



**Minutes of the Multistate Tax Commission Executive Committee Meeting
Thursday, December 6, 2012**

The Westin Denver Downtown
1672 Lawrence Street
Denver, Colorado 80202

I. Welcome and Introductions

The Chair called the meeting to order at 8:30 a.m. The following persons attended the meeting either in person or *via telephone*:

Name	State	Name	Affiliation
Michael Mason	Alabama	Karen Boucher	Deloitte Tax
Robynn Wilson	Alaska	Terry Frederick	Sprint
<i>Tom Atchley</i>	<i>Arkansas</i>	<i>Amy Hamilton</i>	<i>Tax Analysts</i>
Barbara Brohl	Colorado	<i>Steve Kranz</i>	<i>Sutherland</i>
John Vecchiarelli	Colorado	Todd Lard	COST
Stephen Cordi	D.C.	<i>Diann Smith</i>	<i>Sutherland</i>
Kevin Wakayama	Hawaii	Commission Staff	
Rich Jackson	Idaho	<i>Ken Beier</i>	<i>MTC</i>
<i>Phil Skinner</i>	<i>Idaho</i>	Joe Huddleston	MTC
Michael Fatale	Massachusetts	<i>Les Koenig</i>	<i>MTC</i>
Glenn White	Michigan	Sheldon Laskin	MTC
Alana Barragán-Scott	Missouri	<i>Len Lucchi</i>	<i>Patuxent Consulting</i>
Wood Miller	Missouri	Greg Matson	MTC
Dan Bucks	Montana	Jim Rosapepe	Patuxent Consulting
Demesia Padilla	New Mexico	Tom Shimkin	MTC
Lennie Collins	North Carolina	Shirley Sicilian	MTC
Matt Peyerl	North Dakota	<i>Bill Six</i>	<i>MTC</i>
Myles Vosberg	North Dakota		
Gary Humphrey	Oregon		
Nancy Prosser	Texas		
Bruce Johnson	Utah		
<i>Tim Jennrich</i>	<i>Washington</i>		

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II. Public Comment Period

The Chair said that he would provide an opportunity for public comment on the uniformity items when those were reached, and asked for any initial public comments. There were no public comments at this time.

III. Approval of Minutes of the Executive Committee Meeting on August 2, 2012

Demesia Padilla moved that the Minutes of the Executive Committee meeting of August 2, 2012 be approved. The minutes were approved unanimously.

IV. Report of the Chair

The Chair wanted to bring everyone up to date about ongoing discussions and dialogue with the National Conference of State Legislatures (NCSL), in particular their executive committee's Task Force on State and Local Taxation ("Task Force"). He, along with Alana Barragán-Scott, Bruce Johnson, Joe Huddleston, and Shirley Sicilian met with the Task Force in August, and Mr. Johnson met with them again in November. He said the main focus of our dialogue with them has been to explain who we are and what we do, with some focus on pending uniformity proposals.

The Chair invited Mr. Johnson to comment. Mr. Johnson indicated that the Task Force was very gracious in giving him time on their agenda in November and in listening to his input, and that Senator Pam Althoff of Illinois, one of the co-chairs, expressed interest in attending one of our meetings.

The Chair expressed his appreciation to Mr. Huddleston and the Commission staff, and noted the upcoming annual meeting in San Diego, California.

Dan Bucks said that while it is incumbent on us to dialogue with other groups and organizations, he is concerned about our dialogue with NCSL. He noted that, unlike the Commission, they are not a governmental body. The Commission has a representation structure established by state laws; NCSL has no process or governance structure that relates to the Commission. NCSL is not established in laws of any state or in the governmental body of any state. (He pointed out that he used to be a staff member of NCSL many decades ago.) So he asked about the input they are providing—which seems to assume they have some governance authority and this is in conflict with state law—has this been discussed? He appreciates their substantive input of course, but they have no role in approving Commission projects, even though they address the Commission in that manner.

The Chair responded that this is something we've tried to express to them and has been embedded in our presentations. He said Mr. Johnson made that point in both meetings. He pointed out that there are legislators on the Task Force who are not from Compact states, so that is why we've focused on who we are and what we do.

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Mr. Johnson said that Mr. Bucks's point was well taken. He was not that direct with them but tried to point out appropriate roles and separation of powers. He made the point that it is fully in the scope of our authority to develop proposals as an executive branch entity.

The Chair said that he has reminded them when he has met with them that all Commission uniformity proposals that we develop go back to their legislatures to be approved, so they have input then. He added that it important to dialogue with these organizations, and that this was a component of the Commission's strategic goal of engagement.

