



Working together since 1967 to preserve federalism and tax fairness

To: Executive Committee
From: Joe Huddleston
Date: November 2, 2007
Subject: Report of Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2007 through October 31, 2007.

I. Programs & Activities

A. Joint Audit Program

Audit Program completed one income tax audit and parts of three other income tax audits. The Audit Program also completed two sales tax audits. There are 20 income and 27 sales tax audits in progress.

Don Johnson, a senior income tax auditor, resigned in August 2007. Joe Nowinski, an auditor for Georgia, has been hired to fill this income tax auditor position and started on November 1, 2007.

Since Georgia and Illinois have joined the MTC Audit Program, the Audit Program has been authorized to add an additional income and an additional sales tax auditor, and recruiting for these two positions will begin shortly.

Several members of the Joint Audit Program along with the Commission's deputy director continue to work on revising the Joint Audit Program Income and Sales Tax Audit manuals and processes, a project that should be completed early in 2008.

B. National Nexus Program

The Voluntary Disclosure Program opened 18 new cases and collected \$3,173,047 of revenue on behalf of member states. Marketing of the program consisted of the distribution of 1,165 brochures by member states to taxpayers who may have multi-state nexus issues. The program also uses Google to get referrals; Google displays an advertisement for the National Nexus Program to those who search using certain terms, such as "voluntary disclosure."

The program conducted a nexus school in Nashville, Tennessee and has tentative plans to conduct one in Baltimore, Maryland.

There has been some turnover of staff in the voluntary disclosure program within the past year. We recently hired a paralegal to work on voluntary disclosures, which brings our paralegal staffing level to three.

Nexus staff is working with the Nexus Committee on issues such as a possible project to offer guidance to states on the duration of nexus; research on nexus compliance issues; and improvements to the voluntary disclosure program, such as greater uniformity of procedure. Nexus staff is also working with the Technology Committee and Commission technology staff to improve automation of the voluntary disclosure process.

The Nexus staff also supported the tax shelter voluntary compliance program, a separate project of 23 states which ended October 1, 2007, resulting in 36 taxpayers coming forward and collecting \$21,033,366 for the participating states.

C. Legal

In addition to staffing the Uniformity Committee and the Litigation Committee, legal staff hosted bi-monthly teleconferences for state tax attorneys. These teleconferences generally involve two presentations on topics of current interest to the states and allow time for discussion. All state tax attorneys are invited to attend. The last teleconference was held in September and included a presentation and discussion on sourcing receipts from futures contracts in the sales factor. Plans are underway for the next teleconference.

Legal staff support for the Uniformity Committee over this period included staffing the July meetings and work on the following projects:

- Proposed Amendments to UDITPA sec. 17, Multistate Tax Compact Art.IV.17 (under development at Executive Committee and in coordination with NCCUSL)
- Proposed Amendments to MTC Model Financial Institutions Apportionment Rules (under development at the Uniformity Committee)
- Proposed Model Regulation Regarding Statistical Sampling (Public hearing held, returned to Uniformity Committee).
- Proposed Model Statute addressing RICS (Underdevelopment at Uniformity Committee)
- Proposed Model Regulation Regarding Hotel Intermediaries (under development at the Uniformity Committee).
- Proposed Amendments to Regulation regarding Section 18 (under development at the Uniformity Committee)

- Possible New Projects including Telecommunications Transaction Tax Administration and Reporting Federal RARs (white papers under development)

Also, legal staff served as hearing officers for public hearings for the proposed model statute addressing REITS and the proposed model rule for telecommunications apportionment.

The following *amicus curiae* briefs have been filed:

- *Kentucky Dep't of Rev. v. Davis*, United States Supreme Court
- *Surtees v. VFJ Ventures, Inc.*, Amicus Opening Brief, Alabama Circuit Court of Appeals
- *CSX Transportation, Inc. v. Georgia State Board of Equalization*, United States Supreme Court
- *Surtees v. VFJ Ventures, Inc.*, Amicus Reply Brief, Alabama Circuit Court of Appeals

The following requests for *amicus curiae* support are under review:

- *Meadwestvaco v. Illinois*, United States Supreme Court
- *Sigma-Aldrich Corp., et al v. California Franchise Tax Board*, California State Board of Tax Appeals
- *Indiana v. Miller Brewing Company*, Indiana Supreme Court

Legal staff provided input to states on issues in various legal contexts, including review of states briefs, draft state legislation, and draft and proposed federal legislation.

Legal staff continues to provide assistance to the Audit Division on several cases. They also provided legal assistance regarding general Commission administration — including filings associated with the Taxnet Governmental Communications Corporation, recovery of security deposit on a real estate lease, review of hotel contracts, and more. They also provided assistance for the Commission's alternative dispute resolution process. In addition, they contributed to review of bills before Congress.

D. Policy Research

Policy Research staff provided technical support for the Uniformity Committee's project on apportioning the net income of telecommunications service provider businesses. Currently, the staff work on telecommunications transactions taxes is focused on estimating compliance costs for telecommunications service providers.

The Policy Research staff worked with a member of the staff of the Indiana legislative fiscal committee on apportionment issues and measuring corporate income tax capacity. Staff also worked with members of the Utah Tax Commission staff on apportionment issues regarding one taxpayer, and with Illinois revenue estimators on possible methods to estimate revenue impact on individual states due to Internet Tax Moratorium extension.

