



*Working together since 1967 to preserve federalism and tax fairness*

To: Members, Multistate Tax Commission  
From: Joe Huddleston  
Date: July 24, 2007  
Subject: Report of Executive Director for 2006-2007

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This report is a summary of the Commission's organizational and staff activities for the period July 1, 2006 through June 30, 2007.

## **I. Commission Membership**

I am pleased to report that Georgia, Maryland, and West Virginia took steps to become sovereignty members of the Commission for 2007-2008. I am also very pleased to report that Indiana, through legislation passed by their general assembly, indicated it would take necessary steps to become an associate member. The Executive Committee granted these memberships this month.

## **II. Programs & Activities**

### **A. Joint Audit Program**

The audit program completed 15 sales tax audits and there are currently 24 sales tax audits in progress. The audit program also completed 7 income tax audits and there are currently 21 income tax audits in progress. Proposed assessments for FY2007 total \$62,719,032.

In February 2007, several members of the Joint Audit Program along with the Commission's deputy director began work on revising the Joint Audit Program Income and Sales Tax Audit manuals and processes, a project that should be completed early in 2008.

The Commission's audit program continues to grow: Georgia and Illinois have joined the program, and two additional audit positions have been included in the Commission's 2007-2008 budget.

## **B. National Nexus Program**

The Nexus Program executed contracts with 76 taxpayers, which resulted in 313 separate contracts with states. These 313 contracts resulted in \$10,757,157 in back taxes actually collected. The National Nexus Program opened 72 new voluntary disclosure cases during the reporting period. These cases represent 589 separate potential contracts with states.

On April 1, 2007, Sheldon Laskin stepped down as director of the program to work as a counsel with the legal staff, and Thomas Shimkin left his position as counsel to become director. The program has one vacant paralegal position at this time, with one other paralegal position being filled by a temporary worker (these positions work primarily on administration of the voluntary disclosure program).

The Commission's nexus program has also grown: Georgia, New Hampshire, and New Mexico have joined the program.

## **C. Legal**

In addition to staffing the Uniformity Committee and the Litigation Committee, the legal staff began hosting regular 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. Teleconferences were held in January and May.

The legal staff is working on the following uniformity issues:

- 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 by the Uniformity Committee)
- Proposed Amendments to MTC Regulation Regarding “*On Behalf Of*” (currently before the Commission for final adoption)
- Proposed Model Statute addressing *REITS and RICS* (under development at the Uniformity Committee)
- Proposed Model Regulation Regarding *Statistical Sampling* (hearing held, hearing officer's report before the executive committee)
- Proposed Model Rule for *Telecommunications Apportionment* (under development at the Uniformity Committee)
- Proposed Model Regulation Regarding *Hotel Intermediaries* (under development at the Uniformity Committee)
- *Possible New Projects*, including Telecommunications Transaction Tax Administration, Reporting for Federal RARs, UDITPA sec. 18, and Sourcing for Intangible Holding Companies

In December, the Commission filed an *amicus curiae* brief with the 8th Circuit Court of Appeals in support of Minnesota in *Union Pacific Railroad Co. and Soo Line Railroad Co. v. Dan Salomone, Commissioner of Revenue, et al.* In May, the Commission filed an *amicus* brief with the U.S. Supreme Court in *Kentucky v. Davis*. Legal staff has prepared a draft of an *amicus* brief for Circuit Court of Appeals for the state of Alabama in the *VFJ* case, and assisted in the analysis or writing of briefs in West Virginia, New Mexico, and Louisiana. They have also assisted many states with reviews of legislative proposals.

Legal staff assisted in addressing a proposed ABA white paper on economic presence nexus. We've also worked on revisions to the Commission's bylaws. We are working to organize state attorney meetings in conjunction with the Georgetown Advanced State and Local Tax Institute for next May. Legal staff provided assistance to the Joint Audit Program with several cases, including the General Counsel assisting one of the Commission's auditors and the State of Michigan during the auditor's deposition. Legal staff also worked with the Executive Committee in respect of proposed amendments to Commission bylaws.