Barbara Brohl and John Vecchiarelli from the Colorado Department of Revenue entered the room, and the Chair asked that they introduce themselves. Ms. Brohl welcomed everyone to Colorado, and the Chair thanked them for being here and for hosting the meeting.

V. Report of the Treasurer

A. Financial Report for the 4-month period July 1, 2012 – October 31, 2012

Mr. Huddleston delivered the report for Treasurer Julie Magee, and referred everyone to the report that had been distributed. In reviewing the report, he noted that the revenue from California's membership fee that had been budgeted but will not be received greatly contributes to the deficit. He invited questions.

Gary Humphrey asked about current assets and receivables, and whether any receivables were past due. Mr. Huddleston indicated that membership revenue is allocated ratably across the year, and that were no receivables past due at this time.

Mr. Johnson asked about the additional counsel position. Mr. Huddleston said that he expected the position will be filled by first of the year.

Michael Mason moved that the Report of the Treasurer be approved. The motion carried unanimously.

B. Approval of audited financial statements as reported in the independent auditor report for fiscal year July 1, 2011 – June 30, 2012

Mr. Huddleston then directed everyone's attention to the audited financial statements as reported in the independent auditor report for fiscal year 2011. Copies had also been distributed by e-mail and at the meeting. Printed copies will be mailed to those compact and sovereignty states not represented at the meeting today. He reported that the Commission's financial statements received an unqualified opinion from the auditors.

Upon a motion duly made by Ms. Barragán-Scott, the audited financial statements as reported in the independent auditor report for fiscal year 2012 were approved.

VI. Report of the Executive Director

Mr. Huddleston reviewed highlights from his written report. He noted the Commission's increasing role in providing legal support to the states, calling attention to the number of amicus briefs that had been filed. He pointed out Jerry Schleeter, administrative assistant for the Joint Audit Program, retired that after more than 21 years of service to the Commission. He also pointed out that the staff has been very active across the country at outside events.

Mr. Bucks thanked Mr. Huddleston for mentioning Mr. Schleeter's retirement, adding that Mr. Schleeter had been an outstanding employee of the Commission for a long time.

VII. Committee & Program Reports

A. Audit Committee

Les Koenig directed the committee to the Audit Committee's written report. He noted the committee held a teleconference in November with 21 states participating. He also noted that the committee has decided that it better hold its fall meeting in person, and expects to return to that beginning in 2013.

B. Litigation Committee

Ms. Sicilian referred the committee to the written report. She said that the committee met in Grand Rapids with robust attendance for some excellent presentations. The committee sponsored three informational and training sessions that were very well attended. She noted that the Paull Mines award this year was presented to Michael Fatale in Grand Rapids. The Chair congratulated Mr. Fatale on receiving the award.

C. Nexus Committee

Lennie Collins, chair of the Nexus Committee, referred the committee to his written report. He had nothing to add except pointing out the continued success of the Voluntary Disclosure Program and thanked Mr. Shimkin and the nexus staff for their efforts.

D. Uniformity Committee

Wood Miller, chair of the Uniformity Committee referred the committee to his written report. He noted that the Uniformity Committee is divided into two subcommittees, whose chairs are Richard Cram and Robynn Wilson, and he thanked them for their work on all the various projects their subcommittees have developed.

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Mr. Miller highlighted projects currently under development and also that the Uniformity Committee is discussing improvements and efficiency to be gained in the Commission's uniformity processes. He noted that the next meeting of the Uniformity Committee and subcommittees would be in March in St. Louis and invited all to attend those meetings.

Ms. Wilson reiterated their discussions on process improvements in her subcommittee, and in particular encouraged this committee to rethink the notion of a member of the Executive Committee serving as a liaison that would attend the uniformity meetings to facilitate communication. She wants to ensure that the subcommittee is doing as good a job as possible.

Mr. Huddleston said that Mr. Miller and Mr. Collins have done outstanding jobs, and commended Mr. Cram and Ms. Wilson also. He encouraged members of the Executive Committee to attend standing committee meetings, particularly if they haven't before—those committees are doing tough work but it has to be done.

The Chair added that the standing committees are where the heavy lifting is done and the Commission's work could not be done with the volunteer leadership of those committees.

E. Training Program

Ken Beier referred the committee to his written report, and announced several upcoming training opportunities.

F. Other Committee & Program Business

There was no other committee or program business.

VIII. Report regarding Complaint Filed July 26, 2012, pursuant to Commission Public Participation Policy §24

The Chair invited Ms. Sicilian to introduce this matter. Ms. Sicilian referred to the written report and explained Public Participation Policy (PPP) §24. She said that this complaint resulted from a notice issued on July 24, 2012. The complaint filed by Terry Frederick, and Mr. Huddleston circulated the complaint the Commission and she investigated and issued this report, which must appear on the next agenda of the Executive Committee. She noted that the report contained a recommended amendment to the PPP's notice requirements clarifying how days would be counted.

