



MULTISTATE TAX COMMISSION

To: Executive Committee
From: Gregory S. Matson
Date: December 2, 2016
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2016, through October 31, 2016 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The Audit Program has completed one income tax audit and parts of seven other income tax audits thus far in fiscal year 2017. The Audit Program also has completed one sales tax audit and parts of six other sales tax audits during fiscal year 2017. Currently, there are nineteen (19) income and thirty-five (35) sales tax audits in progress.

Through October 31, 2016, the MTC Audit Program has proposed assessments of \$20,874,921 for the completed income tax audits and \$285,783 for the completed sales tax audits.

The following chart summarizes hourly data for completed audits through October 31, 2016, for fiscal year end June 30, 2017:

	Income & Franchise	Sales & Use	Total
Total Audits	1	1	2
Total States Audited	21	5	26
Total Hours	1489	1313	2802
Average Hours per State	71	263	108

In October we added a new income tax auditor, Ali Pazand. Ali came to us highly recommended from the New Mexico Taxation and Revenue Department. We are very pleased that he has joined our team. During the interview process in hiring Ali, we felt that we had many qualified candidates. In taking advantage of this highly qualified applicant pool, we decided to hire another income tax auditor. Virginia (Kay) Mick will be joining the income tax audit program in January 2017. Kay comes to us from the state of West Virginia. Again, Kay comes highly recommended. Both Ali and Kay will report to Jeff Silver in the New York office.

The MTC held a Statistical Sampling for Sales and Use Tax Audits, September 19 - 22, 2016 in Wheat Ridge, Colorado. Bob Schauer was the instructor for this class. We also held a Computer Assisted Audit Techniques Using Excel class October 18-19, 2016 in Hoover, Alabama. Harold Jennings and L.D. Ridenour were the instructors for that class.

B. National Nexus Program

Multistate Voluntary Disclosure Program (MVDP)

The current fiscal year results to date are very encouraging—so far on pace to exceed the outstanding results achieved last fiscal year. The average value of disclosures to date has increased from last fiscal year, as well.

- Nexus states' collections: \$8,695,808 (\$22,317,942 in all FY 2016)
- Nexus states' executed contracts: 140 (488 in all FY 2016)
- Nexus states' average contract value: \$62,113 (FY 2016: \$46,747)

These amounts include funds received by the Commission. Interest on back tax paid and the value of a new taxpayer are not included.

Strategic Planning

The Nexus Committee is currently working on the strategic planning project to improve the information on the Multistate Voluntary Disclosure Program (MVDP) website for clarity and ease of use. The Nexus Committee Work Group made several recommendations, which were approved at the Nexus Committee's July 25, 2016 meeting in Kansas City, Missouri, and implemented. These included highlighting the visibility of the MVDP on the website with a sliding banner, substantial simplification and revisions to the application and instructions, the description of the Nexus Program, and the standard agreement form, as well as elimination of duplicative information. The Work Group also recommended publishing the participating states' lookback periods on the Nexus Program website. This issue will be discussed further at the Nexus Committee meeting on December 13, 2016, in Houston, Texas, with a recommended draft spreadsheet.

Membership

There are currently thirty-eight participating states (including the District of Columbia) in the National Nexus Program, with Delaware having joined at the beginning of this fiscal year. Commission staff continues to reach out to non-members.

Outreach

Richard Cram presented on sales tax basics for non-profit organizations and the MVDP to the GWSCPA in Washington, D.C. on October 11, 2016. He also made a panel presentation with Ferdinand Hogroian of COST and David Dickerson, Executive Director of the National Marine Manufacturers Association at the D.C. office of the Association on

September 27, 2016, on income nexus issues for small manufacturers. Richard has presentations scheduled on tax nexus law developments and the MVDP on February 16, 2017, to the Cornell State and Local Tax Study Group in New York City, and on March 22, 2017, at the Prosper Show in Las Vegas, Nevada, where the audience will be Amazon FBA (fulfilment by Amazon) sellers. He also will be participating on a panel discussing factor presence nexus at the ABA SALT Committee meeting in Orlando, Florida on January 20, 2017.

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

Nexus Schools

NNP staff co-taught a Nexus School in Montgomery, Alabama on November 30 and December 1, 2016. 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.

Staffing

The NNP presently has three full-time staff members and one part-time staff member. The part-time staff member, a college student who will be graduating after next semester, works eight-to-sixteen hours per week, assisting with processing voluntary disclosure applications, as well as filing and data entry work.

C. Legal Division

The legal division staffs two standing committees, uniformity and litigation, and also provides support to the SITAS committee. The division also holds regular state tax attorney teleconferences; participates as speakers at conferences, symposiums and institutes; and assists in teaching the Commission's corporate income tax and nexus training courses. The division provides individual state support on request by filing amicus briefs in state and federal courts; consulting in litigation matters; and reviewing draft statutes, regulations, and legal briefs. It also provides legal support for the Commission's audit division, training division, and general administration, including analysis of federal legislation affecting state taxation. Since the July 2016 Executive Committee meeting, the legal division completed edits to the MTC's apportionment regulations, as directed by the Executive Committee in response to the hearing officer's report and public comments. It also filed an *amicus* brief in the United States Supreme Court in support of a member state.

