

*KPMG CORNER*

## A Conversation with Greg Matson—Executive Director of the Multistate Tax Commission

*SHIRLEY SICILIAN (ssicilian@kpmg.com) is a managing director in the State and Local Tax group of the Washington National Tax practice of KPMG LLP and serves as the firm's National Director for State and Local Tax Controversy. She is based in Washington, D.C. This interview represents the views of Greg Matson only, and do not represent the views or professional advice of KPMG LLP. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax advisor. KPMG LLP, the audit, tax and advisory firm (www.kpmg.com/us), is the U.S. member firm of KPMG International Cooperative ("KPMG International"). KPMG International's member firms have 174,000 professionals, including more than 9,000 partners, in 155 countries.*

The Multistate Tax Commission (MTC) marks its 49th anniversary this July. Over the years, the Commission has served as a forum for states to come together and work through the important state tax issues of the day. The issues, and the Commission members who discuss them, are always changing. But one thing that has been relatively stable is the executive director. Since the Commission began in 1967, there have been only five executive directors. Greg Matson is the fifth, and is just getting started in his new role.

During the Commission's March 2016 meetings in Salt Lake City, Shirley Sicilian of the Washington National Tax practice of KPMG LLP and a regular contributor to this column, had an opportunity to sit down with Greg to discuss his vision for the Commission and his perspective on current multi-state tax issues, as well as a bit of personal reflection.

**Sicilian: Where are you from?**

**Matson:** I'm originally from North Carolina, and grew up in North Carolina, Oregon, Tennessee, and Utah. I've been a resident of Idaho, Pennsylvania, and Virginia, where I live now and have lived the longest. So

I'm pretty much a "multistate guy." I went to college in Utah at Weber State College (now University) and then got my law degree from the University of Utah College of Law. After law school and a brief stint at a small Idaho law firm, I joined the U.S. Army.

**Sicilian: How did you find your way into state tax?**

**Matson:** When I left active duty in 1996, I wanted to get an LL. M. Because of the type of work I was doing in the Army's Judge Advocate General's (JAG) Corps, I knew I'd be comfortable in regulatory and administrative areas, and tax seemed like a good fit. So I went for my LL. M. in tax at Villanova University. I expected I'd graduate and go work for the IRS for 30 years. And, my first job was for the IRS as trial counsel in D.C.

But within a year, a colleague told me there was a new chief counsel at D.C.'s Office of Tax and Revenue (OTR), a guy by the name of Steve Kranz, and he was looking to hire a couple of additional tax attorneys. He wanted someone who could focus on the various miscellaneous taxes D.C. administered and on exempt organizations. That was 1998. While a staff attorney there, I attended my first MTC meetings.

**Sicilian: What was your first impression of the MTC?**

**Matson:** I had no SALT background and was very much focused on D.C.'s tax code, so the MTC was a bit of an eye opener. It was also a bit overwhelming-was there really this much to talk and talk and talk about?-but it exposed me to the larger, interstate picture, and how even tax administration in D.C. affected that picture.

**Sicilian: You eventually became chief counsel at OTR, and then tax counsel at Tax Executives Institute (TEI). What are some take-aways from those days?**

**Matson:** At TEI, I staffed the Corporate Tax Management Committee, Canadian Commodity Tax Committee, and the SALT Committee. In an association like TEI, you end up doing lots of things that just need to get done. Two things especially stand out from those days.

The first is that I learned so much from Timothy McCormally about writing. Timothy was a great mentor, and he really drilled into me that writing is a critical professional skill that you must continually sharpen. The second was the perspective I gained from the relationships and interactions I had with senior tax people in Fortune 100 companies.

While at TEI, I occasionally attended MTC meetings, but from the perspective of an organization of large taxpayers. And I received firsthand experience with being at odds with the executive director of the MTC when I clumsily used the phrase "substantial physical presence"—which isn't an actual standard, of course.

From my time in the Army, working at TEI, and later working for Joe Huddleston at the Commission, I developed a sense that still serves to this day—an organization's efforts cannot be staff driven. Your members are the ones that drive the program. Staff is staff. And staff lawyers are not in charge. Members need to drive the activities of their organization.

**Sicilian: Joe Huddleston hired you away from TEI to become his Deputy Executive Director at the MTC.**

**Matson:** Yes, I began with the MTC in May 2006, just two months before the 2006 Annual Meeting. And everyone was new. This was the first MTC meeting in their new roles for the Commission's Chair, Vice-Chair, Treasurer, Executive Director, General Counsel, and Deputy Executive Director. I would not want to relive that. But it motivated and freed us.