John Vecchiarelli asked about the consequences of a failed notice. Ms. Sicilian said that that is not address in the PPP or the bylaws, but this committee could certainly direct that that be addressed in any amendments.

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Mr. Huddleston responded that in this case he determined that the meeting would occur as scheduled, and the Chair added that this was a working group doing a brainstorming session and that no actions would have been taken.

Mr. Johnson agreed that not being able to take action at such a meeting is important, and also pointed out when we don't give proper notice we may miss out on public input. He indicated he was comfortable with the recommendation but thought it might be to add something about additional time for public input.

Mr. Bucks explained that if Commission holds an improperly noticed meeting, no action can be taken, so any action items would have to be the subject of a subsequent properly noticed meeting. And any public comment at an improper meeting would have to be carried forward as well.

Mr. Johnson clarified that he was thinking of the hearing process, where testimony is taken. Mr. Bucks concurred with Mr. Johnson with respect to the public hearing process.

Mr. Frederick pointed out that with a late notice, members of the public would likely have already made travel plans, and in this case, teleconferencing was not going to be offered, so he filed his complaint.

Further discussion ensued. The Chair asked Ms. Sicilian whether it would be good for the staff to review and come back with more comprehensive recommendation, and she agreed.

Mr. Huddleston noted that in the interim, Commission staff will count days in accordance with this recommendation.

IX. Strategic Planning Report

The Chair referred the committee to the written report and provided a historic recap of the strategic planning that has been going on. He added that the Commission's strategic planning efforts have been tremendously helped by Elizabeth Harchenko, who has served as a fantastic facilitator. The current focus in the goal areas, and work is being done in the engagement goal area and the compliance goal area. He invited Ms. Barragán-Scott to discuss engagement goal projects

Ms. Barragán-Scott summarized the engagement goal area, noting its focus on increasing participation. She said that we have worked on identifying measures, pulling data together, and development of an annual process timeline.

The Chair summarized the compliance goal area, which, after a re-start this summer, is now focused on two projects.

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The Chair informed the committee that the Strategic Planning Steering Committee will be looking at other strategic goal areas in the future, and, importantly, integration of the strategic planning process into the Commission's day-to-day operations. He thanked the other steering committee members Steve Cordi, Nancy Prosser, Ms. Barragán-Scott, and Mr. Huddleston for their ongoing efforts.

Ms. Wilson suggested that one of the ways that the Commission can ensure the value of the strategic planning process is to circle back to the SWOT participants and show how their folks around and show how the items identified in the SWOT process have or are being addressed.

X. Uniformity

A. Uniformity Proposals before the Committee

1. Proposal Regarding Partnership or Pass-through Entity Income Ultimately Realized by an Entity that is not Subject to Income Tax

Ms. Sicilian described the issue that the proposal addresses. She also explained that this project came to commission through the executive committee from Commissioner Najeet Bahl in 2008. The uniformity committee worked on the proposal for three years, with significant and helpful input from insurance industry representatives. A public hearing was held in May of 2011. At the annual meeting in 2011, the insurance industry informed the Executive Committee that they had additional input, so the proposal was sent back for that work. The Executive Committee also asked for a matrix showing the various issues that occur at the confluence of corporate income and insurance premiums taxation, and the possible remedies for those issues, so that they would have a big picture. Ms. Sicilian noted that Sheldon Laskin, Commission counsel, has been staffing this project.

Mr. Laskin explained that the matrix was included in the materials. Mr. Miller, chair of the Uniformity Committee, asked for a change in a footnote of those materials. Mr. Laskin noted that the materials also include a copy of an e-mail from Michael Fatale discussing some items that may address industry concerns. The Uniformity Committee has not seen that email. Industry has been very helpful, but ultimately they and the Uniformity Committee agreed to disagree.

Mr. Bucks questioned whether the proposal could be sent to a bylaw 7 survey. Ms. Sicilian said that it could. She noted the Executive Committee may want to consider the extent of the changes being proposed. If changes are not arising from comments at hearing and are comprehensive, then that would weigh in favor of another public hearing. If the changes are arising from comments at the first hearing, or not comprehensive, then that weighs against the need for another public hearing.

Mr. Laskin stated that the changes are deletions, and have been recommended by Uniformity Committee.

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The Chair asked Michael Fatale for comments. Mr. Fatale said that this has been in front of Executive Committee before, in May 2011, where he reprised a presentation he had made to Uniformity Committee illustrating the problem. An insurance trade group memo to Mr. Laskin suggested there should be an exception for certain activities in LLCs. The insurance folks did not put forward a proposal for accomplishing that though, so he did. This proposal is intended to allow an exception for types of activities that industry has expressed concerns about.

