



To: Executive Committee
From: Greg Matson
Date: November 17, 2017
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2017, through September 30, 2017 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The Audit Program has completed parts of six income tax audits for the first quarter of fiscal year 2018. The Audit Program also completed one sales tax audit and parts of three sales tax audits for this same period. Currently, there are 22 income and 31 sales tax audits in progress.

The MTC Audit Program has proposed assessments of \$6,066,392 for the completed income tax audits and \$118,848 for the completed sales tax audits for the first quarter of fiscal year 2018.

The following chart summarizes hourly data for completed audits through September 30 for fiscal year end June 30, 2018:

	Income & Franchise	Sales & Use	Total
Total Audits	0	1	1
Total States Audited	0	10	10
Total Hours	0	1719	1719
Average Hours per State	0	172	172

The audit committee met for the first time in fiscal year 2018 on July 31, 2017, in Louisville, Kentucky. During this meeting the committee discussed the progress of current audits. The committee also reviewed the companies recommended by for sales tax audits and voted to add eight of those companies to the sales tax audit inventory.

In conjunction with the Commission's all-staff retreat, training for audit staff was held on August 16 and 17.

B. National Nexus Program

Multistate Voluntary Disclosure Program (MVDP)

This First Quarter FY 2018 results (July 1, 2017, through September 30, 2017) are provided below.

- Nexus states' collections: \$1,792,826 (\$19,664,097 in all FY 2017)
- Nexus states' executed contracts: 49 (431 in all FY 2017)
- Nexus states' average contract value: \$36,588 (FY 2017: \$45,624)

The above amounts include funds received by the Commission or paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the value of a new taxpayer are not included.

Online Marketplace Seller Voluntary Disclosure Initiative

At its July 31, 2017 meeting in Louisville, the Nexus Committee approved moving forward with the online marketplace seller voluntary disclosure initiative. A total of 25 states, including D.C., are participating in the initiative. Most of the participating states are offering waiver of back tax liability for both sales and use tax and income/franchise tax to online marketplace sellers with nexus as a result of inventory or other nexus-creating activity by the marketplace facilitator on behalf of the seller, if the seller registers to collect sales and use tax and file income/franchise tax returns prospectively. Four of the participating states require lookback periods. The initial application period was set for August 17 to October 17, 2017, with sellers to be registered to collect sales and use tax by December 1, 2017, and commence filing returns and paying tax due for income/franchise tax. On October 11, the Nexus Committee conducted an emergency meeting by teleconference to address requests to extend the deadlines. The Committee extended the application deadline to November 1 and changed the registration deadline to the later of December 1, 2017, or 30 days after the seller receives notice that the state has signed the voluntary disclosure agreement. By the end of the November 1 application period, voluntary disclosure applications from a total of 850 online marketplace sellers have been received.

Membership

There are currently thirty-nine participating states (including the District of Columbia) in the Program, with Rhode Island having most recently joined effective October 1, 2017. Commission staff continues to reach out to non-member states.

Outreach

A substantial number of inquiries have been received regarding the online marketplace seller voluntary disclosure initiative. Program staff have been engaged in lively

and spirited discussions with business owners and taxpayer representatives over the impacts and ramifications of the initiative.

Staff continues to urge states to put a link to the Program on their voluntary disclosure web pages.

Nexus Schools

Program staff co-taught a Nexus School in Atlanta, Georgia, on September 20-21, 2017, hosted by the Georgia Department of Revenue. Please let a member of the Commission staff know if your state would like to host a Nexus School.

Amnesties

The Program posts on its web page a list of upcoming and current state tax amnesties. Please inform Program staff if you would like the Commission to post your state's amnesty.

Staffing

The Program presently has three permanent full-time staff members: Richard Cram, Director, Diane Simon-Queen, Voluntary Disclosure Program Manager, and Michelle Lewis, Paralegal. For the duration of the online marketplace seller voluntary disclosure initiative, Renee Lee, Paralegal, and Thomas Emberger, a temporary employee, are working full-time for the Program. Angie Molina, a senior at Georgetown University, worked part-time beginning July 5, 2017, ending in October 2017.

