



**Multistate Tax Commission Executive Committee Meeting
Hilton Santa Fe Historic Plaza Hotel, Santa Fe, New Mexico
July 31, 2008**

I. Welcome and Introductions

The Executive Committee commenced its meeting at 8:30 a.m. on July 31, 2008. The following persons attended the Executive Committee meeting:

Name	Affiliation	Name	Affiliation
Robyn Wilson	AK	Mary Loftsgard	ND
Michael Mason	AL	Brian Bedford (via phone)	NY
Tom Atchley	AR	Elizabeth Harchenko	OR
Danny Walker	AR	William Hamner (via phone)	TX
Richard Moon	CA BOE	Gary Johnson	TX
Ben Miller	CA FTB	Bruce Johnson	UT
Tim Weber	CO	Rod Marrelli	UT
Charles Wilson	DC	Russ Brubaker	WA
Steve Cordi	DC	Craig Griffith	WV
Ed Many	GA	Private Sector/Other	
Kurt Kawafuchi	HI	Jana Malone	COST
Ted Spangler	ID	Diann Smith	Sutherland
Richard Cram	KS	Ferdinand Hargroian	PWC
Jennifer Hays	KY	Dustin Hubbard	PWC
Cynthia Bridges	LA	Delores Gregory (via phone)	BNA
Dave Vettel	MI	Karen Setze	Tax Notes
Michael Fatale	MA	MTC Staff	
Ward Einess	MN	Joe Huddleston	Sheldon Laskin
Don Trimble	MN	Greg Matson	Thomas Shimkin
Omar Davis, Chair	MO	Shirley Sicilian	Bill Six
Wood Miller	MO	Ken Beier	Bruce Fort
Dan Bucks	MT	Roxanne Bland	Steve Yang
Lennie Collins	NC	Elliott Dubin	Cathy Felix
Rebecca Abbo	NM	Les Koenig	Jeff Silver
Cory Fong	ND		
Donnita Wald	ND		

II. Public Comment Period

The Chair invited public comment but also said that he would specific comment on substantive matters to the time when the Committee reached that point in the agenda. There was no public comment at this time.

III. Approval of Minutes of May 8, 2008 Executive Committee Meeting and June 20, 2008 Executive Committee Teleconference

After a motion duly made, the minutes of the May 8, 2008, Executive Committee Meeting and June 20, 2008, Executive Committee Teleconference were approved.

IV. Report of Chair

Report deferred to annual business meeting.

V. Report of Treasurer

The Financial Report for the period August 1, 2007 through May 31, 2008 was presented to the committee. The report showed that expenditures were running at less than the previously budgeted amounts in all programs.

VI. Report of Executive Director

Deferred until the business meeting.

VII. Committee and Program Reports

Deferred until business meeting.

VIII. Other Reports

A. Report on Efforts to Improve Internal Audit Program

Greg Matson reported that this is a long-term project with several components. The income tax procedures manual is mostly finished, but the manual needs polishing and review by stake-holders. The sales and use tax audit manual is not completed yet due to complexities of many state rules. The two staff groups continue to forge ahead in this effort.

B. Report from Working Group on COST Survey Responses and Audit Program Improvements

Elizabeth Harchenko provided a report on the findings of the working group established to respond to the issues raised in the COST survey of its members. The COST survey reports that its members had concerns over seven areas of MTC auditing. The Executive Committee appointed a working group to help the Audit Committee investigate and respond. The draft response was circulated for five of seven issues, with the remaining two issues held over for further study:

1. COST Survey Issue One: "Auditors are applying wrong state laws." Working Group's findings and proposed response: we see no evidence of this problem. Auditors will be instructed to better document state responses.

2. Issue Three: "MTC takes too long to complete audits." Working Group's response: "we believe that more pre-audit meetings with taxpayers would help speed up process. Lengthy audits are necessitated by complex nature of taxpayer operations."

3. Issue Four: "Statistical Sampling Errors." Working Group believes the problems may stem from taxpayers being unwilling to participate in statistical sampling.

4. Issue Six: "Auditors assert legal or policy positions different from state policy." Working Group found no evidence to support this complaint.

5. Issue Seven: "States often re-audit after MTC audits." Working Group agreed that some state review occurs after audit proposed assessment, but this is no different from most state internal audit practices. No examples given of MTC "re-audits."

Reserved Issues: (Issue Two) Concern that too many states are participating in audits and (Issue Five) concern that too many waivers are requested. A follow up response would be proposed to the Committee at its November meeting.

Ms. Harchenko requested that the Executive Committee approve sending out response. No formal action taken on request, but agreement with proposed course of action was expressed by Committee members.

IX. Uniformity Projects

A. Update on UDITPA Revision Project and Related Matters

Executive Director Joe Huddleston gave the report on the UDITPA revision project. The Executive Committee agreed with Mr. Huddleston's recommendation to move forward with drafting efforts for proposed UDITPA revisions by the Commission while continuing with its efforts through the Uniform Law Commission (formerly known as the National Conference of Commissioners on Uniform State Laws (NCCUSL)). The decision to proceed with the Uniform Law Commission process comes after that organization's decision to seek more input from state legislative groups instead of immediately commencing drafting efforts. Shirley Sicilian, General Counsel, reported that there has been a good response from the States to the survey asking what states want to see re-drafted—the responses follow the executive committee work group recommendations. Ms. Sicilian reported that 70 percent of Compact members responded to the survey, as well as several other states.