Mr. Johnson and Mr. Huddleston drew the committee's attention to a letter received from NCSL that morning. The letter was read and discussed.

Mr. Johnson noted that the Commission has a responsibility to develop proposals on state tax issues. Mr. Bucks made three points. First, legislators and policy makers do not see corporate income tax returns. Tax administrators who do see them are therefore responsible to raise issues and bring forth proposals to the legislative branch that reflect problems they see: so proposals do emanate from tax administrators. Second, he has a specific statute in Montana that says he will study the tax systems of various states and be proactive – he has a duty to do this which builds on the first point about the institutional role of tax administrators. Third, in his experience, he has never heard of the idea that legislators have to provide permission before ideas can be brought forth.

Mr. Fatale responded to the notion raised that we are singling out insurance companies. He said that does not hold. We are talking about entities that are multifaceted companies and this addresses parts that were subject to taxation for years and then restructured under an insurance company.

The Chair asked if it would be appropriate to send this back to the Uniformity Committee to consider Mr. Fatale's recommendations. Mr. Bucks noted that another option would be to send it directly to another public hearing and to instruct the hearing officer to focus on these issues and to encourage input from NCSL on the regulatory issue.

Mr. Johnson noted that it may be better, if there is a need to go to public hearing, that we go with best proposal. With that in mind, he moved that the proposal be sent back to the Uniformity Committee with direction to consider Mr. Fatale's proposals.

Mr. Bucks, desiring to give an affirmative response to NCSL that there is an open process at the Commission, suggested the motion affirmatively indicate now that this will go to public hearing. The motion was reworded, directing Uniformity Committee to proceed as expeditiously as possible, and that the expectation at this time is that the Executive Committee will send the resulting proposal to public hearing once it comes back.

The Chair called for vote, and the motion approved.

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B. Uniformity Proposals pending before the Committee from prior meeting

1. Model Sales and Use Tax Notice and Reporting Statute

Ms. Sicilian explained that at its last meeting, the committee retained this proposal pending the outcome of *Direct Marketing Association v. Barbara Brohl* case in the U.S. Court of Appeals for the 10th Circuit, and a decision has not yet been rendered in that case.

2. Recommended Amendments to Compact Article IV [UDITPA]

Ms. Sicilian provided a brief background and explanation of the provisions. She noted her memorandum of May 3, 2012.

Mr. Huddleston reminded everyone that these projects have come up over a long period of time, but earlier the decision was to hold these as a group and consider them as a group. He encourage maintaining that approach.

Mr. Johnson related that NCSL has asked us to wait until the *Gillette* case is concluded.

Mr. Bucks noted he is not comfortable with double-weighted sales. This has become an area occupied by state legislatures, and not by tax administrators. He recognizes the amount of work that has gone into this. But he suggested that we should have a recommendation that weighting be left to the states.

Steve Kranz commented that Mr. Bucks raises a good point about factors. Their view is that in light of the *Gillette* case, there are also implications for each of the other amendments. He interprets what the NCSL task force has said as that the MTC should not move forward until there is an understanding about what that case means in terms of state flexibility.

Mr. Johnson stated that he supports Dan's proposal. There are good tax reasons to support the other changes. He thinks that three-factor is best but he wouldn't recommend it to legislators in Utah at this point. In his view, double weighting is a concession, not necessarily a choice that is the best policy.

Mr. Bucks moved that the proposals be forwarded to a public hearing with one change: weighting of sales factor be a matter of individual state determination.

After discussion, the motion was approved by voice vote with no objections and no abstentions.

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C. Other Uniformity Matters

There were no other uniformity matters.

XI. Federal Issues with State Tax Implications

The Chair invited Commission consultants Jim Rosapepe and Len Lucchi to provide an overview of federal developments and legislation that states need to be aware of. As Mr. Rosapepe and Mr. Lucchi reported on these matters, a discussion ensued.

XII. Upcoming Meetings & Events

The Chair noted that the last, colored page in the notebook is the calendar of upcoming events.

THE COMMITTEE WENT INTO CLOSED SESSION AT 1:34 P.M.

XIII. Resumption of Public Session and Reports from Closed Session

The open session resumed at 2:31 p.m. There were no reports from the closed session.

The Chair noted that the Commission's annual meeting in 2014 will be New Mexico.

The Chair also commended Mr. Johnson for his phenomenal job as the face and voice of the Commission in interacting with the NCSL Task Force.

XIV. Adjournment

The meeting was adjourned at 2:37 p.m.