Uniformity Work

The legal division has staffed the following uniformity projects:

- Partnership Information Project
- Art. IV, Section 18 Work Group
- Amendments to General Allocation and Apportionment Regulations (resulting from Section 1 and Section 17 Work Groups)

Litigation Committee Work

The legal division supported the litigation committee by organizing and making presentations at the in-person meeting in Kansas City, Missouri, in July 2016. At the meeting, the division offered state attorney training sessions, which were well attended. In addition, the legal division organized periodic teleconference update sessions for state tax attorneys.

Legal Assistance to States

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

- *Amicus* brief in *Renzenberger, Inc. v. New Mexico*, before the New Mexico Court of Appeals, Docket No. A-0001-CA-2015-34999
- *Amicus* brief in *DMA v. Brohl*, before the U.S. Supreme Court on petition for certiorari, Docket No. 16-458

Commission Support

The legal division 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. The division offered extensive analysis on draft federal legislation intended to mitigate the effect of *Quill* on collection of state use taxes. The division also provided legal assistance to the Commission's audit division on a number of challenging audit-related issues. The division supported the Commission's training program by teaching at the November 2016 Nexus training on Montgomery, Alabama. In further efforts to provide quality service, the legal division has embarked on an ambitious project to overhaul the MTC's training program.

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 period the policy research director participated in the State Intercompany Transactions Advisory Service Committee training and information session in Indianapolis on October 5th and 6th. He attended the Federation of Tax Administrators Revenue Estimating and Research Conference October 15th through 19th Asbury Park, New Jersey. He consulted with Robert Ebel, former Chief Revenue Estimator, DC OCFO, on use of user charges to finance pay infrastructure debt and with Edith Brashears, U.S. Treasury on use of fulfillment companies to register small U.S. online retailers with OECD revenue agencies and collect VAT for these firms.

The policy research director hosted the Tax Economists breakfast forum at the Hall of the States on September 28th, with John Hicks, Executive Director, NASBO, Fiscal Condition of States. 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 is writing and presenting a paper with Professor Joann Weiner-Martens and John Alvarino of George Washington University for the National Tax Association Annual Meeting in Baltimore on November 10, 2016, on Comparison of Corporate Income Taxation in the European Union and the U.S. States. He also wrote an article with intern Trevor Ahouse “Trends in State and Local Government Finance, 1960 to 2015” for *Journal Multistate Taxation and Incentives*. The article will appear in November/December 2016 issue and will be updated for the annual meeting in 2017.

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

- Tax Economist Forum Breakfast: Ernst & Young: Jerry Auten, Treasury Dep’t. Using IRS data to measure income inequality – August 3rd
- Tax Economist Forum Breakfast: Tom Neubig, OECD Tax Initiatives, Center for American Progress – September 7th
- Tax Economists Forum Breakfast: Education Tax Credits, Caroline Hoxby, Stanford University, at Hoover Institution, -- September 22nd
- Hosted Tax Economists Forum Breakfast at Hall of the States: – September 28th
- Tax Economists Forum Breakfast: Methods to Mitigate income Shifting, Jane Gravelle, CRS, at American Action Forum – October 26th

Policy research intern Trevor Ahouse completed his internship in August. Policy research intern Amelia Wang continues to assist with the paper to be presented at NTA meeting November 10th.

E. Training

The Training staff supported the following activities since July 1, 2016:

Statistical Sampling for Sales and Use Tax Audits

September 19-22, 2016, in Wheat Ridge (Denver area), Colorado, for 9 participants from the City of Wheat Ridge, the City of Denver, and the Colorado Department of Revenue.

Computer Assisted Audit Techniques Using Excel

October 18-19, 2016, in Hoover (Birmingham area), Alabama, for 22 participants from the Alabama Department of Revenue and the South Carolina Department of Revenue.

The events and training staff were the principal coordinators of the 49th Annual Conference and Committee Meetings in Kansas City, Missouri. Excellent onsite support was provided by Beth Whaley and Laura Lewis with the Missouri Department of Revenue.

Wanda Dorsey-Jenkins returned on a part-time basis, as an events and training coordinator, to assist the events and training manager in handling registration, administrative and logistical support for all MTC meetings and training courses.

The events manager has participated in a number of professional development webinars and local educational meetings/conferences to sustain her Certified Meeting Professional (CMP) designation, which is up for renewal in December; and her Certified Government Meeting Professional (CGMP) designation, which is up for renewal in 2017.

II. Administration

In September Wanda Dorsey-Jenkins returned to a part-time position assisting Sherry Tiggett with planning for committee meetings and training.

Ali Pazand joined the audit staff on October 1 as an income tax auditor. Ali had worked as an auditor with the New Mexico Taxation and Revenue Department since 2013.

Also on October 1, Renee Lee joined the legal department in a paralegal position. Previously Renee had worked in administrative legal positions with the District of Columbia and with Prince George's County, Maryland.

Lila Disque was promoted effective October 1 to the deputy general counsel position within the Legal Department. Lila has worked for the MTC since January 2013. There had not been a deputy general counsel at the Commission for a number of years.

