



## MINUTES OF MEETING HELD THURSDAY, MAY 11, 2017 IN WASHINGTON, DC

### Meeting of the Multistate Tax Commission Executive Committee

444 N. Capitol St., NW Ste. 425  
Washington, DC 20001  
8:30 a.m. to 2:00 p.m. Eastern Time

#### I. Welcome and Introductions

The Chair, Rich Jackson (Id.), called the meeting to order at 8:34, took roll, and confirmed a quorum. The following is a list of members and participants:

Rich Jackson, Idaho State Tax  
Commission  
Nancy Prosser, Texas Comptroller  
of Public Accounts  
Nathan Hoepfner, Kansas  
Keith Richardson, D.C.  
Tom Shimkin, MTC  
Wendy Margolis, MTC  
Richard Cram, MTC  
Marshall Stranburg, MTC  
Bill Six, MTC  
Lila Disque, MTC  
Sheldon Laskin, MTC  
Helen Hecht, MTC  
Greg Matson, MTC  
Joe Huddleston, E&Y  
Jim Rosapepe, Patuxent Consulting  
Len Lucchi, Patuxent Consulting

#### **By phone:**

Walter Anger, Arkansas Dept. of Finance  
and Administration  
Ryan Rauschenberger, North Dakota  
Office of State Tax Commissioner  
Dee Wald, North Dakota Office of State  
Tax Commissioner  
Mike Kadas, Montana Dept. of Revenue  
John Valentine, Utah State Tax  
Commission  
Keith Getschel, MTC  
Bruce Fort, MTC  
David Hesford, Washington State Dept. of  
Revenue  
Adam Krupp, Indiana Dept. of Revenue

**II. Approval of Minutes of the Executive Committee Meeting on December 15, 2016**

Nancy Prosser (Tex.) moved for approval of the minutes. Minutes were approved by voice vote.

**III. Initial Public Comment Period**

There was no public comment at this point.

**IV. Report of the Chair**

**A. Election of Executive Committee Member for Unexpired Term Due to Vacancy**

When Mr. Jackson became Chair, he appointed John Valentine to replace him as Vice-Chair. This created a vacancy in one of the committee's four at-large positions. Mr. Jackson appointed Walter Anger from Arkansas to complete the unexpired term. The bylaws required the Executive Committee to confirm by vote each of these two appointments. Ms. Prosser moved to approve this appointment, and the motion passed by voice vote.

**B. Resolutions Committee**

Mr. Jackson 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. Ms. Prosser volunteered, and was thanked for her participation.

**C. Nominating Committee**

Mr. Jackson asked for one or more volunteer to work with him and Mr. Matson to develop a slate of officers and at-large members of the Executive Committee to stand for election at the Commission's annual meeting. John Valentine (Utah) volunteered and was thanked for his involvement.

**V. Report of the Treasurer**

**A. Financial Report for the 9-month period July 1, 2016 - March 31, 2017**

Ryan Rauschenberger (N.D.), Treasurer, provided a summary of his report. The most notable item was the Commission's purchase, in October, of software from Cleo Communications for \$49,500 along with 1-year support for an additional \$9,900. This purchase provides a managed file transfer (MFT) solution that will enable MTC staff to securely manage, and control data flow with external (non-MTC) personnel. The total purchase amount was charged to administration/IT operations and allocated to the operating departments of the Commission. This purchase, in combination with a realized loss on the sale of Vanguard intermediate term bond funds on December 1, resulted in an actual year to date

deficit in this program area. Audit and Nexus reported surpluses as a result of vacant positions. Revenues showed a favorable variance as a result of Delaware joining the Nexus Program. Expenditures for Salaries, Retirement, and Employee Insurance showed the same as a result of the employee vacancies. Ms. Prosser moved to approve the report and the motion passed by voice vote.

#### **B. 2017-2018 Budget Review and Approval**

Mr. Rauschenberger stated that membership assessment and audit program fees are proposed to increase by 2.0%, while no increase is proposed in nexus program fees. In general, the requested expenditure amounts reflected a continuation of current activities. The only notable changes are a \$49,000 increase to the Washington, D.C. office rental amount to provide for additional space and a request to set aside \$12,000 for a legal intern. Greg Matson, Executive Director of the MTC, provided additional details on the proposed office rental increase.

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

### **VI. Report of the Executive Director**

#### **A. Report for the Period July 1, 2016-March 31, 2017**

Mr. Matson presented a summary of the Commission's organizational and staff activities for the period July 1, 2016, through March 31, 2017. He emphasized the excellent performance by the Audit division in both audits and training, and noted that two new auditors have been added to the New York office. The Nexus program has also performed exceptionally well, and is set to exceed the outstanding results for FY 2016. The legal division is set to finish drafting the regulations to accompany Art. IV, and has also submitted a number of *amicus* briefs in support of states. As for the Policy department, the director has participated in a large number of trainings, forums, and seminars. He also co-presented a paper on Comparison of Corporate Income Taxation in the European Union and the U.S. States. At the conclusion of Mr. Matson's discussion, John Valentine, Commissioner of Utah, thanked the Commission for its recent efforts on an *amicus* brief in *See's*.

