



MULTISTATE TAX COMMISSION

To: Executive Committee  
From: Joe Huddleston  
Date: December 5, 2014  
Subject: Report of the Executive Director

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This report is a summary of the Commission's organizational and staff activities for the period July 1, 2013, through October 31, 2014 (unless otherwise noted).

**I. Programs & Activities**

**A. Joint Audit Program**

The audit program completed two, and parts of three other, income tax audits through October 31, 2014 for this fiscal year. The audit program also completed one sales tax, and parts of six other, sales tax audits for the same period. There are 14 income and 37 sales tax audits in progress. The audit program proposed assessments of \$2,186,169 for income tax and \$917,872 for sales tax through October 31, 2014 for this fiscal year.

The following chart summarizes hourly data for completed audits through October 31 for fiscal year end June 30, 2015:

	<b>Income Franchise</b>	<b>&amp; Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	2	1	3
<b>Total States Audited</b>	31	12	43
<b>Total Hours</b>	5093	2338	7431
<b>Average Hours per State</b>	164	195	173

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

Pennsylvania and Rhode Island have joined the audit program for income and franchise tax audits.

The audit program lost two auditors during this period, one to retirement and the other through resignation. The audit program has filled two income tax positions, with one of the new auditors starting on December 1<sup>st</sup> and the other on January 5, 2015.

Audit division staff provided instruction at one income tax training class, one computer assisted audit techniques using Excel, and one sampling class through mid-November of fiscal year end June 30, 2015.

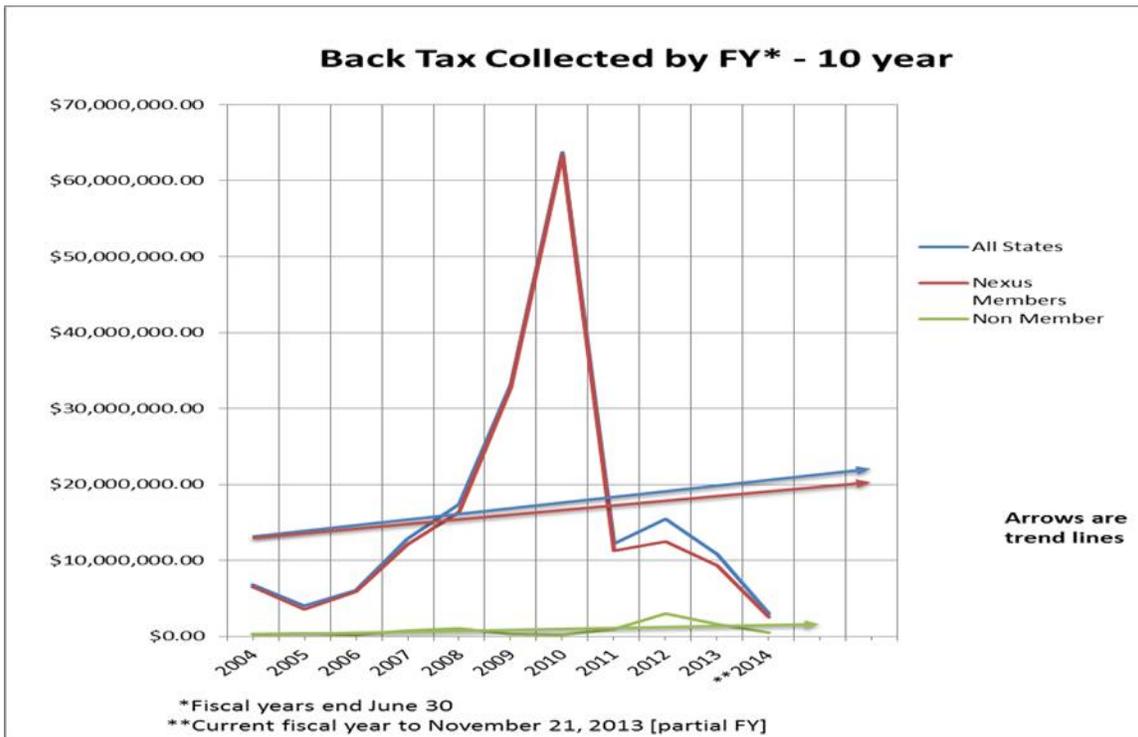
**B. National Nexus Program**

The multistate voluntary disclosure statistics for FY 2015 to date (July 1 – October 31, 2014) are —