#### **D. Policy Research**

Policy Research staff are providing technical support for the Uniformity Committee's project on apportioning the net income of telecommunications service provider businesses. This work is focused on sourcing wholesale sales of telecommunications service providers. The work on telecommunications transactions taxes is focused on estimating compliance costs for telecommunications service providers.

The policy research director is working with a member of the staff of the Indiana legislative fiscal committee on apportionment issues and measuring corporate income tax capacity. He has also worked with staff members of the Utah Tax Commission on apportionment issues regarding one taxpayer and participated in discussion of trends in state tax reform with state delegations.

Policy Research staff monitored state adoption of MTC model statutes, regulations, and guidelines, attended professional forums on topics pertaining to state and local fiscal conditions, and assisted in production of testimony before Congress (Business Activity Tax legislation).

The policy research director edited two articles and wrote one article for the winter 2007 issue of the *Multistate Tax Commission Review* and is working on the summer 2007 issue. The Director of Policy Research presented at the Commission's Nexus School in December.

Policy Research takes the lead in hosting visits from foreign dignitaries who want to learn more about the Commission (typically through U.S. State Department programs). In May, the policy research director participated with the executive director and deputy director in hosting a discussion of state tax administration with OECD officials.

### **E. Training**

The Commission offered 11 courses during 2006-2007: 4 Nexus Schools, 2 Corporate Income Tax courses, 2 Non-Statistical Sampling courses, 2 Non-Statistical Sampling courses, and a Computer Assisted Audit Techniques course.

The Commission is registered with the National Association of State Boards of Accountancy (NASBA) as a CPE sponsor. This registration is for “group-live” programs. Accounting boards in 44 states recognize NASBA certification for granting of CPE credit for in-person courses. The Commission also certifies attendance for CLE credit at Commission sponsored events. The director of training attended the NASBA CPE conference on March 12-14 in Nevada.

Outside review of Corporate Income Tax course materials was performed. This is one of the requirements of our registration as a CPE sponsor with NASBA.

Copies of the 2007-2008 training brochure will be available at the Annual Meeting and will be mailed out in early September.

### **F. Administration**

Effective August 1, 2006, the Commission changed its group health carrier from Aetna to Guardian. The Guardian plan is partially self-funded with stop-loss coverage to protect the Commission with set maximum claims limits for any plan year. We will be renewing our plan with Guardian but are considering adjustments to coverage and whether self-funded or fully-funded will give the Commission greater flexibility in future years.

The Commission completed a transition of its main bank from J.P. Morgan (formerly Bank One) to Wachovia, consolidating all bank accounts, facilitating face-to-face meetings with banking representatives, and allowing for simplified and faster deposit of receipts. All old J.P. Morgan accounts were closed in January 2007.

### **H. Multistate Voluntary Compliance Initiative**

The states launched this program on May 1. Although the program is targeted toward taxpayers who amended their returns to unwind an abusive tax shelter (ATAT) in some, but not all, states in which they filed, it is open to any taxpayer who wishes to amend returns with one or more participating states as a result of participation in an ATAT. To date only a few amended returns have been received, but many taxpayers

have inquired. Experience of states that have sponsored similar programs is that almost all response arrives during the last two weeks. This program ends October 1.

### **I. Information Sharing with the IRS**

The Commission and IRS have work closely to develop the terms of their information-sharing partnership through a Memorandum of Understanding. We are waiting for final endorsement by the IRS before sending agreements and background materials to the states to complete the process.

