



**Minutes of the Executive Committee Meeting
May 10, 2007**

Hyatt Regency Washington on Capitol Hill
400 New Jersey Avenue, N.W.
Washington, D.C.

I. Welcome and Introductions

The Chair called the meeting to order at 9:08 a.m. Eastern time. The following individuals attended:

| Name | State or Affiliation | Name | State or Affiliation |
|-------------------------|-------------------------------|---------------------------------------|------------------------------------|
| Joan Wagon | Kansas | Russ Brubaker | Washington State |
| Elizabeth Harchenko | Oregon | Virgil Helton | West Virginia |
| Jan Goodwin | New Mexico | Dan Salomone | Minnesota |
| Bruce Johnson | Utah | Nancy Prosser | Texas |
| Carl Joseph | California FTB | Lennie Collins | North Carolina |
| Kurt Kawafuchi | Hawaii | | |
| Private Sector | | | |
| Ferdinand Hogroian | PricewaterhouseCoopers LLP | Maryann Luongo | Sutherland Asbill & Brennan LLP |
| Dolores Gregory | Bureau of National Affairs | John Buhl | Tax Analysts |
| Doug Lindholm | COST | | |
| Beth Cooley | COST | | |
| Commission Staff | | | |
| Joe Huddleston | Ken Beier | Jim Rosapepe (Patuxent Consulting) | |
| Gregory Matson | Les Koenig | Len Lucchi (Patuxent Consulting) | |
| Shirley Sicilian | Loretta King | | |
| Thomas Shimkin | Sheila Hudson | | |
| Bill Six | | | |

II. Public Comment Period

There were no public comments.

III. Approval of minutes

After a motion duly made and seconded, the minutes of the Executive Committee meeting open session of January 4, 2007 were approved, subject to typographical corrections submitted by Mr. Johnson in advance of the meeting.

IV. Report of the Chair

A. Election of Executive Committee Appointee Susan Combs

The Chair explained that Susan Combs became the Commission member for Texas when she assumed the position of Comptroller in January, replacing Carol Keeton Strayhorn. Ms. Strayhorn also served as an elected Executive Committee member, so the change created a vacancy on the committee. She appointed Ms. Combs to fill the vacant spot on the committee in accordance with the bylaws, but the appointee or other Commission member must be elected at the next meeting of Executive Committee.

After a motion duly made by Ms. Harchenko and seconded by Ms. Goodwin, the appointment of Ms. Combs was approved and she was elected to the Executive Committee.

The Chair noted that Ms. Prosser has been designated as Ms. Combs' alternate.

B. Legislative Day Recap

The Chair opened a discussion of the previous day's activities by describing her meetings with members of congress and their staff, particularly staff for Senators Enzi and Dorgan, regarding federal legislation related to state tax authority. Federal legislation related to the streamlined sales tax efforts and business activity tax nexus were key areas of discussion. She noted that there will be a hearing on May 23, 2007, regarding the Internet Tax Freedom Act, which may encompass other state tax issues as well. Overall, she was pleased with the Legislative Day program and appreciated the efforts of those involved in putting it together.

Ms. Goodwin reported that she had good meetings, although tax issues seemed to be low priority for members and staff. Ms. Harchenko said she found feedback from members on tax issues to be interesting. Mr. Brubaker stated that the members of his state's delegation with whom he spoke were interested in streamline sales tax and the hotel intermediaries issues. Mr. Helton reported having had good meetings. Mr. Johnson expressed his view that now is a good time for Congress to move on streamlined sales tax legislation.

V. Treasurer's Report

A. Financial Report for the period July 1, 2006-March 31, 2007

Mr. Salomone reviewed the fiscal year 2007 budget and revenue results. He reported that actual revenue is higher than budgeted overall and actual expenses are less than budgeted. Schedules supporting appropriated fund activity are attached to the balance sheet. He continued his report by discussing program income statements, noting that unspent funds in the Enterprise Automation Project will be applied to future years. Mr. Six has noted a number of factors affecting revenues and fees, including positive fund balances resulting from delay in filling open positions during 2006-2007.