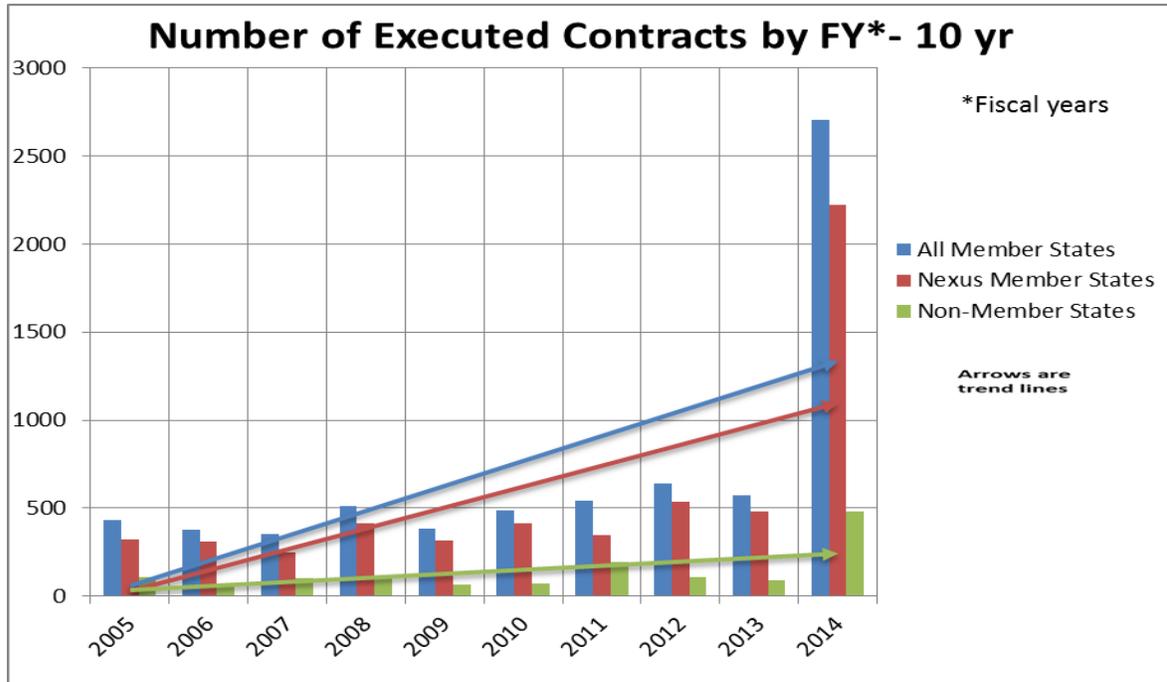
- Nexus states’ collections .....\$ 3,160,318
- All states’ collections .....\$ 4,342,268
  
- Nexus states’ executed contracts .....254
- All states’ executed contracts .....303
  
- Nexus states’ average contract value.....\$12,442
- All states’ average contract value .....\$14,330

*Please Note: All of the above amounts include only amounts actually received before the Commission closed its file; neither interest, which taxpayers pay directly to states after their Commission files are closed, nor the future value of new taxpayers, is included. Hence, the actual value of each case is higher than reflected here.*

The following provides context over a 10-year period:



*The large spike in revenue recovered in FY2009 and FY2010 is due to a single taxpayer. Such large taxpayers come forward occasionally; their appearance cannot be predicted, other than that there will be more eventually.*



#### Service to Non-Members

The Commission stopped accepting new disclosures on behalf of non-member states on July 1, 2014. This was at the request of the Nexus Committee and follows more than fifteen years of providing free services to these states. This has reduced the number of disclosures by about 15%, allowing staff to speed service to member states. The NNP has 2.25 FTEs doing the administrative processing of disclosures.

#### Low-Value and Zero-Value Voluntary Disclosures

The Commission has implemented the Nexus Committee's recommendation to limit voluntary disclosures to those with at least \$500 back liability based on the applicant's good-faith estimate. The policy has reduced the work load of our voluntary-disclosure processing staff (2.25 FTEs) about 10% so that they can give more speedy service to non-members. Nexus processed approximately 2,700 disclosures last fiscal year (2014).

#### Nexus Committee

Staff continues to work with the Nexus Committee on various projects, including ongoing amendments to the text of the template multistate voluntary-disclosure agreement. This is often required by changing state policies.

The Nexus Committee decided at its January 8, 2014, teleconference to pursue strategic planning in accordance with the Commission's overall strategic planning, which has been under way for about three years. The committee completed an "environmental scan," approved mission, vision, and goals, and has initiated two projects. The two projects are:

- Increase membership by identifying barriers to membership; explore avenues to give member states a fuller appreciation of the benefits of membership.
- Identify improvements to the NNP's multistate voluntary disclosure process.