C. Legal Division

The legal division staffs two standing committees: Uniformity and Litigation. The division also holds regular state tax attorney teleconferences; participates as speakers at conferences, symposiums and institutes; and teaches the Commission's corporate income tax and nexus training courses. The division provides individual state support on request by filing amicus briefs in state and federal courts; consulting in litigation matters; and reviewing draft statutes, regulations, and legal briefs. It also provides legal support for the Commission's audit program, training division, and general administration, including analysis of federal legislation affecting state taxation. In the first quarter of fiscal year 2018, the legal division has worked toward completing two uniformity projects—the Model Sales and Use Tax Notice and Reporting Statute and the Section 18 Regulatory Project—in order to bring them to the Uniformity Committee for consideration. In addition, it has continued to closely follow developments regarding federal partnership audit and adjustment regulations and to provide informational updates and discussions. As of September 30, the legal division has filed one amicus brief in support of a member state.

Uniformity Work

The legal division has staffed the following uniformity projects:

- Model Sales and Use Tax Notice and Reporting Statute
- Partnership Informational Project
- Section 18 Regulatory Project

Litigation Committee Work

At the 2017 Annual Meeting, the legal division supported the committee by creating and organizing an all-day training session for state attorneys. The session focused on brief-writing and addressed topics ranging from persuasive writing skills to proper formatting. The training was very well received, and the legal division has been asked to consider putting on similar events in the future.

Legal Assistance to States

Generally, the legal division consults with individual states regarding draft legislation, draft regulations, and significant on-going litigation strategy and briefs. In recent months, market-based sourcing and the *Quill* challenge cases have been the main issues to arise. In addition, the legal staff filed an amicus brief in the Texas Compact case, *Graphic Packaging v. Hegar*, before the Supreme Court of Texas, Docket No. 15-0669.

Commission Support

The legal division provides support for the Commission's general administration by addressing open meetings issues, maintaining confidentiality policies, handling records requests, researching and making recommendations for record retention policies, resolving lease disputes, reviewing contracts, and filing corporate registrations and reports. This quarter, legal staff also provided support as the Nexus Program completed its online marketplace seller voluntary disclosure initiative. Commission staff continues to create and implement new training systems to more efficiently meet the individual needs of the member states.

D. Policy Research

The policy research director supports Commission efforts in addressing federal legislation with implications for state and local taxation, monitors state adoption of MTC model statutes, regulations, and guidelines. He is a member of the National Tax Association Advisory Board.

The policy research director is writing a short summary on the impact of federal adoption of territorial taxation on state business income tax bases. He is organizing and will act as moderator for a session on infrastructure spending and means of financing infrastructure at the 110th Annual Conference of the National Tax Association in

Philadelphia, Pennsylvania, November 9 through 11. At that conference, he also will discuss two papers on the theory of optimal taxation.

The policy research director participated in the following periodic local or online economic forums and seminars:

- National Association for Business Economics symposium on transfer pricing – July 18 through July 20
- CQ webinar on federal tax reform – September 7
- Federation of Tax Administrators Revenue Estimating and Research Conference, Omaha, NE September 23 through 28 and presented a paper on long-term trends in state corporate income taxes
- Tax Economist Forum Breakfast: Jane Gravelle, Congressional Research Service. Analysis of House Tax Reform Plan: A Better Way; at Ernst & Young

E. Legislative Division

The legislative counsel and director:

- Monitors and analyzes federal legislation that affects states in collaboration with the director of policy research and the legal division;
- Coordinates Commission responses to federal legislation, including joining with the efforts of other organizations, drafting policy positions, and meeting with legislative staff;
- Educates congressional members and staff about the negative effects of preemption generally and with respect to specific bills;
- Answers questions from member states about federal legislation;
- Monitors state legislation, identifies trends, and consults with states when requested;
- Maintains relationships with other multistate and governmental organizations; and
- Represents the Commission on state and federal legislation to policy makers and the public.

The legislative counsel created and maintains a public page on the Commission's website to view legislative reports. It may be found on the Commission's web site under the tab *Resources* and then by clicking on *Legislation* from the resulting drop down menu, which then provides an option of viewing either *State Bills* or *Federal Bills* and allows for searching for a bill by number or viewing a list that can be sorted various ways. The website updates every two hours for federal bills and daily for state legislation and contains reports, summaries, and analyses of federal and state bills.

The legislative counsel continues to proactively develop relationships with federal legislators and staff, including the four new members on the House Judiciary Committee, which has jurisdiction over all state-tax legislation. He also has maintained and strengthened

relationships with other organizations such as the State Tax Task Force of the National Council of State Legislatures, the National Governor's Association, the Congressional Budget Office, as well as with the Commission's collaborative work with the Federation of Tax Administrators.