### **III. Website**

The Commission deployed its new website in November and it has been a real success. The following chart shows significant trends for the website:

	<b>Total Hits</b>	<b>Total Page Views</b>	<b>Avg Page Views /Visitor</b>	<b>Avg Visit Length</b>	<b>Avg Page Views /Day</b>	<b>Total Visitors</b>	<b>Avg Visitors /Day</b>
<b>Dec</b>	608,301	92,092	4.25	4:23	2,970	21,674	699
<b>Jan</b>	394,556	56,487	4.09	4:14	1,822	13,797	445
<b>Feb</b>	317,327	43,646	3.62	3:36	1,558	12,068	431
<b>Mar</b>	341,543	50,401	4.01	3:48	1,737	12,567	433
<b>Apr</b>	343,404	43,137	3.26	3:28	1,437	13,236	441
<b>May</b>	398,179	52,993	3.71	3:47	1,709	14,265	460
<b>Jun</b>	369,642	46,629	3.16	3:25	1,554	14,763	492

Total visitors per month have risen over 22% since the lowest month, February, with a consistent increase each month. Average visitors per day have also risen consistently each month, with an increase of 14% since February.

Website access increases significantly in months where there is a major MTC meeting (January, March, May), as shown by the average visit length per user, average visitors per day, total page views, and average page views per day for those months. This suggests that the website has established itself as a useful resource to access meeting information and materials.

Activity on the Sales and Use page continues to grow, as it was the second most visited page on the website in May and June, after the homepage. Sales and Use Tax may have been the most popular topic on the website during the spring, as the number of visits to Article V of the Compact (Elements of Sales and Use Tax Laws) rose to 649 in June, compared with 238 visits in April (almost a 175% increase). The number of downloads for the Sales and Use Certificate also continued to rise in through the month of June, with a total of 7,505 downloads since December.

The Multistate Tax Shelter Voluntary Compliance Program was also a popular area of the website, with over 800 visits since the section was introduced to the website in the beginning of May. The press release announcing the program was the second most downloaded file in the months of May and June.

The form to submit an employment opportunity is now in place. It can be found by clicking the Employment Opportunities link in the left menu from the homepage. Staff continues to work with developer to get online registration working properly and to enhance other features of the website.

### **III. Staffing**

#### **A. Personnel**

The following are changes to the Commission's staff during 2006-2007:

- Allison Kelly joined the staff in November as the website content manager for the Commission's new website.
- Robert Schauer, formerly with the Washington Department of Revenue, was hired in December as a computer audit specialist.
- Bruce Fort, formerly counsel for the New Mexico Taxation and Revenue Department, joined the legal staff as Commission counsel in January.
- David Nowak, a former supervisor with the Ohio Department of Revenue, was hired as an auditor in January.
- Sheila Hudson, executive assistant, was hired in February.
- Diane Simon-Queen, a long-time employee of the National Nexus Program, was promoted from paralegal to senior paralegal on March 1.
- Sheldon Laskin joined the legal staff as counsel effective April 1.
- Tom Shimkin was promoted to director of the National Nexus Program effective April 1.
- Andrew Barnes, National Nexus Program paralegal, resigned effective April 20 to take another position.
- Glenn White, information systems manager, resigned effective June 1 to pursue other opportunities.

Additionally, Andrew Nicholas, a PhD candidate in Economics at American University, worked during the year as a policy research intern.

Two Commission staff received special recognition of note: Diane Simon-Queen was awarded the National Capital Area Paralegal Association's 2006 President's List Award, and Elliott Dubin was presented with a Distinguished Alumnus Award from the Graduate and University Center, City University of New York.

On this 40<sup>th</sup> anniversary of the Commission, I would also like to acknowledge Paul Mond, a senior auditor based in Houston, Texas, who is the longest-tenured employee currently on staff celebrating 23 years of work with the Commission.

## **B. Consultants**

An RFP for support in the federal legislative arena was issued in January, and three proposals were submitted. A review committee consisting of the three Commission officers and the Executive Director reviewed the proposals and conducted interviews. Patuxent Consulting, the Commission's long-time consultants in this area, were retained, albeit with a renegotiated contract.

## **IV. Facilities**

The lease with State Services Organization (SSO) on the current space in the Hall of the States for the Commission's headquarters in Washington, D.C. has been renewed to January 31, 2014. SSO and Commission are working out arrangements for the Commission to acquire a small amount of contiguous space so that common-area needs and a better layout can be achieved. Acquisition of this additional space and subsequent build-out has been programmed into the 2007-2008 budget.