B. 2007-2008 Budget Review and Approval

Mr. Salomone explained that the focus at this meeting is on the 2007-2008 revenue budget and setting membership and program fees; the expense budget is reviewed and approved at the summer meeting. He referred the committee to the budget document, and in particular the recommend fee increases: a zero percent increase for the general membership assessment, a five percent increase in the Joint Audit Program fee, and a zero percent increase in the National Nexus Program fee. Mr. Huddleston noted that there had been a projected increase for all three fees of five percent, but that given current financial circumstances, the Commission would maintain a sufficient budget with no increase in the general membership assessment or National Nexus program fee for 2007-2008.

Following a motion by Ms. Harchenko to approve the 2007-2008 fees as proposed, which was seconded by Salomone seconded, discussion followed.

Ms. Harchenko asked whether a zero percent increase would be sufficient to maintain adequate reserves to see the Commission through a recession. She noted that the Commission used reserves during previous recessions to avoid fee increases that states in some cases were not able to pay due to their own fiscal constraints. She noted that given what revenue forecasters report for Oregon, they may not be in a position to handle a fee increase three years from now. Mr. Huddleston explained that the proposed budget does continue to grow the Commission's reserves despite the lack of fee increases. Ms. Harchenko suggested considering a modest 1% increase in the general membership assessment.

Ms. Harchenko, with Mr. Salomone's consent, withdrew her motion to approve the budget as proposed, and moved to approve the budget with an increase the general membership assessment by one percent, the Joint Audit Program fee by five percent, and the national Nexus Program fees for the by zero percent, with the increased amount in the general membership assessment dedicated to reserves. The motion was seconded by Ms. Goodwin. The vote was called by Chair and the motion failed to carry because there were only three votes in favor, the remaining members having abstained.

Following a brief discussion, the Chair decided to defer further action on the budget to later in the meeting.

[Note: for purposes of these minutes, the complete discussion of an agenda item will appear under that item regardless of when it occurred.]

The Chair again directed the committee's attention to the budget. After clarification of the alternating responsibilities year to year between the Franchise Tax Board and the State Board of Equalization in respect of California's participation, as well as the fact that a projected five percent increase for all fees had been approved as part of the budget process last year, all members present at the meeting were prepared to vote. The Chair reminded those present that all compact member states represented at the meeting, not just members of the Executive Committee, may vote. Ms. Harchenko said that she would consult with other tax administrators and possibly raise the issue at the annual meeting whether the general membership assessment should be increased a small amount to enhance the Commission's reserves.

Following a motion duly made by Ms. Harchenko and seconded by Mr. Joseph, the committee approved the 2007-2008 revenue budget and fees as proposed (a zero percent increase for the general membership assessment, a five percent increase in the Joint Audit Program fee, and a zero percent increase in the National Nexus Program fee).

VI. Report of Executive Director

Joe Huddleston referred the committee to his written report. He announced that the Indiana General Assembly passed legislation requiring the governor and commissioner of revenue to take steps to become an associate member of the Commission effective July 1, 2007. He also noted that Maryland and West Virginia has decided to become sovereignty members, also effective July 1, 2007. Mr. Helton of West Virginia expressed his hope that in the near future the West Virginia legislature will consider and approve adoption of the Multistate Tax Compact so that West Virginia would thereby become a compact member.

Mr. Huddleston explained a change in staff roles: Thomas Shimkin left the Legal Division to be director of the National Nexus Program and Sheldon Laskin left his position as director of the National Nexus Program to serve as a counsel in the legal division. He then invited Mr. Shimkin to give the update on the National Nexus Program. Mr. Shimkin reported that he has hired two temporary paralegals who will work primarily on the voluntary disclosure program. He noted that this represents a one third increase in staff that he anticipates will lead to faster processing time, greater taxpayer satisfaction, and ultimately more disclosures and revenue for the states. He further stated that revenue from the program continues at the expected rate, with a little less than one million dollars in back tax collected during the most recent full quarter.