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

- FTA Training for Management, Lean, and Plain Language; Indianapolis, Indiana (Matson)
- NYU Summer Institute in Taxation: Intermediate State & Local Taxation; *A View From the State Tax Administrators* (Matson, panelist); New York, New York

AUGUST

- Georgetown 39th Annual Advanced State and Local Tax Institute; *Taking Advantage of State Audit Programs and Early Resolution Initiatives* (Getschel, panelist); *Protecting Taxpayers' Confidential Information* (Hecht, panelist); Washington, D.C.
- 2016 MSATA Conference; Des Moines, Iowa (Matson)

SEPTEMBER

- NYU Law School's State and Local Tax Career Night; New York, New York (Hecht, panelist)
- IPT 2016 Sales Tax Symposium; *How the Economic Climate Impacts Decisions Made by Legislatures and Department Employees* (Stranburg, panelist); Indianapolis, Indiana
- 2016 WSATA Conference; *Partnership Tax Issues* (Fort, panelist); *Updates from FTA and MTC* (Stranburg, panelist); Scottsdale, Arizona
- 2016 NESTOA Conference; *MTC Joint Audit Program: What It Is, How It Works, and What Difference It Makes* (Matson); *Hottest Topics in State Taxation* (Hecht, moderator); *Sales Tax Potpourri* (Shimkin, panelist); Hershey, Pennsylvania
- National Marine Manufacturers Association; *Current Income Tax Nexus Issues for Small Manufacturers* (Cram, panelist); Washington, D.C.

OCTOBER

- GWSCPA; *Sales Tax Basics for Non-Profit Organizations* (Cram); Washington, D.C.
- Streamlined Sales Tax Governing Board Meeting; *MTC Analysis of the Online Sales Simplification Act* (Cram); Atlanta, Georgia
- Crowell & Moring's Managing Tax Audits & Appeals Seminar 2016; *Multistate Tax Commission's Transfer Pricing Initiative* (Stranburg); Washington, D.C.
- D.C. Bar State and Local Tax Committee Lunch; *National State Tax Legislative Update and Outlook*; Washington, D.C. (Matson, Shimkin)
- COST's 47th Annual Meeting; *Radical Views on the Nation's Most Significant Tax Policy Issues: Debate Forum* (Hecht, panelist); Las Vegas, Nevada
- 23rd Annual Paul J. Hartman State and Local Tax Forum; *This Little Piggy Cried Wee, Wee, Wee All the Way Home* (Hecht, panelist); *Whither Quill/Due Process Clause* (Fort, panelist); *Transfer Pricing – MTC ALAS Project* (Stranburg, panelist); *Nexus: What's New?* (Stranburg, panelist); Nashville, Tennessee (Matson)

Technology Addendum

The Commission continues to work with a vendor to develop a state contact portal. The progress made with the vendor developing this portal has not been without issues. The code used to create the contacts in Exchange 2010 does not function fully. We may need to consider looking elsewhere for a contact portal solution.

The changes that were requested to the Audit History Database have been made and testing has been completed. The programmatic issues that we identified were made by Yoodle (our website hosting company). The Audit Director and Network Administrator have a list of future updates and adjustments that need to be made. A Scope of Work and quote are in the works currently.

The migration of the National Nexus Program (NNP) applications is on-going. The Network Administrator has talked to the author of the VDK application and Online Application at RSI and she has provided some guidance for migrating the server. A test environment is in the works to test the migration and once successful a maintenance window will be identified to do the cut over. The conversations with the application author (RSI) concerning the NNP migration also included talks about upgrading the online portion of the application as well. Before reaching out to the vendors we need to have a solid idea of what it is that we want to achieve with the online application. This will require more conversations between the Network Administrator and the NNP Director.

The physical layout of the VMWare environment has been completely re-done (servers, switches, and data storage) in anticipation of a new data storage unit being purchased. The data storage used now is 8 + years old. The network cards installed in them are old and out of date. The network traffic to the VMWare servers and to the clients using these machines will be enhanced by the new unit. Additionally, the redundancy, reduced heat signature, and reduced electric requirements will all be made better by the new unit.

Cleo testing has been completed and the product has been purchased. Cleo Unify will allow users to share large files with taxpayers and state personal. Cleo Jetsonic will allow high speed backup of remote staff to the MTC internal domain. The physical infrastructure is being purchased and configured with an expected roll out date of January 2017.

The remote access authentication issue has not been able to be resolved. The firewalls in our remote offices are not designed for enterprise remote access. The integration of Active Directory and remote access with those firewalls does not function properly. The firewalls protect the computers in the remote offices and control the VPN connection between those offices and headquarters in D.C. A more feature rich firewall would have to be placed in remote offices in order for remote access and Active Directory to work properly. In order to do that, A/C concerns would need to be addressed before any additional heat producing equipment could be installed in the remote server rooms. It is the hope of the Network Administrator that Cleo Unify will alleviate the need for remote access.

In addition to the new A/C unit in the Data Center, the Commission has purchased a 2 ton spot cooler that will be used in emergency situations when the A/C unit is down for maintenance or repair.

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