We quickly realized that "wash-rinse-repeat" from past Commission meetings wasn't the best approach; because we were new, we had to know why things were done and were not beholden to past practices that weren't required by the Commission's rules.

I'm very proud to have worked for Joe. My perspective on the Commission's executive agency—as being member—services oriented—fit with Joe's intentions wonderfully. Joe worked very hard to improve the relationship between Commission and industry. Many of the things we were able to accomplish could not have been accomplished without that.

Joe revived more active participation by industry in our uniformity efforts. That made our uniformity products better. And Joe was very supportive of transparency in government. I know we don't satisfy everybody, but I think that we're a pretty good model for other organizations in that regard.

Anything we do that doesn't relate to confidential taxpayer information is open to the public. One good example of this is that we updated and organized our joint audit manuals and made them available on the website. That was important to Joe. And, it remains important to me.

I think the significance of this work is only beginning to be seen. Ten or 20 years from now, people will look back on the Commission's work of the past 10 years much like they look back now on the work of compact and industry regulations of the 1970s.

**Sicilian: What are your long-term goals for the Commission now?**

**Matson:** When Joe was hired after a long process, he was given specific charges—certain things he needed to accomplish. I was named to the position on Joe's departure, and I have interpreted that as my own charge: That the Commission is very satisfied with the operations and tenor of the organization, and they want that to continue. I was hired because the Commission is not seeking a new direction, but wants to build on the direction they established already.

My approach to the job is not going to be the same, of course. But we will continue to do the work the states need us to do and to support them in the ways we've been able to in the past. We have an excellent staff capable of making this happen. And I'm very excited to have Richard Cram and Marshall Stranburg joining us (nexus director and deputy executive director, respectively). The melody may change, but the rhythm and timbre of the Commission will remain the same.

That said, part of what the Commission has done well is continually improve. MTC's vision is to be recognized as the "gold standard" for tax policy development, the primary authority for the public and public officials on issues of state and local tax uniformity and fairness, and the leading resource for ensuring equitable tax compliance. We certainly have our work cut out for us!

A personal goal I have is to get the minutes and other reports of every MTC meeting and uniformity proposal that the Commission has ever worked on since the beginning posted on our website. It will be a significant task. We have a lot of old records, many of them only preserved on microfilm. We'll have to work a little at a time. But some day, if you want to read the minutes of a uniformity committee meeting from 1973, say, you'll be able to go to our website and find it (assuming we still have that record).

I think one of the most important things we'll accomplish is the model regulation work being done now as a result of the recommended amendments to the Uniform Division of Income for Tax Purposes Act (UDITPA). Model regulations, more so than model statutes, are where the uniformity work of MTC is at its best. And producing either is not an easy task.

There is an inherent tension in the uniformity work of the Commission and its stated mission to preserve state tax sovereignty. A lot of people tend to forget that participants in the Commission and its committees are tax administrators. They are not the state policy makers. So the MTC approach is going to be from the administrative perspective. When the Uniformity Committee works on the kinds of things departments of revenue work on—regulations—it's right in their sweet spot.

At the same time, the Commission wants to be the gold standard for supporting development of good state tax policy. And we want to be ready to work on that when a state policymaker asks us to address a particular issue or to give advice. We want to have a ready library of model statutes as well as regulations. Some of the models in our library may not have been widely adopted yet, but they are there as a resource for states when the states need them.

In fact, our uniformity work can have an impact whether it ever results in an adopted model law or not. The work by itself draws attention to certain issues. I want the Uniformity Committee to feel emboldened to do things that are not in the traditional uniformity proposal track. The Commission is authorized by the Compact to "study state and local tax systems and particular types of state and local taxes."

The Uniformity Committee can work on any state tax issue, and not all of that work needs to be run through the full uniformity process and emerge as a model. Technical papers, white papers, issue briefs, resolutions, or even compendiums of best practices are all possibilities.

**Sicilian: So, what do you think is going to rock the tax world in the next few years?**

**Matson:** Three things come to mind. First, wherever it comes from, the silver bullet that takes out *Quill* will be the next thing that rocks the tax world. It may be congressional action, it may be a U.S. Supreme Court opinion. But it will be big, if not a surprise.

Second, it may be a little early to say so, but I think there will be significant repercussions in the state tax world from the Base Erosion and Profit Shifting (BEPS) project, driven by country-by-country reporting. And, though it seems impossible now, I think the European Union could eventually move to formulary apportionment with their Common Consolidated Corporate Tax Base, a proposal that will be relaunched this year. That would certainly filter out into the state tax world as the tax structures across countries and states become more similar.