At Mr. Huddleston's invitation, Ms. Sicilian reported on the legal division's activities. The Commission's legal staff supports two committees, Litigation and Uniformity. The status of pending uniformity projects are: the "on behalf of" model legislation has passed a bylaw 7 survey; a hearing has been held on the statistical sampling legislation; work continues on the long-term telecommunications apportionment project; and considerable progress has been made on the hotel intermediaries model legislation. Most importantly, Ms. Sicilian said, the MTC

continues to work with NCCUSL to establish a framework for revision to UDITPA §17, and maybe other sections. Ms. Sicilian added that the legal staff will review state amicus briefs and review state legislation upon request. She announced that regular state tax attorney teleconferences are being held, with the next scheduled for May 21, 2007, on § 346 (bankruptcy). She explained that the brief bank is up and running on the Commission's website.

Mr. Helton thanked Ms. Sicilian and Roxanne Bland, Commission counsel, for their help to West Virginia in replying to MBNA's petition for certiorari to the U.S. Supreme Court.

Mr. Huddleston asked Mr. Dubin, director of policy research, to provide a brief update. Mr. Dubin stated that his intern continues to work on telecommunications tax issues. He also noted that he is working with the Commission's publication coordinator, Teresa Nelson, to get the *MTC Review* published on a regular schedule.

Mr. Huddleston next asked Mr. Beier to discuss the training program. Mr. Beier said that tuition rates will rise considerably because costs of training have generally exceeded revenue from tuition. He informed the committee that the Commission is revising sampling software for use in MTC training courses. He mentioned that the next Nexus School will be in Hartford, Connecticut in June.

Mr. Huddleston turned his attention to health care costs, stating that they project a seventeen percent increase over last fiscal year. He said that he is very pleased with the customer service offered by the Commission's current provider, in sharp contrast with that of the previous provider, but that he remains concerned about the cost. He emphasized that he is looking very closely at health care costs and that it may become necessary to make certain changes to the Commission's health care benefit. He added that he is reviewing the Commission's retirement program; highlighting concerns with poor investment returns, hidden fees, and opaqueness of the current provider.

Mr. Shimkin and Ms. Harchenko commented on the recently launched tax shelter voluntary compliance program. Ms. Harchenko gave a brief summary of the background of the program and Mr. Shimkin stated that twenty-one states are currently participating and that approximately 7,500 invitations to taxpayers were prepared and are about to be mailed.

Mr. Huddleston stated that negotiations between MTC and IRS regarding an information exchange agreement are going well, with an agreement anticipated to be signed by July.

Mr. Huddleston expressed his satisfaction with the development of the Commission's website and praised the work of Allison Kelly, web content manager. It is averaging almost four hundred fifty visitors per day. Google is the number one referral site.

Mr. Huddleston continued his report by highlighting changes on the Commission's staff since the last meeting: Bruce Fort, David Nowak, and Sheila Hudson have joined the staff, while Andrew Barnes, paralegal in the National Nexus Program, has left. He noted that Elliott Dubin, director of policy research, has been awarded the Distinguished Alumnus award by the City University of New York.

Mr. Johnson thanked Mr. Huddleston for his successful efforts to increase membership.

VII. Action on Proposed Bylaws and Amendments

Ms. Sicilian began the discussion on proposed changes to the bylaws by explaining that the Executive Committee must give the Commission sixty days notice of proposed by-law changes. She then walked the Committee through the proposed changes to Bylaws 5, 6, and 11, which were refined by staff following the committee's discussion at its January 2007 meeting.

The Chair opened discussion of the proposed revisions to Bylaw 5. Mr. Johnson inquired about section 5(d), which provides for holding a Commission vote open for fifteen days under certain circumstances. He said that it may be a good thing to allow delegates with incomplete voting authority to have fifteen days to secure guidance from their principals, that such a rule would reduce the number of abstentions on Commission votes.

Ms. Wagnon reviewed the committee's discussion on the proposed changes to Bylaw 5 and summarized them by enumerated paragraph: (a) no change to staff proposal; (b) no change to staff proposal; (c) no change to staff proposal; (d) add clarification regarding section (b)(1) and (c)(1) and allow abstaining members to vote within 15 days; (e) no change to staff proposal; (f) strike, "upon demand of any commissioner." Ms. Harchenko pointed out that recording individual votes is current practice anyway.