A substantial amount of time and effort has been spent on monitoring developments regarding federal tax reform. Tax reform is a critical issue for the Commission and states to watch not only because of the impact on states of changes to the federal code, but also because preemption bills that have been introduced previously could be included in tax reform proposals. As of the date that this report is being prepared, the tax bill is scheduled to be released by House Ways & Means (tax bills always begin in the House) on November 2, 2017. The legislative counsel spends considerable time updating information about the latest federal tax proposals. The summary and analysis of tax reform is found under the *Federal Bills* link for H. Con. Res. 71, the federal budget resolution. A more detailed discussion on the status of federal tax reform will be presented as a separate agenda item during the Executive Committee meeting.

Significant federal bills introduced in the 115th Congress include the following:

- *No Regulation Without Representation Act of 2017* (H.R.2887); referred to the House Committee on the Judiciary. This bill would prohibit a state from enacting any law, regulation, or policy that affects any other state or its residents. It applies beyond tax law. It is so absurd and sweeping that it is unlikely to advance.
- *Mobile Workforce State Income Tax Simplification Act of 2017* (H.R.1393) ; approved by the House in a 'suspension of the rules' voice vote ('suspension' is supposed to be reserved for uncontroversial bills). H.R.1393 is pending in the Senate Committee on Finance. A subcommittee of Senate Finance held hearings on the Senate companion bill, S.540.
- *Mobile Workforce State Income Tax Simplification Act of 2017* (S.540); referred to Senate Committee on Finance. See H.R.1393, above.
- *Remote Transactions Parity Act* (H.R.2193); referred to Subcommittee on Regulatory Reform, Commercial And Antitrust Law of the House Committee on the Judiciary; no hearings or action since referral on May 5, 2017.
- *Marketplace Fairness Act of 2017* (S.976); referred to Senate Committee on Finance; hearing held by Senate Committee on Banking, Housing, and Urban Affairs. Permits member states of the Streamlined Governing Board (SGB) to require remote vendors to collect use tax on behalf of their state's citizens; allows states not members of the SGB to require remote vendors to collect use tax on behalf of their citizens when they enact enumerated simplifications to their sales and use tax laws. This bill passed the Senate by a large margin in a previous congress but made no headway in the House.
- *MOBILE NOW Act of 2017* (S.19, Sec.20), formerly *Wireless Telecommunications Tax and Fee Collection Fairness Act*; approved by House Committee on the Judiciary and now on Senate Legislative Calendar No. 17 (available for Senate floor consideration); Sec.20 is unrelated to the rest of S.19; it preempts state tax authority over certain mobile wireless communication; we do not know how far

the preemption extends because the definition of preempted activity is unclear; it requires original jurisdiction in federal district courts notwithstanding the Tax Injunction Act.

- *End Discriminatory State Taxes for Automobile Renters Act of 2017* (H.R.2024 and companion S.1159); the House Committee on the Judiciary referred it to a subcommittee on May 1, where there has been no action; in the Senate it resides without action in the Committee on Finance. The bills would prohibit taxation of automobile rentals at a rate higher than a state's general sales tax rate.
- *No Tax Subsidies for Stadiums Act* (H.R.811); this eponymous bill was referred to Ways and Means; there has been no further action.
- *Tax Filing Simplification Act of 2017* (S.)912 by Senator Elizabeth Warren (D-Mass.) would have IRS at the taxpayer's option prepare the taxpayer's return when there are no complicated issues; allow taxpayers to download their tax information from third parties; and provide online software to prepare and submit returns. It is dormant in the Senate Finance Committee. Its companion bill is H.R. 3511 by Rep. Brad Sherman (D-Cal.30) is dormant in Ways and Means.

F. Training

The Training staff supported the following activities since July 1, 2017:

Nexus School

September 20- 21, 2017, in Atlanta, GA, for 33 participants from the Alabama Department of revenue, the Georgia Departments of Revenue, the Idaho State Tax Commission, the Kentucky Department of Revenue, the New Jersey Division of Taxation, and the South Carolina Department of Revenue.

On September 26 and 27, Larry Shinder from the audit program, along with Bruce Fort from the legal division, provided the Vermont Department of Taxation with income tax training. The training was geared to specific topics requested by Vermont on issues they have encountered during audits.

The events and training staff coordinated the logistics of the 50th Annual Conference in Louisville, Kentucky, July 31 – August 3, 2017, which included an off-site reception and dinner at Churchill Down's Kentucky Derby Museum. Staff provided onsite assistance to special invited guests Eugene Corrigan and James Peters, and the Kentucky Department of Revenue provided staff — Melinda M. Hill, Deputy Commissioner, and Stacy Ball from the commissioner's office — to assist with onsite activities.