The committee anticipates completing the first project and beginning the second by January 2015.

#### Membership

There are currently thirty-eight member-states (including the District of Columbia). This number remains unchanged from last fiscal year.

#### Technology

The NNP and IT staffs continue to work with a new software vendor to maintain and upgrade the NNP's technology. Technological efficiencies are critical given the program's small staff and the large number of disclosures.

#### Nexus School

Nexus staff taught a school in Little Rock on September 15 -16, 2014, and another in Trenton on November 13 - 14, 2014.

### **C. Legal Division**

The regular duties of the legal division include:

- Providing staff support to two standing committees, uniformity and litigation and related sub-committees or working groups;
- Consulting with state attorneys on litigation matters, filing amicus briefs in state and federal courts, and reviewing draft statutes, regulations, and other legal documents;
- Conducting regular state tax attorney informational and educational teleconferences, participating as speakers at conferences and symposiums, and helping teach the commission's corporate income tax and nexus training courses; and
- Providing legal support to other parts of the organization, including administrative, audit and nexus functions.

### Uniformity Work

Currently, the legal division is staffing the following uniformity projects, in addition to a uniformity process strategic planning project:

- Amendments to Compact Art. IV (UDITPA) – Sec. 18 and conforming amendments – sent to Bylaw 7 survey
- Model Sales & Use Tax Notice and Reporting Statute (awaiting resolution of issues in *Direct Marketing Association v. Brohl* case)
- Model Remote Seller Nexus Statute (under development at uniformity subcommittee)
- Amendments to MTC Model Financial Institutions Apportionment (hearing held May 8, 2014)
- Model Provisions Concerning Class Actions and False Claims (under development at uniformity subcommittee)
- Art. IV, Sec. 1 Work Group – drafting model regulations for amended definition of “sales” (now “receipts”)
- Art. IV, Sec. 17 Work Group – drafting model regulations for amended market-sourcing provisions
- Uniformity Process Strategic Planning Project

### Litigation Committee Work

Legal division supported the litigation committee by organizing and making presentations for the July 2013 in-person meeting in San Diego, California as well as the in-person meeting in March 2014 in Denver, Colorado. In addition, legal division organized teleconference information and training sessions for state tax attorneys, with teleconference meetings generally including approximately 50 state attorneys from more than 35 states. There has also been a consistent trend toward increasing attendance.

### Legal Assistance to States

The legal division consulted with individual states regarding significant on-going litigation strategy and briefs, draft legislation, and draft regulations, including:

- Amicus brief on behalf of the Maryland Comptroller in *Maryland Comptroller's of the Treasury v. Wynne* (U.S. Supreme Court) petition granted May 27, 2014
- Amicus brief on behalf of the Alabama Department of Revenue in the merits phase of *Alabama v. CSX Transportation, Inc.* (U.S. Supreme Court) petition granted July 1, 2014 (the Commission filed a brief in the petition phase as well)
- Amicus brief on behalf of the Colorado Department of Revenue in *Direct Marketing Association v. Brohl* (U.S. Supreme Court) petition granted July 1, 2014

- Amicus brief on behalf of the Massachusetts Commissioner of Revenue in *First Marblehead Corporation and Gate Holdings, Inc.* (Massachusetts Supreme Judicial Court)
- Amicus brief on behalf of the Montana Department of Revenue in *Montana v. Priceline.com, Inc.* (Montana Supreme Court)
- Mock expert witness cross-examination session at the MTC Annual Conference during the Litigation Committee meeting in July 2014
- Review of federal legislation including proposed Marketplace Fairness Act and related legislation
- Review of proposed extension of the Internet Tax Freedom Act
- A conference call to review with the Litigation Committee the effects of the Internet Tax Freedom Act on state taxes and inform participants of request from industry on taxes that might apply if the act should lapse
- Ongoing consulting with states on the effects of *Gillette* litigation

#### Commission Support

The legal division provides support for the commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, resolving lease disputes, and filing corporate registrations and reports. During the fiscal year, the division provided legal assistance to the commission's audit division on a number of challenging audit related issues and has addressed several public participation issues and records requests. Staff supported the Commission's legislative day in May 2014. The legal division has also provided support for the Commission's training division by teaching the following classes:

- Nexus School - September 15-16, 2014 in Little Rock, Arkansas
- Corporate Income Tax School – October 20-23, 2014 in Burlington, Vermont
- Nexus School – November 23-24, 2014 in Trenton, New Jersey

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

##### Articles & Research

- Submitted article by Bob Schauer and Harold Jennings regarding superiority of statistical sampling versus representative sampling for sales and use tax audits for publication.
- Reviewed submission by Michael Udell of District Economics Group on Single Sales Factor apportionment. This article was published in *Tax Analysts*, July 15, 2014 "Sales Factor Apportionment of Profits to Broaden the Tax Base."
- Writing articles on state and local government finance and trends in state corporate income taxes. Scheduled to present results of trends in state corporate taxes to the Tax Economists Forum, December 3, 2014.

