



MULTISTATE TAX COMMISSION

To: Executive Committee  
From: Joe Huddleston  
Date: July 24, 2014  
Subject: 2014 Annual 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, 2013, through June 30, 2014.

**I. Programs & Activities**

**A. Joint Audit Program**

The audit division completed 6 and parts of 7 income tax audits for fiscal year 2014. The audit division also completed 6 sales tax audits and parts of 9 other sales tax audits for this fiscal year. There are currently 17 income and 29 sales tax audits in progress. Proposed assessments through for fiscal year 2014 from these audits total \$42,525,220.

The following chart summarizes hourly data for completed audits for fiscal year end June 30, 2014:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	6	6	12
<b>Total States Audited</b>	161	78	239
<b>Total Hours</b>	14413	6570	20983
<b>Average Hours per State</b>	89	84	88

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

Audit division staff provided instruction at two income tax training classes and three sampling class during this fiscal year.

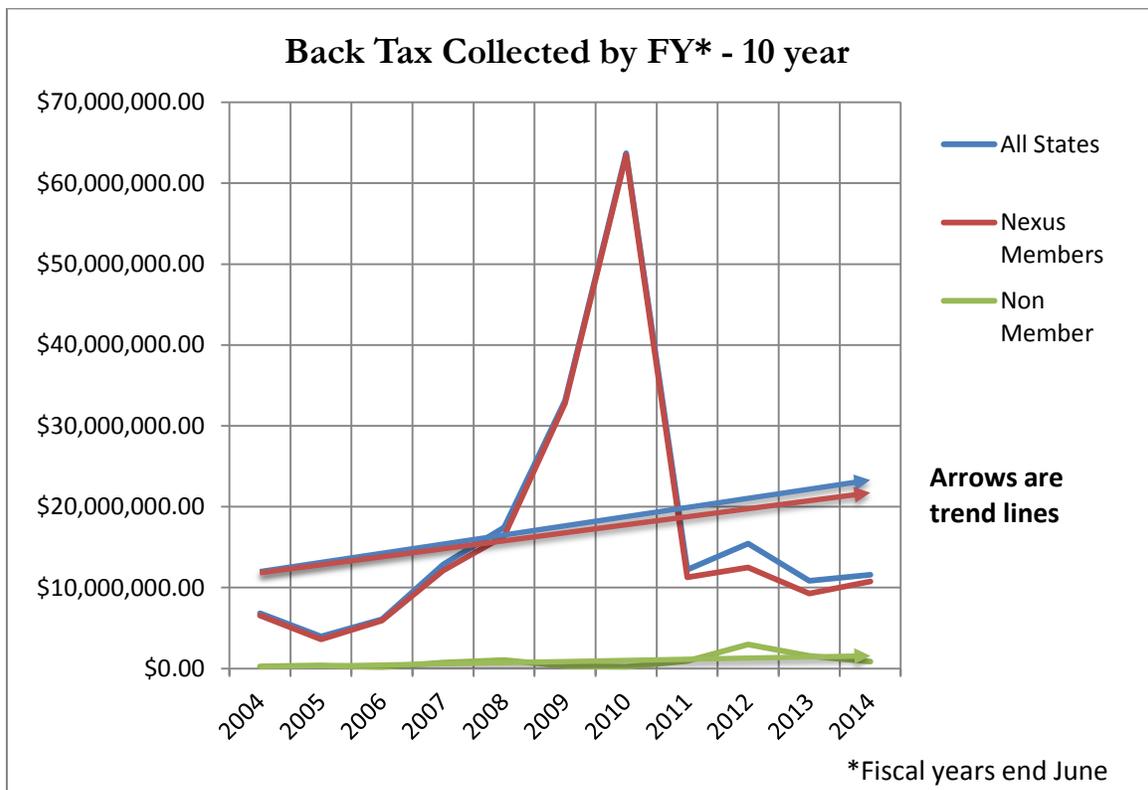
**B. National Nexus Program**

The multistate voluntary disclosure statistics for FY2014 are —

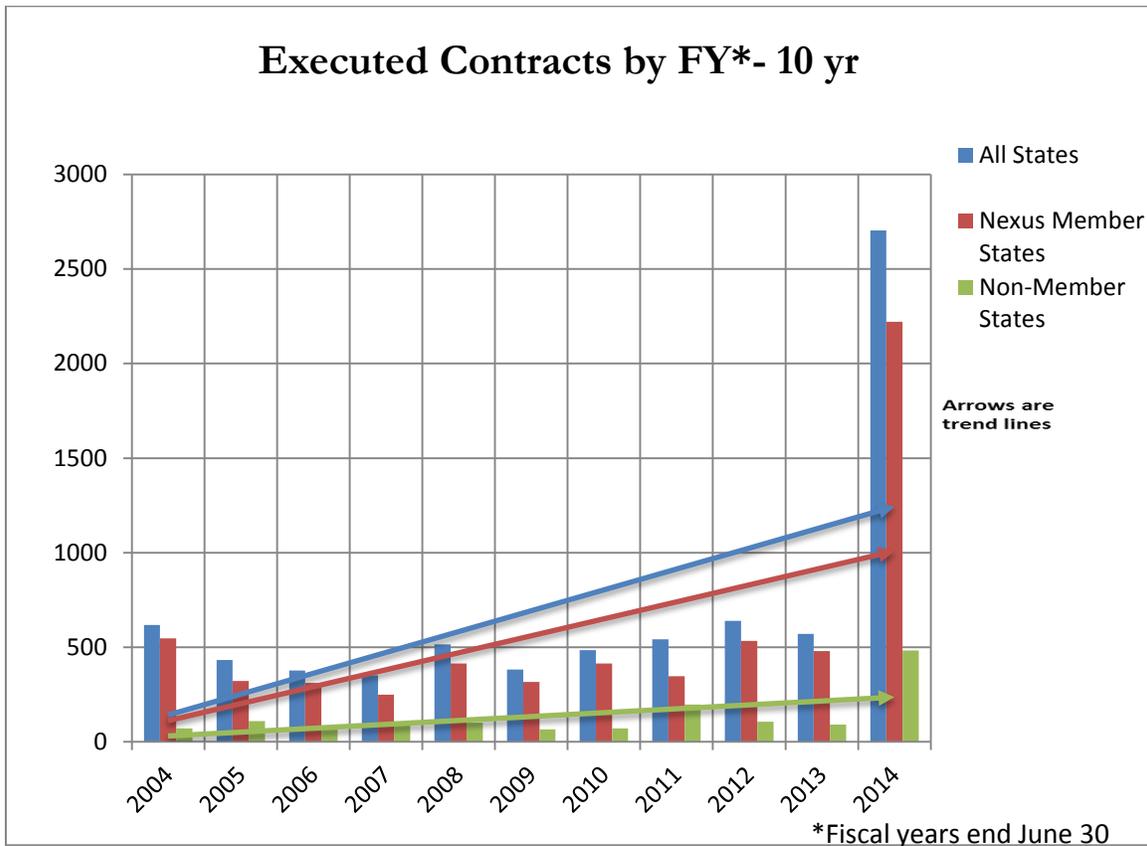
- Nexus states’ collections .....\$ 10,757,075
- All states’ collections .....\$ 11,606,862

- Nexus states' executed contracts .....2,222
- All states' executed contracts .....2,704
  
- Nexus states' average contract value.....\$ 4,841
- All states' average contract value .....\$ 4,292

*Please Note: All of the above amounts include only amounts actually received before the Commission closes its file; neither interest, which taxpayers pay directly to states after their Commission files are closed, nor the future value of new taxpayers are included.*



The large spike in revenue recovered in FY2009 and FY2010 is due to a single taxpayer. Such large taxpayers come forward occasionally; their appearance cannot be predicted.



#### Nexus Committee

Staff continues to work with the Nexus Committee on various projects, including ongoing amendments to the text of the template multistate voluntary-disclosure agreement and the Procedures of Multistate Voluntary Disclosure, which provides rules for state, the Commission, and taxpayers participating in multistate disclosure. This is often required by changing state policies.

In response to a request from the committee, staff shifted its focus at the first two meetings (July and December) toward presentations of nexus-related issues, such as recent court cases, and facilitating exchange of information at roundtable discussions.