Third, I think at some point soon we'll see states challenge congressional authority to pre-empt their taxing power. For example, I think there are grounds for a constitutional challenge to the Permanent Internet Tax Freedom Act (PITFA), and I think it would be very interesting if at least one of the grandfathered states currently taxing Internet access pursued such a challenge.

**Sicilian: No interview of Greg Matson would be complete without asking about the Compact election cases. What impact has this experience had on the Commission?**

**Matson:** These cases have brought a focus on the history and development of the MTC that we would not otherwise have. And that's one thing I really appreciate about my friend Michael Herbert. I enjoy our conversations about the history of the Commission, even though-no surprise to anyone-our views are not always consistent.

Another result is that it has caused states to reflect on what it is they want out of a multistate tax compact. As Commission staff, we've had to become extremely rigorous in our analysis of what the Commission is doing and why it is doing it. And we've certainly received a lot of press out of it.

Some people have a lot of consternation over the notion the Compact is advisory, and some even think this is some sort of recent shift, but Bill Dexter (former MTC general counsel) described it that way in his brief to the Supreme Court in the *U.S. Steel* case in the 1970s. The notion is not new.

Another thing people should understand is that the idea the Compact was entered into in exchange for some sort of promise by Congress not to take tax sovereignty away from states is also not accurate. At most, it was an offer. Congress had multiple opportunities to consent through various bills, some of which did not contain an article III election. Adopting any of those would have changed the advisory nature of the Compact, but Congress never did. It was an offer that was not accepted. States are not renegeing on a promise.

**Sicilian: Where's the Commission headed with its proposal for an Arm's Length Adjustment Service (ALAS)?**

**Matson:** We're still looking for enough committed states, but if we're able to start this, it's going to be huge. It will be great for the states that participate. The last big program the Commission started from scratch was the National Nexus Program in the early 1990s, and it took two years or more to get that program going. So while the pace has been a little frustrating, it is not concerning, given the scope of what we're trying to do.

On the other hand, states that have concerns over income shifting are not going to wait for us to start this program. They're going to start pursuing solutions on their own, and several have already done so. So if the Commission is going to get something done, we're going to need to do it soon.

There's a tendency to think the Arm's-Length-Adjustment Service (ALAS) proposal is only about transfer pricing. It isn't. That can be both welcoming and scary to taxpayers. We hear from taxpayers that have dealt with states that the states are getting into this and most demonstrate how inexperienced they are in dealing

with transfer pricing. States naturally find it difficult to just trust what a taxpayer is giving them if they don't fully understand it.

The core of the ALAS program is to give states the ability to say "this issue came up in audit, the taxpayer gave us a report, let's get an expert to take a look at it," rather than just say "you have to file combined." The ALAS program gives states an alternative to forced combination, economic nexus, expense disallowance, and add-back-all of which tend to be blunt instruments when it comes to dealing with income shifting. When states have more comfort around transfer pricing, they won't react to it by looking for another approach. And contemporaneous documentation will be key.

There also seems to be an assumption out there that states will rely on IRS determinations, and that's an incorrect assumption. States are not bound by IRS determinations. I'm not saying that means a company will have to pay for a transfer pricing study for each state, though. Most states start with federal adjusted gross income, and 99% of the case law and regulations that deal with transfer pricing are from the federal level. States aren't looking to develop a separate body of law, so there will be a strong reliance on federal law.

**Sicilian: What is your sense of current relations between taxpayers and tax administrators?**

**Matson:** In many ways I think relations are okay, but some areas are becoming more contentious. For example, taxpayers have been sensitized to information sharing for obvious reasons and not just tax reasons. Cyber attacks, hacking, and other data security issues foster this sensitivity, and rightly so.

Our Joint Audit Program is commended by some and dreaded by many. Among the Fortune 500, some are okay with the audit program and even see benefits from it. For example, we had a large company tell us its experience with an MTC audit was refreshing. The MTC auditor showed up, completed an audit for around 15 states, and left before another state was able to conclude its single state audit.

We do the work for the states, and they make that assessment on their own. Sometimes they don't follow the assessment we have proposed. That is extremely frustrating to both the taxpayer and our audit staff, because it obviates the efficiencies of the joint audit program. I certainly hear about it from the Council On State Taxation (COST) and taxpayers. That's a situation that the audit states may need to address.

**Sicilian: What is the best way to communicate with you?**

**Matson:** I'll certainly be out and about, involved in outside conferences. Senior MTC staff will be out there also. And if you've got an idea or issue we need to talk about, just pick up the phone or send an email. If someone has an issue they haven't been able to resolve, I want to hear about it.

**Sicilian:** **Good luck, Greg—we look forward to working with you!**