee to stand for election at the Commission's annual meeting. Ms. Padilla volunteered.

V. Report of the Treasurer

A. Financial Report for the Period July 1, 2014 – March 31, 2015

Mr. Jackson presented the report and commented on favorable and unfavorable variances from the previous nine-month period.

Mr. Valentine moved to approve the financial report. The motion passed by voice vote.

B. 2015-2016 Budget Review & Approval

Mr. Jackson noted this year's budget will be slightly smaller than last year's. Mr. Huddleston pointed out that employee healthcare costs are something of a "wild card" and the organization will not know until August what those costs will be. The other area that's difficult to predict is auditor travel. The number presented is based on historical costs, but may be more than estimated.

Mr. Valentine moved to approve the budget. The motion passed by voice vote.

VI. Report of the Executive Director

While the budget is a key item, Mr. Huddleston emphasized the number of areas in which the MTC has been active, including the auditor training program and new nexus program activities. He commended the legal staff for supporting the member states in the areas of litigation and legislation, and emphasized the number of events at which members of the MTC staff were featured as speakers or participants.

VII. Strategic Planning Report

Ms. Prosser discussed the three projects currently underway at in the Strategic Planning Steering Committee. Two are being conducted by the Nexus Committee. They relate to increasing membership in the committee and improving the Multistate Voluntary Disclosure Program. Those projects are expected to conclude by July. An internal staff project is being conducted by the Joint Audit Program and it is intended to align the joint audit program with the strategic plan. The committee will meet in person at the July annual meeting.

VIII. Arm's Length Adjustment Service

Mr. Matson delivered the report of the advisory group and the final program design, and explained where the project stands in terms of interested states. To date, six states are interested in becoming charter members in the program. Prudently, about ten states would be an ideal number with which to implement the program, and the MTC will continue to recruit states. Mr. Matson requested the committee's approval of the final program design.

In response to questions from Mr. Valentine, Mr. Bucks noted the system would provide support and contacts with an outside expert. Mr. Bucks stated the program has identified the high-level experts that will work with the states, and has also identified a management and communications system to make sure it functions as intended.

Ms. Padilla asked about timing, and Mr. Bucks said that by the end of the first year the program operates, 10 economic analyses are projected to have been

done, there will be training courses underway for the states, and the MTC staff will be initiating case assistance and resolution services for the states. This will result in a concentrated early return on investment for the states.

Mr. Valentine moved to approve the final program design. The motion passed by voice vote.

The Chair noted that the ALAS Advisory Group had completed their task of generating a program design for ALAS, and discharged the group, commending them for their excellent work.

IV. Committee & Program Reports

A. Audit Committee

Mr. Getschel reported that the committee has met 4 times this year. In July and October, the committee selected 13 sales tax cases and 10 income tax cases to add to the audit inventory. They added another income tax case in December. In March, they reviewed all of the cases in inventory; and decided not to pursue one of the sales tax cases.

B. Litigation Committee

Ms. Hecht reported on the Litigation Committee's activities, emphasizing the number of *amicus* briefs the MTC has submitted and plans to submit. MTC policy is to have the head of the state agency to make a request of the executive director and consideration given to what we could say on behalf of the states and which states share their interest. Ms. Hecht noted that, at the March meetings, featured speaker Judge Duane Benton said that judges greatly appreciate *amicus* briefs, especially when they bring up issues the parties were not able to address.

C. Nexus Committee

Mr. Shimkin discussed the revenue recovered to date by the Nexus program. The committee continues its nexus activities, and has been working on strategic planning projects to increase membership and make voluntary disclosures more efficient. In addition, MTC staff taught 3 nexus schools in Little Rock, Arkansas; Trenton, New Jersey; and Prattville, Alabama.

D. Uniformity Committee

Mr. Miller reported that through the third quarter of this fiscal year, the committee and subcommittees have met three times in person, during the July annual meeting in Albuquerque, New Mexico, during the Fall meetings in Nashville, Tennessee and during the Winter meetings in Kansas City, Missouri. Drafting groups and work groups have met regularly by

teleconference. Mr. Miller outlined the uniformity projects that are currently pending. The main projects in development are the regulations relating to Sales & Use Tax Nexus, Compact Article IV, sections 1 (“receipts”) and 17 (model market-sourcing regulations).

E. Training Program

Mr. Beier offered information on the type of legal and audit trainings offered by the MTC. He outlined the programs that have already occurred this year, and reminded the states to contact him early regarding hosting a course.