The committee approved participation in strategic planning and appointed a work group that has twice. The full committee has had two ad hoc meetings to work on strategic planning. The NNP director is a member of the work group. Strategic planning will likely be the committee's primary task for the next year. The committee intends to present a proposed project to the Commission's strategic planning Steering Committee at its July 2014 meeting for its consideration.

### Strategic Planning for Marketplace Fairness Act

The NNP director and the associate director were working in a small group with consultant Elizabeth Harchenko and state representatives on a strategic plan to prepare for a single sales/use tax audit that may be required under the federal MFA, which has passed the Senate and is under active consideration in the House. However, this project is on hold pending further developments in the U.S. House of Representatives.

NNP staff has dedicated a significant amount of time to strategic planning this fiscal year and will continue to do so at least until December 2014.

### Discontinuation of Free Voluntary Disclosure

The Nexus Committee requested that staff discontinue its practice of making multistate voluntary disclosure available to all states without regard to their membership status in the NNP. Staff notified commissioners and voluntary disclosure staff of non-member states that the Commission welcomes their continued participation on a paying basis effective July 1, 2014. The Commission's executive director and the director of the National Nexus Program contacted commissioners to request that they join before the deadline. The director of the National Nexus Program also contacted state staff.

### Membership

There are currently thirty-eight member-states (including the District of Columbia) of the National Nexus Program. New Hampshire rejoined in September after five years absence. The Commission provides voluntary disclosure services to non-members as well until July 1, 2014. The California Franchise Tax Board (but not the State Board of Equalization), Delaware, Nevada, Ohio, Illinois, New York, and Pennsylvania were not participating when the Commission ceased offering services to non-members and were therefore unaffected by the change.

### Outreach

Nexus staff continues to urge member states to put a link to the Commission's multistate voluntary disclosure program on their own voluntary disclosure web pages. Twenty-eight states currently make no direct referral to multistate voluntary disclosure on their own disclosure pages. Minnesota posted a link in FY2014.

### Nexus School

Staff taught at nexus schools in Honolulu on November 18 - 19, 2013, and in Boston on January 14 - 15, 2014.

### C. Legal Division

The legal division staffs two standing committees: uniformity and litigation. The division also holds regular state tax attorney teleconferences; participates as speakers at conferences, symposiums and institutes; and teaches 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. The division 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 May 2014 Executive Committee meeting, the legal division has completed a hearing on proposed financial institutional model apportionment regulations, has done extensive work on two amicus briefs in support of the Massachusetts Department of Revenue in state court, and has begun work on an amicus brief in support of Maryland for the *Wynne* case pending before the U.S. Supreme Court.

#### Uniformity Work

The division has staffed nine uniformity proposals under consideration by the executive and uniformity committees, in addition to a uniformity process strategic planning project:

- *Amendments to UDITPA and Compact Art. IV related provisions:*
  - Definition of "sales" - Compact Art.IV(1)(g)
  - Sales factor sourcing - Compact Art.IV.17
  - Factor weighting - Compact Art.IV.9
  - Definition of "business income" - Compact Art. IV.1(a)
  - Distortion relief - Compact Art. IV.18
- *Model Sales & Use Tax Notice and Reporting Statute* (awaiting resolution of issues in *Direct Marketing Association v. Brohl* cases)
- *Model Remote Seller Nexus Statute* (under development at uniformity subcommittee)
- *Amendments to MTC Model Financial Institutions Apportionment* (hearing held May 8, 2014)
- *Model Provisions Concerning Class Actions and False Claims* (under development at uniformity subcommittee)
- *Uniformity Process Strategic Planning Project*

#### Litigation Committee Work

Legal division supported the litigation committee by organizing and making presentations for the July 2013 in-person meeting in San Diego, California as well as the in-person meeting in March 2014 in Denver, Colorado. In addition, legal division organized

teleconference information and training sessions for state tax attorneys, with teleconference meetings generally including approximately 50 state attorneys from more than 35 states. There has also been a consistent trend toward increasing attendance.