The events and training staff coordinated logistics for the Commission's staff retreat and auditor training which occurred in Itasca, Illinois, August 15 – 17, 2017.

The events manager attended the National Association of State Boards of Accountancy's 2017 National Registry of CPE Sponsors Summit September 26 – 27, in Nashville, Tennessee.

II. Administration

An all-staff retreat was held in Itasca, Illinois August 15 and 16, 2017. The highlight of the retreat was a day-long presentation by Leading Edge on team building. Other presentations made during the retreat were on topics such as the Commission's updated personnel manual and information and technology security. At the conclusion of the retreat, the Joint Audit Program remained in Itasca on August 16 and 17 for staff training.

III. Outside Presentations & Events

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

- 2017 SEATA Conference; New Orleans, Louisiana (Matson)
- National Association for Business Economics 7th Annual Transfer Pricing Symposium; Washington, D.C. (Dubin)
- NYU Summer Institute in Taxation: Intermediate State & Local Taxation; *A View From the State Tax Administrators* (Matson, panelist); New York, New York
- Tax Executives Institute, Philadelphia State and Local Tax Committee; *Multistate Tax Commission Update* (Stranburg, panelist); Philadelphia, Pennsylvania
- Georgetown 40th Annual Advanced State and Local Tax Institute; *The SALT Hangover: Reporting Federal changes to the States* (Hecht, panelist); *Digging In: State perspectives on Federal Tax Reform* (Fort, panelist); Washington, D.C. (Cram, Disque, Dubin, Matson, Shimkin, Stranburg)

AUGUST

- NCSL Executive Committee Task Force on State and Local Taxation meeting; Boston, Massachusetts (Shimkin)
- 2017 MSATA Conference; Indianapolis, Indiana (Stranburg)
- Council on State Taxation Mid-Atlantic Regional State Tax Seminar; (Matson, panelist); McLean, Virginia

SEPTEMBER

- 2017 NESTOA Conference; Stowe, Vermont (Matson)
- 2017 FTA Revenue Estimation and Tax Research Conference; *Joint FTA-NTA Session – State General Business Taxation: Obsolete? Hopeless? Or Prospective? – Long-Term Trends in State Corporate Income Taxes: A Zombie Tax* (Dubin); Omaha, Nebraska
- National Association of State Boards of Accountancy 2017 National Registry Summit; Nashville, Tennessee (Tiggett)

Technology Addendum

The audit director and network administrator have received a Statement of Work and a quote from Yoodle to address the list of future updates and adjustments that need to be made to the Commission's audit database. The audit director, network administrator, and Yoodle have walked through each item on the Statement of Work to ensure that all parties are on the same page regarding expectations and deliverables. The Statement of Work is signed and Yoodle has begun work on the changes.

The network administrator met with RSI and it was determined that a support agreement for the voluntary disclosure database is not something that RSI is interested in entering into at this time. The network administrator will be receiving training on the technology that this application is built on. This should allow for better troubleshooting abilities in house, but will not provide nearly enough expertise to upgrade or build a new voluntary disclosure application and database. The National Nexus Program director and the network administrator will sit down to begin discussions on upgrading the online application after the online marketplace seller voluntary disclosure initiative is completed.

The VMWare servers are in place as is the new Cybernetics Storage Attached Network. The new equipment provides more processors, more memory, and more redundancy for the VMWare data. An install date has been set with Alliance Info Systems for late November to assist in the upgrade of the VMWare software and the migration of all of the Virtual machines.

The network administrator and Cleo have finished installation and configuration of the Unify portion of the installation. The staff has been using Unify and there have been very few problems reported. The Jetsonic software is close to being ready to roll out. The challenge has been installing the software on a remote laptop (outside the MTC firewall) to make changes on the client software while being able to access the servers internally (inside the MTC firewall) to make configuration changes to the server software. Currently, we are focusing on the rules and triggers that will automate the copying of newly changed files back to the servers in D.C.

The 8x8 phone service that is used by all Commission staff is causing some issues that the vendor cannot seem to explain or resolve. This has been frustrating for staff and a thorn in the side of the web content manager and the network administrator to try to get these problems identified and resolved. Examples of some of the issues encountered include features that used to work no longer work and calls are dropped after long call duration. The web content manager and the network administrator are actively searching for suitable other options for our phone system.

The normal maintenance of server hardware in the D.C. and Chicago offices occurs on a regular basis through on-site visits by the network administrator.