### Other Activities

- Supports MTC efforts in addressing federal legislation with implications for state and local taxation.
- Monitors state adoption of MTC model statutes, regulations, and guidelines.
- Member of the National Tax Association Advisory Board.
- Organizer of Tax Economists Forum breakfast at Hall of the States on July 9, 2014.
- Participated in National Association of Business Economists webinar on corporate tax inversions September 18, 2014.
- Participated in Regional Economic Modeling Institute (REMI) web-based seminar on impact of corporate inversions on states, September 23, 2014.
- Participated in REMI web-based seminar on sales factor apportionment, October 9, 2014.

### **E. Training**

The Training staff supported the following activities since July 1, 2014:

#### Computer Assisted Audit Techniques Using Excel

September 25-26, 2014 in Washington DC for 36 students from the District of Columbia and the MTC.

#### Corporate Income Tax

October 20-23, 2014 in Burlington, Vermont for 51 students from the Vermont, Arizona, Connecticut, Nebraska, New Hampshire and South Carolina.

#### Statistical Sampling for Sales and Use Tax Audits

November 17-20, 2014 in Atlanta, Georgia for 29 students from Alabama, The District of Columbia, Florida, Georgia, South Dakota, Utah, the MTC and the private sector.

#### Nexus School

September 15-16, 2014 in Little Rock, Arkansas for 30 students from Arkansas, Iowa, Mississippi, Nebraska, Oregon, and Utah.

November 13-14, 2014 in Trenton, New Jersey for 21 students from Idaho, New Jersey, West Virginia, Wisconsin and Pennsylvania.

## II. Administration

Policy Research summer intern Tong Liu, a master's degree candidate in applied economics at Johns Hopkins Institute, completed her internship on August 29th.

Helen Hecht, formerly tax counsel for the Federation of Tax Administrators, began her stint as the Commission's general counsel on July 1st.

Les Koenig retired on July 31st. Les was the long-time director of the Audit Program. Les started with the Commission in July, 1990 and became Audit Director in 1991.

Danette Smith, sales tax auditor, resigned effective July 25, 2014. Danette had held this position with the Commission since April 14, 2008.

Ken Morrow, a senior income tax auditor, retired from the Commission on September 24th. Ken was hired in 1994 and served the Joint Audit Program for 20 years.

Gloria Carrillo, accountant, retired on September 30, 2014. Gloria had been the bookkeeper for the Commission since July, 1989 (shortly after the Commission moved to Washington, D.C. from Boulder, Colorado). The Commission hired Wendy Margolis to fill the accountant's position; she started on October 8th. Wendy has worked in accountant and controller positions for a number of D.C. based associations.

The Commission has now filled two vacant income tax auditor positions. Lindsay Buerkle began her employment on December 1, 2014, and Pamela Downs will start her employment on January 5, 2015. Both of these auditors have prior auditing experience in state tax departments.

Jennifer Goldbetter is currently assisting the National Nexus Program as an administrative temp.

## 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

- The Pew Charitable Trusts panel discussion, *State Implications of Federal Corporate Tax Reform*, Washington, D.C. (Huddleston)
- SEATA 64<sup>th</sup> Annual Conference; *Overview of State Taxation* (Huddleston, panelist); Point Clear, Alabama
- NYU Summer Institute in Taxation: State & Local Tax II; *A View From the State Tax Administrators* (Huddleston, panelist); New York, New York

#### AUGUST

- Georgetown 37<sup>th</sup> Annual Advanced State and Local Tax Institute; *Sales Tax Issues, Opportunities, and Traps* (Hecht, panelist); *The Three Great Issues the U.S. Supreme Court Has Not Answered* (Huddleston, panelist); Washington, D.C. (Matson)
- 2014 MSATA Conference; Minneapolis, Minnesota (Huddleston, Getschel)
- Regional Economic Models, Inc. Monthly Policy Luncheon, *The Economic and Fiscal Impacts of Tax Inversions on States*; Washington, D.C. (Dubin)