#### Legal Assistance to States

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

- *Bridges v. Thomas* (Louisiana Supreme Court) filed September 9, 2013
- *California FTB v. Gillette* (California Supreme Court) filed October 21, 2013
- *IBM v. Michigan Dep't of Treasury* (Michigan Supreme Court) filed Nov. 5, 2013
- *Alabama Dep't of Revenue v. CSX Transportation Inc.* (U.S. Supreme Court) petition granted July 1, 2014
- *Health Net Inc. v. Oregon Dep't of Revenue* (Oregon Tax Court) arguments heard July 22, 2014
- *DirecTV LLC v. Massachusetts Dep't of Revenue* (Massachusetts Supreme Judicial Court) amicus brief filed July 2014.
- *Maryland Comptroller's of the Treasury v. Wynne* (U.S. Supreme Court) petition granted May 27, 2014

#### 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. During the fiscal year, the division provided legal assistance to the commission's audit division on a number of challenging audit related issues and has addressed several public participation issues and records requests. Staff supported the Commission's legislative day in May 2014. The legal division has also provided support for the Commission's training division by teaching at the following classes:

- Combined Reporting Training (October 2013 - Washington D.C.)
- Nexus Training (November 2013 - Honolulu, Hawaii)
- Nexus Training (January 2014 - Boston, Massachusetts)
- Corporate Income Tax (February 2014 – Denver, Colorado)

## D. Policy Research

*Uniformity Project on Revising Model Statute on Apportioning Income of Financial Institutions* — The policy research director continues to work with other MTC staff, state revenue agency personnel, and industry representatives to develop a better Model Apportionment statute. Policy research staff helped develop methods for siting loan bundles for the property factor in the apportionment formula. Policy research staff also wrote a memorandum on possible adoption of alternative apportionment formula for financial institutions.

### *MTC Review* —

- Reviewing submission by Bob Schauer and Harold Jennings regarding superiority of statistical sampling versus representative sampling for sales and use tax audits.
- Reviewing submission by Michael Udell of District Economics Group on Single Sales Factor apportionment; referred this article to Tax Analysts
- Writing article on state and local government finance and trends in state corporate income taxes.

### *Other Activities* —

- Supports MTC efforts in addressing federal legislation with implications for state and local taxation.
- Monitor state adoption of MTC model statutes, regulations, and guidelines.
- Elected to Advisory Board of National Tax Association; collaborated with colleagues on the NTA Budget and Finance Committee to develop new budget tools, budget procedures, and dues and fee structures to be voted on by NTA Board on May 15th.
- Helped organize NTA/UMICH conference on the 100<sup>th</sup> anniversary of U.S. income tax at the Rayburn House Office Building.
- Organized session on sales taxes for Federation of Tax Administrators Revenue Estimating and Research Conference in Providence, Rhode Island, October 21-24, 2012
- Assisted executive director in preparing for presentation on U.S. fiscal federalism for OECD taxation conference in Marrakech, Morocco; presentation will be basis for future *Review* article.
- Discussant for two papers on interaction between Federal taxes and state taxes at the National Tax Association Annual Meeting.
- Organized Tax Economists Forum breakfast at Hall of States on December 4, 2013.
- Organized Tax Economists Forum breakfast at Pew Charitable Trusts on January 18, 2014.
- Co-presented on the topic of worldwide combined reporting and formulary apportionment at the Tax Economists Forum breakfast at Hall of States, April 10, 2014.
- Organized Tax Economists Forum breakfast at Hall of States on May 21, 2014.

## **E. Training**

The Training staff supported the following training activities this fiscal year:

### Corporate Income Tax

October 7-10, 2013 in Washington, DC for 34 students from the District of Columbia, Idaho, Nebraska, South Carolina, and the MTC.

February 3-6, 2014 in Denver, Colorado for 76 students—75 from Colorado and 1 from Montana.

### Statistical Sampling for Sales and Use Tax Audits

October 15-18, 2013 in Wheat Ridge, Colorado for 28 students from Colorado, South Dakota, Wisconsin, Wyoming and the private sector.

February 10-13, 2014 in Hoover, Alabama for 16 students—10 from Alabama (4 from local governments and 6 from the Department of Revenue), 4 from local governments in Louisiana, 1 from the South Carolina Department of Revenue and 1 private sector participant. This session was sponsored by the Alabama Local Tax Institute of Standards and Training (ALTIST) at Auburn University.