Upon a motion by Ms. Harchenko and a second by Mr. Brubaker, the committee approved the motion to recommend to the Commission that By-law five be amended per staff recommendation as modified by the present executive committee discussion

The Chair then opened discussion of the proposed changes to Bylaw 6. Ms. Sicilian walked the Committee through the proposed changes. There was discussion about including a provision to more clearly define what is required for the executive committee to approve something, e.g., a majority of what – eligible committee members regardless of the number present or eligible committee members present? Ms. Wagnon moved approval of a "present and eligible" criterion.

The Committee noted some additional clean up language: (1) "Means" in section 6(c) should be "includes," (2) it should be clarified that ex officio members must be currently serving as the chief tax administrator for their state, and (3) the introductory language (or "flush" language) should become an enumerated paragraph.

The Committee discussed whether it is necessary for Executive Committee actions to be ratified by the Commission. If ratification is desired, how should it be accomplished? Should actions be deemed ratified within a certain number of days after notice is given? The Committee discussed the balance of efficiency and finality with inclusiveness. With respect to the old 6(d), Ms. Wagnon summarized the conversation by saying the choice is to either wait for the next

annual meeting for executive committee actions to be ratified by the Commission or allow for automatic ratification after twenty days.

Ms. Harchenko spoke of the need for the executive committee to have the authority to act for the MTC quickly and decisively without second guessing. She suggested that the check to abuse of authority is the full membership's power to elect the executive committee. Mr. Joseph detailed his concern that proposals that would be defeated in the full Commission due to the population requirement could nevertheless be approved by the executive committee, where population is not relevant to voting and where decisions are often made by committee members from states with small populations.

Later in the afternoon, after consultation with Ms. Sicilian, Ms. Harchenko presented two choices regarding amendments to the bylaws: 1. no ratification, 2. deemed ratification after 20 days notice and lack of objection by 50% of the members. Mr. Joseph suggested sending both versions to the Commission for consideration.

There followed a discussion of the need for a safety valve with respect to very time sensitive issues. Mr. Johnson proposed a combination of the two rules that would allow any state present to invoke Commission ratification as an extraordinary procedure and that would otherwise allow Executive Committee actions to take effect without delay. He explained that this rule made sense under a theory that at least one state would be present to invoke the rule in the event the executive committee made a decision potentially damaging to the organization or tax administration. He suggested such a rule would avoid the necessity of defining in advance which issues should be referred for ratification and which the Executive Committee should make in its sole discretion. Mr. Joseph noted that some type of safety valve is critical. Mr. Johnson explained that under his proposal, any member of the Executive Committee present at a vote may require that vote to be submitted to the full Commission membership for ratification within twenty days. Ms. Harchenko moved adoption Alternative B with Mr. Johnson's language included as a recommended change to the bylaws. Mr. Johnson offered a second. The motion carried unanimously.

The Committee discussed and approved a change to Bylaw 11 substituting *Mason's Manual of Legislative Procedure* for *Robert's Rules of Order*. Ms. Harchenko made the motion, Mr. Salomone provided the second, and the committee approved it unanimously. Mr. Johnson asked for an outline of the differences between Robert's and Mason's rules; Ms. Sicilian offered to provide that.

VIII. Report on Process of Streamlining the Commission's Audit Process

Greg Matson discussed the Joint Audit Program's Income Tax Audit Manual and the Sales & Use Tax Audit Manual and the schedule for their completion. He said that the sales tax manual in particular is in poor shape — it is essentially just a collection of forms and examples that hasn't been updated in many years. Two separate teams are working with him and Mr. Koenig to review and revise the audit manuals and processes. Mr. Huddleston added that one key goal is to give taxpayers clear roadmap of a Commission audit. Mr. Matson said that late in

the process both the Audit Committee and the private sector groups will be engaged in this project. Mr. Koenig added that the draft contents for both manuals were distributed to the Audit Committee at its March meeting earlier this year.