## **V. Presentations**

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission during 2006-2007:

### JULY

- NYU Summer State & Local Tax Seminar, New York, NY (Huddleston)
- SEATA Annual Conference, Memphis, TN (Huddleston)
- Kentucky Chamber of Commerce Economic Summit & Annual Meeting, Louisville, KY (Huddleston)

### AUGUST

- MSATA Annual Conference, Traverse City, MI (Huddleston)
- COST Mid-Atlantic Region State Tax Seminar, McLean, VA (Matson)

SEPTEMBER

- NESTOA Annual Conference, Burlington, VT (Huddleston)
- FTA Revenue Estimating Conference, Portland, OR (Dubin)
- WSATA Annual Conference, Lake Tahoe, NV (Huddleston)
- IPT Sales Tax Symposium, Tucson, AZ (Huddleston)

OCTOBER

- SEATA Compliance and Attorneys' Workshop, AL (Huddleston)
- IPT Income Tax Symposium, San Diego, CA (Huddleston)
- Paul J. Hartman State & Local Tax Forum, Nashville, TN (Huddleston, Sicilian)
- TEI Annual Conference, Scottsdale, AZ (Sicilian)
- COST Annual Meeting, San Francisco, CA (Huddleston)

NOVEMBER

- Tennessee Society of CPAs State Tax Conference, Franklin, TN (Huddleston)
- Annual SJSU/TEI High Technology Tax Institute, Palo Alto, CA (Huddleston)
- National Tax Association Annual Meeting, Boston, MA (Dubin)

DECEMBER

- AICPA National Construction Industry Conference, Scottsdale, AZ (Huddleston)
- TEI Advanced State & Local Tax Seminar, San Diego, CA (Huddleston)
- NYU Institute on State Taxation, New York, NY (Huddleston, Matson)

JANUARY

- American Bar Association 2007 Mid-Year Meeting, Hollywood, FL (Sicilian)
- Cornell State & Local Tax Luncheon Group, New York, NY (Huddleston)
- 16th Annual Ohio Tax Conference, Columbus, OH (Fort)

FEBRUARY

- FTA New Commissioners Meeting, New Orleans, LA (Huddleston)
- NYU State & Local Tax Luncheon Group, New York, NY (Matson)
- Florida Bar Association National Multistate Tax Symposium, Orlando, FL (Huddleston)

MARCH

- D.C. Bar Tax Section Luncheon, Washington, DC (Huddleston)
- Republican National Lawyers Association Luncheon, Washington, DC (Huddleston)

APRIL

- St. Louis University School of Law State & Local Tax Seminar, St. Louis, MO (Huddleston)
- Tax Executives Institute Minnesota Chapter President's Meeting, Minneapolis, MN (Sicilian)
- 4th Annual New Mexico Tax Policy Conference, Santa Fe, NM (Fort)

MAY

- National Marine Manufacturers Association Government Relations Conference, Washington, DC (Shimkin)
- Advanced State & Local Tax Institute, Georgetown University Law Center, Washington, DC (Matson, Sicilian);
- Milwaukee Chapter of TEI Annual State and Local Tax Seminar, Milwaukee, WI (Fort)
- TEI Denver Chapter State & Local Taxes Seminar, Denver, CO (Huddleston)
- COST Annual Spring Audit Session & Income Tax Conference, New Orleans, LA (Matson)

JUNE

- FTA Annual Conference, Chicago, IL (Shimkin, Sicilian)
- Ernst & Young 2<sup>nd</sup> Annual Domestic Tax Conference, San Francisco, CA (Huddleston)
- Minnesota CPA Society 21<sup>st</sup> Annual State Taxation of Multistate Business Conference, Minneapolis, MN (Fort)
- IPT 31<sup>st</sup> Annual Conference, Orlando, FL (Huddleston)