March 31-April 3, 2014 in Madison, Wisconsin for 15 students—6 from Wisconsin, 4 from Nebraska, 2 from New Hampshire, 2 from Arizona and 1 from New Jersey.

### Nexus School

November 18-19, 2013 in Honolulu, Hawaii for 53 students from the Hawaii Department of Taxation

January 14-15, 2014 in Boston (Chelsea), Massachusetts for 44 students—40 from Massachusetts, 3 from New Hampshire and 1 from West Virginia.

The training director was the principal coordinator of the July 24<sup>th</sup> annual meeting conference in San Diego, California.

The training staff supports registration activities for all regular in-person meetings of the Commission.

The training director made a presentation on Sourcing of Sales of Electricity to the Uniformity Subcommittee on Income and Franchise Tax on March 11, 2014 in Denver, and continues to support educational efforts on this topic which were requested by the Uniformity Committee.

#### **F. Arm's-Length Adjustment Service Project**

The Arm's-Length Adjustment Service (ALAS) Project was launched in March with the recruitment of an advisory group for this design effort. Eight states and the District of Columbia are participating in the project: Alabama, D.C., Florida, Georgia, Hawaii, Iowa, Kentucky, New Jersey and North Carolina. Additional states are welcome to join the project as well. Dan Bucks has been retained as the project facilitator.

The first meeting of the ALAS Advisory Group was held in St. Louis, Missouri, on Monday, June 2, 2014. They held a teleconference on June 25. Their second in-person meeting is planned for Monday, July 28th, in conjunction with the Commission's annual meeting in Albuquerque, New Mexico.

The project will evaluate a range of potential services that would support states in the pre-audit, audit, and post-audit phases of addressing transfer pricing issues. The actual services to be proposed will emerge out of the work and discussions with the states over the next year.

The objective of this effort will be to complete a design for an operational Arm's Length Adjustment Service to submit to the executive director by early April 2015. After review of the design with tax administrators of interested states, a final service design will be available for action by the Commission at its annual meeting in 2015.

## **II. Administration**

On October 22, 2013, two income tax auditors were terminated for failure to meet performance goals. These two income tax audit positions remain vacant.

General Counsel Shirley Sicilian tendered her resignation on November 19, 2013, effective December 31, 2013. Shirley was hired in 2003 as deputy general counsel and became general counsel in July 2006. Shirley joined KPMG LLP in January 2014 as the national director of state and local tax controversy for its Washington National Tax practice.

Mike Bontrager, Senior Sales Tax Auditor, resigned January 31, 2014, to take a position with private industry. Mike had been with the Commission since November 2004.

Keith Getschel, who was the assistant commissioner for business taxes with the Minnesota Department of Revenue, has been hired as the incoming director of the Joint Audit Program. He started on June 16, 2014. Les Koenig, the current director, will retire on July 31 of this year.

Jantha Jamison began employment with the Commission on June 16, 2014, as a sales tax auditor. Jantha worked for the Nebraska Department of Revenue since 1997, most recently as a senior auditor.

Two summer interns are working in the Commission's headquarters. Stephen Emerick, an information technology major at Northern Virginia Community College, has been working with the network administrator and website manager since late May. Tong Liu, a master's degree candidate in applied economics at Johns Hopkins Institute is working with the director of Policy Research; she began in June.

Helen Hecht, who was tax counsel for the Federation of Tax Administrators, has been hired as general counsel and started on July 1, 2014.

### 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

- SEATA 63<sup>rd</sup> Annual Conference; *Alternative Apportionment (Sicilian); Multistate Tax Commission Update* (Huddleston); Hilton Head, South Carolina

#### AUGUST

- BNA State Tax Advisory Board Roundtable; Participant (Matson); Washington, D.C.
- Georgetown Advanced State and Local Tax Institute; *The Presumptive Correctness of Tax Assessments* (Laskin); *SALT Implications of Federal Tax Reform* (Huddleston); *MTC Compact Litigation and Refund Opportunities* (Sicilian); Washington, D.C. (Shimkin)
- Florida Tourist Development Tax Association 18th Annual Conference; *Sales Tax Enters the 21st Century* (Beier); Clearwater, Florida
- 2013 Annual Meeting of MSATA; Oklahoma City, Oklahoma (Huddleston)