IX. Report on Tax Sheltering Compliance

Mr. Shimkin stated that twenty-one states are presently participating, that letters to 7,500 participants in past tax shelter voluntary compliance programs have gone out to invite their participation, that information about the program is on the MTC web site, and that a number of trade press outlets have picked up on it and run brief stories. BNA will print an interview with Mr. Shimkin soon. He stated that he has received considerable interest from the professional tax community. He also stated that participating states are encouraged to post notices on their web sites with links to the information on the Commission's website, and to publicize the program as they think best. He noted that states are welcome to join even after the program has begun.

X. Committee and Program Reports

A. Audit Committee

Mr. Koenig referred to the written report which had been previously distributed. He discussed the Audit Committee meeting in March, including review of the status of audits in progress. They discussed problems the Commission and states are experiencing in conducting bank and financial audits. A key problem is dealing with the issue of assigning receivables for the numerator of the property factor. After discussion, the Audit Committee moved to request that the Executive Committee consider action to rectify the problem with the Commission's Bank and Financial Regulation concerning assignment of receivables in the property factor. The Audit Committee also approved the Commission's Sales Tax Sampling Manual.

Ms. Harchenko echoed concerns about the financial institutions apportionment rules and the Chair directed the Uniformity Committee to put together a high priority task group to address this problem.

B. Nexus Committee

Mr. Shimkin said he had nothing to add to the written report that he had not already covered during the Executive Director's report.

C. Uniformity Committee

Ms. Sicilian reported that the Income Tax Subcommittee continues its multi-year quest to hammer out a model regulation on apportionment of income for telecommunications. She said that they are close to having something finalized. The subcommittee is also working on model legislation for dealing with REITs and RICs. The Sales Tax subcommittee continues its work on the hotel intermediary model statute, but the taxpayers have decided to take the issue to

Congress as well, presumably with the hope to secure preemptive federal legislation. She referred to the committee's written report and her earlier comments during the Executive Director's report concerning the status of various uniformity projects.

D. Litigation Committee

Ms. Sicilian referred to the written report which had been previously distributed. She discussed *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Authority* (U.S. Supreme Court, 2007), which held that a municipal corporation may require an out of state waste hauler to tip its waste exclusively at a municipal facility without violation of the dormant Commerce Clause. The court distinguished this from a municipality requiring an out of state waste hauler to tip their waste at a private facility within the municipality. Ms. Sicilian noted that this case has implications for the *Davis* bonds case, which she also discussed briefly.

Ms. Sicilian noted that West Virginia has filed a response to the petition for certiorari in the *MBNA* case.

E. Technology Committee

Mr. Matson referred to the written report which had been previously distributed. He highlighted the progress of several projects shown in chart form. He reported that the Technology Committee is very pleased with the progress of the update and redesign of the website, as well as the Commission's website content management. The committee will continue its work on the secure communications plan and other projects.

F. Training Program

Mr. Beier discussed the training program, referring to the written report previously distributed. He noted that the next nexus school is scheduled in Hartford, Connecticut, this June. An Audit and Computer Technology Workshop will take place in Nashville, Tennessee, September 23-27. During 2007-2008, he anticipates course offerings similar to those during the past fiscal year. He reported that tuition has increased by about twenty percent to bring revenue for training courses in line with actual costs. He stated that the previous four-tiered fee structure has been reduced to three, with Compact and sovereignty states enjoying the lowest fees.

XI. Uniformity Projects

A. UDITPA Revision Project

Ms. Sicilian reported on the Commission's comments at the NCCUSL Stakeholders' Meeting regarding recommended revisions to UDITPA. She noted the Commission, working through the Executive Committee's UDITPA Revisions Steering Committee and the Drafting Subcommittee, provided comments to NCCUSL which identified Section 17 as the provision most in need of review. The following provisions were identified as being of secondary importance:

- Factor weighting
- Definition of business income (transactional and functional)
- Definition of gross receipts (in particular, returns of principal)
- Section 18 relief

The Commission commented that other provisions could also be reviewed, but that these could be very controversial, could yield much less in terms of benefits to uniformity, and therefore might not be appropriate to address at this time. The Commission also commented on a proposed list of criteria for evaluating and revising UDITPA.

B. Proposals before the Executive Committee

1. Uniformity Recommendations for Review

There were no proposals before the committee.