The Policy Research staff's other activities include:

- Being a member of Nominating Committee of National Tax Association
- Assisting in organizing a session on State Revenue Estimating Methods for National Tax Association' Annual Meeting in Columbus, Ohio.
- Conferring with U.S. Census Bureau staff on content and presentation of state and local government finance data to improve their website.
- Meeting with foreign visitors via the U.S. State Department program (Switzerland, Trinidad)
- Editing two articles and wrote one article for the Winter 2007 issue and completed Summer/Fall 2007 issue, which will be published shortly.

E. Training

The training staff has ongoing contact with state personnel to ensure state training needs are being monitored and met.

Training staff helped revise the certificate of attendance for MTC courses. They also supported the following training activities:

- Audit and Computer Technology Workshop in Nashville, Tennessee, September 23-26
- Training Session on Combined Reporting for West Virginia, conducted by the Commission's General Counsel
- Nexus School in Nashville, Tennessee, October 29-30

In addition, training staff organized the November 8 audit training session in New Orleans on FIN 48, Tax Disclosures and Related Topics, and have been supporting internal audit staff training in Chicago later this month.

Training staff also worked on implementing and improving the online website registration process.

The training director also assisted in legislative analysis of the Internet Tax Freedom Act, preparing a summary of streamlined sales tax developments, updating website content, and hosting the bi-weekly update call for the states.

Architectural drawings have been considered for reconfiguring the Commission's headquarters office, including the incorporation of additional, adjacent space. We are waiting for an estimate for the proposed changes before finalizing plans.

II. Information Sharing with the IRS

The IRS endorsed a Memorandum of Understanding format for use by the MTC and the states to formalize information-sharing in away that would allow the Commission to handle federal taxpayer information directly. A copy of the agreement and background materials were sent to 24 states to complete and return; we have received 19 executed agreements back at this point.

III. Website

Overall traffic (as measured by the total visitors per month) for the third quarter was down from the second quarter by just over 4 percent. July was the busiest month on the website since January as users prepared for the annual conference, but the months following showed steady decline, with visitors down 16 percent by September. Not surprisingly, the Uniformity Committee section of the conference agendas is getting the most traffic prior to meetings. October visitors increased about 3.5 percent from September, most likely as users prepared for the Fall Committee Meetings.

Referrals from other state tax agency websites increased significantly in September, probably due to the upcoming October 1st deadline for applications to the Voluntary Compliance Program. After a reminder and request was sent to the participating states asking them to add links to the MTC program and website to their sites, September referrals from states rose almost 40 percent from the previous month. State referrals in September were 15 percent of total referrals, though that number is back down to 10 percent for October. About 30 states are now sending referrals from their websites (websites who refer less than 3 visitors are not listed discreetly, so there may be other states included in referrals that were not identified).

IV. Staffing

A. Personnel

The following are changes to the Commission's staff during this time:

Don Johnson of the MTC Chicago Audit Staff resigned effective August 17, 2007.

Ted Jutras took a position as a paralegal in the National Nexus Program on August 22, 2007.

Michelle Lewis started as a paralegal in the National Nexus Program on October 1, 2007.

In addition, Allison Kelly, website content manager, resigned effective November 2, 2007. Planning and recruiting for her replacement has begun.

V. Facilities

Architectural drawings related to the acquisition of contiguous space have been reviewed, and we await an estimate of costs before approving the proposed reconfiguration of the Commission's headquarters office (acquisition of this additional space and subsequent build-out was programmed into the 2007-2008 budget).

VI. Presentations

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 Annual Conference, Orlando, Florida (Huddleston)

AUGUST

- NCSL Annual Meeting, Boston, Massachusetts (Huddleston)
- TEI State & Local Tax Course, Indianapolis, Indiana (Fort)
- MSATA Annual Conference, Omaha, Nebraska (Huddleston)

SEPTEMBER

- NESTOA Annual Conference, Washington, D.C. (Huddleston, Matson)
- Kansas Interim Tax Committee, Topeka, Kansas (Sicilian)
- WSATA Annual Conference, Santa Fe, New Mexico (Huddleston, Fort)
- FTA Revenue Estimating Conference, Raleigh, North Carolina (Dubin)
- ABA Tax Section Meeting, Vancouver, British Columbia (Huddleston)
- MTC Update Presentation for Sprint Corp., Kansas City, Missouri (Sicilian)

OCTOBER

- Presentation to Massachusetts Governor's Commission studying Combined Reporting, Boston, Massachusetts (Sicilian)

- SEATA Compliance and Attorneys' Workshop, Atlanta, Georgia (Huddleston)
- AFT-Public Employees Program and Policy Council Meeting, Washington, D.C. (Huddleston)
- Paul J. Hartman State & Local Tax Forum, Nashville, Tennessee (Huddleston, Sicilian, Fort)
- The Broadband Tax Institute Annual Conference, Scottsdale, Arizona (Huddleston)
- National Association of State Tax Bar Associations, Washington, D.C. (Fort)
- Multistate Tax Commission Alternative Dispute Resolution, Birmingham, Alabama (Sicilian)
- Eastern States Working Group, New York, New York (Matson)