#### SEPTEMBER

- 2013 Annual Meeting of NESTOA; Philadelphia, Pennsylvania (Huddleston)

#### OCTOBER

- 2013 FTA Revenue Estimating and Research Conference; Springfield, Illinois (Dubin)
- 2013 WSATA Conference; *Multistate Tax Commission Update* (Fort); Salt Lake City, Utah
- National Association of State Bar Tax Sections Annual Conference (Laskin, presenter); Washington, D.C.
- Bloomberg BNA Online Seminar: *Revising UDITPA and the Multistate Tax Compact*; (Sicilian)

- Hartman State and Local Tax Forum; *Burden of Proof in State Taxation* (Fort); Nashville, Tennessee (Huddleston, Sicilian)
- Pennsylvania Institute of Certified Public Accountants 2013 Multistate Tax Conference; *Multistate Tax Commission Update* (Shimkin); Malvern, Pennsylvania
- Tax Executives Institute 68<sup>th</sup> Annual Conference; *Effect of the Gillette Decision and Current MTC Projects on Taxpayers* (Matson); New Orleans, Louisiana

#### NOVEMBER

- Tax Analysts Conference: *The Project to Rewrite UDITPA: Does Model Legislation Have an Expiration Date?* (Sicilian); Washington, D.C. (Huddleston, Matson, Dubin, Disque)
- COST 2013 Mid-Atlantic Regional State Tax Seminar; *Everything You Wanted to Know, But Were Afraid to Ask, About the MTC* (Matson); McLean, Virginia
- 2013 California Tax Policy Conference; Moderator: *Shave and a Haircut: (Two) Thoughts on the Future of the Multistate Tax Compact after Gillette* (Huddleston); San Jose, California
- AICPA 2013 National Tax Conference; State & Local Tax Committee; Presenter (Shimkin); Washington, D.C.
- 2013 New England State and Local Tax Forum; *State of the States* (Huddleston); Newton, Massachusetts
- National Tax Association 106<sup>th</sup> Annual Conference on Taxation; Discussant: *Interacting Federal and State Taxes* (Dubin); Tampa, Florida

#### DECEMBER

- International Tax Dialogue (ITD) Global Conference on Tax and Intergovernmental Relations, *Tax Administration: Striking the Right Balance – A U.S. Multistate Perspective* (Huddleston), Marrakech, Morocco

#### JANUARY

- 23rd Annual Ohio State Tax Conference; Columbus, Ohio (Huddleston)

#### FEBRUARY

- NYU State Tax Group lunch meeting, New York, New York (Huddleston)
- Deloitte and Florida Bar Tax Section's National Multistate Tax Symposium; Orlando, Florida (Huddleston)
- Memphis Lunch Group of the Institute for Professionals in Taxation, *The Multistate Tax Commission Programs & Projects: A National Overview of Issues Facing Taxpayers and State Revenue Departments* (Huddleston), Memphis, Tennessee

### MARCH

- D.C. Bar State and Local Tax Committee Luncheon, discussion of federal legislation on state and local tax issues (Matson, panelist), Washington, D.C. (Abalos)
- Cornell State & Local Tax Discussion Group, *Current Tax Events* (Huddleston), New York, New York
- Tax Executive Institute's 64th Midyear Conference, Washington, D.C. (Huddleston)
- American Enterprise Institute and International Tax Policy Forum, *Economic Effects of Territorial Taxation*, Washington, D.C. (Dubin)

### APRIL

- Crowell & Moring's D.C. Tax Executives Luncheon, *Multistate Tax Commission Update and National Issues in State Taxation* (Huddleston), Tysons Corner, Virginia
- Tax Economists Forum, *It's Time to Adopt World Wide Formulary Apportionment & Combined Reporting* (Dubin, co-presenting), Washington, D.C. (Huddleston, Matson)
- The Office of Tax Policy Research at the University of Michigan, the Center for Business and Economic Research at the University of Tennessee and the Department of Economics at the University of Georgia, Conference on Subnational Government Competition, Knoxville, Tennessee (Huddleston)
- 11th Annual New Mexico Tax Research Institute Tax Policy Conference, *UDIPTA – Past Present and Future* (Fort, panelist), Albuquerque, New Mexico