The five recommendations for possible revision are:

1. Section 17 sales factor sourcing for non-tangibles;
2. Factor weighing;
3. Defining business income;
4. Defining gross receipts;
5. Section 18 equitable relief.

Other suggestions made by survey respondents were for review of current UDITPA provisions on: exclusion of financial institutions and utilities; the allocation rules for non-business income; and the definition of the payroll factor (to clarify treatment of leased employees).

Public Comment on UDITPA Revision Effort:

Diann Smith stated that she represents a group of telecommunications companies which do not favor the project, principally because it is unrealistic to think state legislatures will pass proposals. Two "legislative leadership" groups have submitted testimony urging NCCUSL to abandon project.

Mr. Miller suggested that the Executive Committee should seek out expressions of legislative support for project to counter-act legislative "leadership" groups.

Joe Huddleston disagreed with Diann Smith's characterization of the legislative groups' actions. Those groups had not spoken against the project—merely subcommittees of those groups.

Mr. Bucks suggested the Executive Committee should give more direction to staff, a separate budget item and more communication with legislative groups.

Mr. Johnson observed that some UDITPA issues are political, and uniformity may not be possible. But some UDITPA issues, Johnson continued, e.g., Section 17 sourcing rules, are technical in nature and uniformity is critical and obtainable for such technical rules.

Mr. Bucks argued that “COST's agenda is clear”—prevent cooperation among states, then turn to Congress to obtain favorable preemptive legislation.

Diann Smith responded that her telecommunications clients do not support total congressional preemption of UDITPA.

B. Uniformity Proposals Before Executive Committee

Ms. Sicilian stated that no uniformity proposals were before Executive Committee at present.

X. Federal Issues with State Tax Implications

A report was made by Jim Rosapepe and Len Lucci (by phone) of Patuxent Consulting on federal legislation. The consultants stated that relatively little federal legislation affecting the States is expected in the short term. The following legislation or proposed legislation was discussed:

A. Mobile Workforce State Income Tax Fairness and Simplification Act

A House committee has instructed the parties working on the Mobile Workforce Bill to negotiate key terms amongst themselves. This bill appears likely to emerge from committee within the year.

Mr. Bucks urged states and MTC to work on fostering cooperation among states on withholding to head off federal legislation, which some believe will set a precedent for incorporating physical presence standard.

Joe Huddleston suggested that a mark-up of the federal legislation could be drafted by the end of August and circulated to the states, along with a copy of the FTA resolution. Then states can decide what, if any, cooperative measures MTC should organize to head off federal legislation.

Mr. Bucks moved to support executive director in obtaining state cooperation on withholding to head off federal legislation. The motion was approved.

Other pending and possible federal legislation was briefly discussed:

- B. Business Activities Tax Simplification Act (no action expected this year)
- C. Cell Tax Fairness Bill (same)
- D. Hotel Intermediaries (same)
- E. Sales Tax Simplification and Fairness Act (same)
- F. Other Legislation: none anticipated

XI. Future Meetings and Event Plans

- A. Review of Upcoming Meetings and Events

A notice of upcoming events was provided to the attendees and briefly discussed, beginning with the fall committee meetings in San Antonio, Texas; the winter Executive Committee meeting in San Diego; and the winter committee meetings in Nashville. The 2009 Annual Meeting will be held in Missouri. Chairman Omar Davis stated hotel negotiations are on-going for possible sites in Kansas City and Saint Louis. The 2010 meeting will be held in Hood River, Oregon.

- B. Sites for 2011 and 2012 Annual Meetings

Mr. Bucks volunteered to host the 2011 annual meeting in Montana, but would defer to another state wanting to host. The committee did not reach a final determination on sites for the 2011 and 2012 Annual Meetings and will consider this issue again at a later time.

[Committee goes into Closed Session]

XII. Resumption of Public Session and Reports from Closed Session:

There was nothing to report from the closed session.

The Chair asked if there were any other items for the Committee to discuss.

In respect of the NCCUSL UDITPA project, Ms. Harchenko stated that the Commission staff should give the highest priority to three items: (a) keeping the Commission's members well informed of progress and status of the Uniform Law Commission's UDITPA redrafting efforts, including use of contract resources; (b) being

prepared to develop MTC proposals in case ULC effort does not go forward; and (c) developing information to allow states to visit with their legislatures on this issue.

Executive Director Joe Huddleston recognized the contributions of MTC staff to the success of annual meeting. Perry Castellani of the Internal Revenue Service was recognized by Mr. Huddleston for attending the meeting and his assistance in implementing IRS information exchange with the MTC through its Memorandum of Understanding with the states.

XIII. Adjournment

The Chair announced the adjournment of the Executive Committee Meeting at 12:00 noon Mountain time.