2. Hearing Officer Recommendations for Consideration

Ms. Sicilian reported that the Hearing officer report for the Model Uniform Statistical Sampling Statute and Accompanying Regulation is not yet completed pending review of recently submitted written comments.

C. Report on Bylaw 7 Survey Results for Proposed “On Behalf of” Amendment to Model Regulation IV.17

Ms. Sicilian informed the committee that the “on behalf of” uniformity proposal passed the Bylaw 7 survey and will be on the Commission’s agenda for its annual business meeting in August.

XII. Federal Issues with State Tax Implications

Mr. Rosapepe of Patuxent Consulting delivered a report on federal legislative activities with potential impact on state tax issues. He stated that the change in control of the Congress is generally favorable for state tax sovereignty, but he noted that the Iraq war makes it difficult to make headway on other issues. He said that the hotel intermediaries have been looking for an opportunity to secure federal preemption.

Mr. Rosapepe said that ITFA is up for extension this year and that there are proposals to make it permanent. House Judiciary intends to have its own hearing on the issue.

Mr. Rosapepe noted that Senator Schumer is considering the introduction of this year’s version of BATSA. He reported that any such bill has poor prospects — House Judiciary members appear to have no interest in pursuing it.

Mr. Rosapepe said there is not much traction on the cell phone tax moratorium.

Mr. Rosapepe reported that Senate Commerce Committee will have a hearing May 23 to consider SST, among other issues. Proponents are close to getting introduction in both chambers. There will be a July 24th subcommittee hearing and a possible September subcommittee markup of ITFA, and SST may be tied to ITFA at some point.

The Chair asked committee members what they would like the Commission to do to assist them with their advocacy efforts. Ms. Prosser asked for e-mail updates after hearings. The Chair noted that senators Enzi and Dorgan should get letters on the SST issue. In any e-mail updates, Ms. Harchenko would like to have hyperlinks to the language of bills. Mr. Salomone asked for regular updates on fiscal estimates related to pertinent federal legislation. The Chair asked Mr. Rosapepe to provide periodic written updates via e-mail on federal legislative matters of concern, and he agreed to do this.

XIII. Industry Issues

A. Insurance Related Issues

No insurance industry representatives were able to make this meeting, so this topic was deferred to a future meeting.

B. Amended Return Processing Following Receipt of Federal RAR (KPMG)

Ms. Loren Chumley and Ms. Tammy Hunter of KPMG made a presentation about the massive burden business taxpayers bear when having to produce sometimes thousands of tax returns within a very short period of time following a federal adjustment. They explained that there is not software adequate to the task; much of the work is done semi-manually in Excel. They believe that most large multistate business taxpayers are similarly situated. They suggested that the Commission work to create a one-stop forum for filing these amended returns or otherwise come up with a solution that will benefit both taxpayers and states by obviating numerous returns after a federal adjustment. The consensus of the Executive Committee is that the idea was worthy of pursuit as a uniformity project, building on earlier work on model reporting deadline. The Chair directed that a work group be convened in Minneapolis during the week of Commission meetings. Ms. Chumley and Ms. Hunter said that they look forward to working with this group to craft some solutions.

XIV. Future Meeting and Event Plans

A. 40th Annual Conference & Meetings

Mr. Huddleston reminded the committee that the 40th Annual Conference will take place July 29 – August 2, 2007, in Minneapolis, Minnesota. He referred them to the preliminary program that had been previously distributed and encouraged all to make plans to attend.

B. Fall Committee Meetings

Mr. Huddleston announced that the fall committee meetings would be held November 5-8, 2007, in New Orleans, Louisiana.

NOTE: THE COMMITTEE WENT INTO CLOSED SESSION AT 3:45 P.M.; MINUTES OF THE CLOSED SESSION ARE MAINTAINED SEPARATELY.

XV. Resumption of Public Session and Reports from Closed Session

The committee resumed its public session at 4:40 p.m. The Chair announced that the contract for RFP #2007-01, Federal Governmental Affairs Services, had been awarded to Patuxent Consulting.

XVI. Adjournment

The meeting adjourned at 5:10 p.m.