#### **B. Recommendation on Property Tax (4R Act) Project Funds**

At the December 15, 2016 meeting Gene Walborn (Mont.) asked for a recommendation on how to resolve the long-time balance remaining in this restricted fund account. Mike Kadas (Mont.) moved to approve closing the 4R project and give a credit to the 7 states that contributed. The motion passed by voice vote.

#### **C. Adjustments to Committee Meeting Schedule**

Attendance has been down at some committee meetings, and state employees have commented that this is due to inconvenient timing: meetings tend to coincide with legislative sessions, holiday seasons, etc. After distributing a

survey, Mr. Matson recommended moving the March committee meetings to April and shifting the May Executive Committee meeting to coincide with those committee meetings (for a total of 3 program and Executive committee meeting weeks annually). The December meetings would then be moved back to November. Mr. Valentine supported the idea. There was a general consensus to proceed accordingly. Dates and location of the November meetings will be announce shortly.

**D. Notice of Proposed Amendments to Bylaws**

At the December 15, 2016, meeting the Executive Committee approved proposed amendments to the MTC bylaws. A 60-day notice period must be provided before the Commission's annual meeting in August where the Commission could adopt any amendments; this item therefore served as a notice item in advance of the August meeting.

**VII. Committee Reports**

**A. Arm's-Length Adjustment Service Committee**

Marshall Stranburg, Deputy Executive Director of the MTC, reported that the most recent meeting of the committee was in February, when they met with staff from the IRS. They play to discuss how to schedule and handle future meetings.

**B. Audit Committee**

Keith Getschel, Audit Director of the MTC, said that the audit committee has met three times, and approved an audit evaluation form at the July 25, 2016, meeting. Since January of 2017, the Commission has distributed that survey to taxpayers on completed audits.

**C. Litigation Committee**

Helen Hecht, General Counsel at the MTC, reported that the Committee meets twice a year and always receives a number of presentations. This year, the committee participated in a discussion of partnership audits presented by IRS staff. In committee matters, it adopted a charter and initiated a group of attorneys to draft joint state *amicus* briefs, with Dee Wald (N.D.) joining as co-vice chair.

**D. Nexus Committee**

The Nexus Committee has had three in-person meetings and a substantial number of teleconferences. It completed a strategic planning project, and has worked to revise and simplify forms to streamline the process. The committee also approved publication of a state-by-state listing of lookback periods.

**E. Strategic Planning Steering Committee**

Mr. Stranburg reported that the committee has met twice this year, and heard updates and reports on team progress and work results. The focus this year has been on the 50th anniversary of the Commission.

#### **F. Uniformity Committee**

Ms. Hecht informed the committee that Tommy Hoyt (Tex.) volunteered as the new vice-chair of the uniformity committee. The committee is working on three major projects, one of which is a redraft. Regarding Section 18, the work group is trying to create special rules for situations in which a taxpayer may not have a receipts factor under the new definitions. The committee has also received input from taxpayers involving lodging taxes, Airbnb. Karl Friedan (COST) noted that they would welcome the MTC's participation in or review of the RAR project. Joe Huddleston (E&Y) emphasized that there is a growing sense that industry can come to the MTC and have its concerns addressed.

#### **G. Other Committee Business**

There was no other business at this time.

### **VIII. Federal Issues with State Tax Implications**

Len Lucchi and Jim Rosapepe (Patuxent) said that Congress wants to get through healthcare reform before it starts on tax reform. It's possible that tax reform could pass before the summer recess, and Congress will certainly want to do it during the calendar year. Tax cuts will be very expensive, so some personal deductions will likely be eliminated to compensate. Some representatives are advocating for a territorial system of corporate income taxation. The states and MTC should therefore be very proactive about protecting their interests, because during negotiations Congress will not necessarily be thinking about the states.

Currently, two relevant bills have been introduced in the 115th congress: S.19, the MOBILE NOW act, which would prevent state taxation of prepaid wireless telecommunications services, and S. 540.H.R. 1393, the Mobile Workforce State Income Tax Simplification Act of 2017, which determines when employees temporarily in another state will be subject to tax in that state. Issues likely to be considered in the 115th Congress are Marketplace Fairness/Remote Transactions Parity; Digital Goods and Services; Business Activity Tax Simplification; and End Discriminatory State Taxes for Automobile Rentals.

### **IX. Upcoming Meetings and Events**

Mr. Matson reminded the committee to make reservations for the MTC's 50th Annual Conference & Meetings, July 31- August 3, 2017, Louisville, Kentucky.

### **X. Closed Session**

The Executive Committee went into closed session for consideration of confidential matters.

**XI. Resumption of Public Session and Reports from Closed Session**

There was nothing to report from the closed session.

**XII. Adjournment**

The committee adjourned by unanimous consent.