### MAY

- American Bar Association Section of Taxation May Meeting; *Aftershave: Multistate Tax Compact Election Litigation Sweeps the Nation* (Laskin, panelist); Washington, D.C. (Huddleston)
- National Tax Association 44th Spring Symposium; Washington, D.C. (Dubin)
- Bloomberg BNA Online Seminar, *Analyzing Bloomberg BNA's 2014 Survey of State Tax Departments* (Shimkin, panelist)
- Bloomberg BNA Online Live Event, *State Taxation in the Digital Age* (Shimkin, panelist)

### JUNE

- OECD International Tax Conference; Washington, D.C. (Huddleston)
- Tax Economists Forum, Urban Institute; Washington, D.C. (Dubin)
- Bloomberg BNA-Baker McKenzie U.S. Transfer Pricing Primer; Washington, D.C. (Matson)
- Federation of Tax Administrators Annual Meeting; *Market Sourcing Issues – Emerging Rules* (Fort, panelist); *UDITPA Update – Past, Present and Future* (Laskin, panelist); *SCOTUS, SALT and the Road Ahead* (Fort, panelist); St. Petersburg, Florida (Huddleston, Matson)

- Tax Analysts Conference: *U.S. State Tax Considerations for International Tax Reform* (Huddleston, panelist); Washington, D.C. (Matson, Dubin, Disque)
- Indiana Tax Competitiveness and Simplification Conference; *Sales and Use Tax* (Laskin, panelist); Indianapolis, Indiana
- IRS-Tax Policy Center Research Conference, *Advancing Tax Administration*; Washington, D.C. (Dubin)
- Tax Economists Forum, Deloitte; *State Implications of Federal Tax Reform*; Washington, D.C. (Dubin)

## Technology Addendum

The Technology Committee was inactivated by the Executive Committee in June of 2011; during the time this committee is inactive, the Executive Director is responsible for providing this technology update with this report.

The Commission's new Exchange 2010 email server continues to coexist with the Exchange 2003 server. Configuration issues with the backup server have been resolved, and the migration of mailboxes is close to completion. The remaining mailboxes need to be cleaned up before migrating to minimize the possibility of corruption during the migration.

The Commission continues to work with Quality Assessment Solutions, LLC, on the state contact portal. The application has been tested and QAS, LLC is in the final stages of remediation of all issues that the deputy executive director and network administrator identified during their testing. Active Directory testing is complete and the final data synchronization should occur soon.

The network administrator has also been working with National Nexus Program staff to provide technical support for the voluntary disclosure application system. A second Statement of Work has been signed with the software Development Company and work has begun on an extensive list of corrections and improvements to the voluntary disclosure application system. Upon completion of this second round of improvements, the online application will be addressed with the software development company.

The software vendor that is doing work on the voluntary disclosure application system has also been contacted to migrate the Audit History database, which currently is in Access 2000, to a SQL server backend and a web interface for the end user. This will allow the Audit Historical data to be viewed, added and edited by internal users that have permissions to do so.

The need for a way to securely transfer large (over 10 MB) files has continues to be an issue for commission staff. The network administrator has an initial meeting with a vendor this week to discuss a possible solution. Other vendors will be contacted to determine the best possible and most fiscally feasible solution.

The normal maintenance of server hardware in the various offices occurs on a regular basis.

The laptops and computers for the entire MTC staff have been received and configured. The majority of the audit staff has been issued new laptops. The network administrator continues to deploy laptops and desktops to the legal and support staff.

The Commission continues to maintain its current website while building a new infrastructure. The staff has made steady improvement in transitioning to a new website with an updated content management system (CMS).

In April, the website manager and deputy executive director completed Content Administrator Essential Training online for the Kentico CMS. The training provided an in-depth view of the web content system. The website manager also completed Developer Essential Training online later in April.

The new website is currently in the last phase of testing. We have completed our content migration phase from our old CMS to the new CMS. The new website will include a new look and feel, redesigned content locations, and overall increase of website performance. The new website will allow reformatting of the uniformity content. We have improved the content layout for ease of use of locating information.

The following chart tracks pageviews by month over the last fiscal year (blue) and has a comparative overlay of the previous fiscal year (gold):

### Website Pageviews