F. Other Committee and Program Business

There was no other business.

X. Recommended Amendment to Bylaw 7

Mr. Matson identified a minor change that would improve the Commission’s flexibility in handling uniformity matters at times other than the annual meeting. The proposed amendment would delete the word “regular” as a descriptor of “meetings of the Commission” in Bylaw 7(g). A “regular” meeting requires physical presence, and has limited the MTC’s ability to address some models that could come before the Commission other than at the annual meeting.

Ms. Prosser moved to accept the amendment, and the motion passed by voice vote.

XI. Uniformity

Ms. Hecht noted the group has recently received the results of the Revisions to the Financial Institutions Model Rules Bylaw 7 survey indicating a majority of the Compact member states would consider adopting the revisions, so they will go on the agenda for the Commission in July.

A. Model Provisions Concerning Class Actions and False Claims – Uniformity Committee Request for Guidance

On behalf of the Uniformity Committee, Sheldon Laskin, MTC, requested the Executive Committee’s guidance as to the future direction of this project as relates to undercollection issues. Based on their work so far, they believe the options are:

- (1) for the Commission to develop a model state tax whistleblower statute (the IRS model, IRC §7623);
- (2) for the Commission to develop a model state tax false claims act statute (the New York model);

(3) for the Commission to develop both a model state tax whistleblower statute and a false claims act statute; or

(4) to terminate the project.

On balance, the staff determined an administrative whistleblower program (Option 1) is the more appropriate means of dealing with state tax underpayment or undercollection issues because it makes use of existing procedure. Mr. Laskin clarified that this is exclusively relative to tax issues – not to other whistleblower false claims actions.

Mr. Friedan presented some public comments. COST supported the staff recommendation not to move in the direction of New York’s model, but to base the project on the IRS model. New York allows tax undercollection claims to be made under state False Claims Acts, while the IRS has implemented procedures to allow whistleblowers to bring administrative claims of tax underpayment to the revenue department. The primary problem with the New York model is that it subverts the normal administrative channel for dealing with tax controversies. It applies triple damages, which COST considers excessive, and leads to public disclosure rather early in the process. In addition, the forum it ends up in may lack tax expertise. The *Sprint* case has gotten great publicity, and it illustrates taxpayers’ fears that states won’t be able to distinguish between fraud and a legitimate tax dispute. He requested the Committee follow the staff’s recommendations.

Ms. Padilla, Ms. Prosser, and Mr. Brewer backed Option 1, the whistleblower model. Mr. Huddleston noted this doesn’t preclude any activity at a later date. The official guidance from the Executive Committee was to focus on the whistleblower portion at this time.

B. Model Sales and Use Tax Notice and Reporting Statute – Status of Litigation Report

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.

C. Other Uniformity Matters (if any)

Ms. Hecht reiterated that the Commission is looking into ways to use the uniformity process to facilitate either compliance or enforcement ease and efficiency. The project that has come to the forefront is the RAR (federal adjustments) project, and there will be a report in July with recommendations regarding how to proceed.

XII. Federal Issues with State Tax Implications

Jim Rosapepe & Len Lucchi discussed pending federal legislation that would affect state taxation:

- A. H.R. 235, Permanent Internet Tax Freedom Act / S.431 Internet Tax Freedom Forever Act
- B. S.698, Marketplace Fairness Act
- C. S.386, Mobile Workforce State Income Tax Simplification Act
- D. S.851/H.R.1643, Digital Goods and Services Tax Fairness Act of 2015
- E. H.R.1528, End Discriminatory State Taxes on Automobile Rentals Act of 2015
- F. Business Activity Tax (not introduced)
- G. Federal Tax Reform
- H. Other Federal Legislative Activity

The Permanent Internet Tax Freedom Act is the one most likely to affect the states this session, as the Marketplace Fairness Act has not made progress similar to what was made during the previous session.

XIII. Upcoming Meetings and Events

Mr. Huddleston reminded the attendees of the 48th Annual Conference & Meetings, July 27-30, 2015, in Spokane, Washington.

XIV. Consideration of Confidential Matters during Closed Session

The committee went into closed session at 10:55 a.m.

XV. Resumption of Public Session and Reports from Closed Session

The public session resumed at 11:13 a.m. There was nothing to report.

XVI. Adjournment

Ms. Prosser moved to adjourn. The motion passed and the committee adjourn at 11:15 a.m.