#### SEPTEMBER

- 2014 WSATA Conference; Boise, Idaho (Huddleston, Getschel)
- Tax Policy Center, *Business Tax Reform: What Can Be Done?*; Washington, D.C. (Dubin)
- Taxpayers' Federation of Illinois State & Local Tax Conference (Huddleston, luncheon speaker); Chicago, Illinois
- 2014 NESTOA Conference; *State Taxation From the FTA-MTC Perspective* (Huddleston, panelist); New Brunswick, New Jersey (Matson, Getschel)

#### OCTOBER

- COST's 45th Annual Meeting; *Views on the Nation's Most Significant Policy Issues* (Hecht, panelist); Hollywood, Florida
- National Association of State Bar Tax Section's 35th Annual Meeting; *Apportionment – Where Are We Now?* (Hecht, panelist); San Francisco, California
- 2014 Vertex Exchange; *Multistate Tax Commission: Establishment, Programs, and Activities* (Abalos); New Orleans, Louisiana
- Hartman State and Local Tax Forum; *What Hath Moorman Wrought?* (Hecht, panelist), *The Use & Abuse of Equitable Appointment* (Fort, panelist), *Sword or Shield?* (Hecht, panelist); Nashville, Tennessee (Huddleston, Shimkin)

### **Technology Addendum**

The Commission's new Exchange 2010 email server continues to coexist with the Exchange 2003 server. Configuration issues with the backup server have been resolved, and the migration of mailboxes is close to completion. The remaining mailboxes are currently being cleaned up before migration to minimize corruption during migration. After complete migration, the Exchange 2003 server will be decommissioned.

The Commission continues to work with a vendor to develop a state contact portal. The application has been tested in the final stages of remediation of all issues that the deputy executive director and network administrator identified during their testing. A sample synchronization brought to light some issues that are currently being addressed by the vendor.

The network administrator has also been working with National Nexus Program staff to provide technical support for the voluntary disclosure application system. Coding for phase two of the Voluntary Disclosure Application has completed. The network administrator and Nexus staff are in the beginning phase of acceptance testing before the changes are implemented into production.

The software vendor that is doing work on the voluntary disclosure application system has also been contacted to migrate the Audit History database, which currently is in Access 2000, to a SQL server backend and a web interface for the end user. The coding for this application is near completion. The network administrator and software vendor are working at setting up the hardware that will host the application.

The network administrator is in the process of upgrading all MTC SSL certificates from SHA1(which will no longer be supported by popular web browsers).

The network administrator is upgrading the software on the MTC secure email systems.

Preparations have begun for upgrading all Windows Server 2003 machines to Windows Server 2008. This is in anticipation of Microsoft's end of support for Windows Server 2003 in June 2015.

The Commission will be moving its Chicago office from Downtown Chicago to a location close to O'Hare airport. The network administrator has been actively involved in ensuring that the new location meets the Commission's IT and security needs.

The firewall gateway in the New York office was replaced due to equipment failure. A new Checkpoint firewall was configured and is currently in the New York office. An identical firewall has been purchased and will be configured and put in place in the new Chicago office.

The normal maintenance of server hardware in the various offices occurs on a regular basis.

New laptops and computers for the entire MTC staff have been configured and issued.

The Commission's new website was successfully launched on August 25, 2014. The transition of web content and files occurred with minimal website disruption. The new website offers a simple reformat design, easy-to-navigate functionally and an updated content centered usability.

The overall website structure was improved to feature the following sections:

- Homepage – The site's homepage is the focal point for the Commission's latest information. This page includes a rotational image slider, upcoming events listing, search box feature and a Quick Resources section.
- The Commission – This section includes information about the organizational structure and compact members and states. This section will also host recent information regarding the commission changes to the Bylaws, Public Participation Policy, Executive Officers and Annual Reports.
- Nexus Program – The Nexus program will host information regarding the Voluntary Disclosure Program, Nexus Committee agendas and state amnesties.
- Audit Program – The Joint Audit Program section will focus on information of the Audit Committee and taxpayer-Initiated Joint Audits
- Uniformity – The uniformity section of the website has been completely revamped with updated and archived content. The newly created Current Uniformity Projects webpage will be the home for Uniformity Committee projects and working groups. This section also includes an archived section of the Uniformity Committee and Subcommittees agendas.
- Events and Training – A listing of the most recent Commission events along with state tax-related conferences, meeting, courses, and seminars. The Training Program will include Nexus School, Statistical Sampling for Sales and Use Tax Audits, Corporate Income Tax and Computer Assisted Audit Techniques using Excel course information and online registration.
- Resources – this section will include Employment Opportunities, Policy Research, and the TsepWin statistical analysis application.
- A search box is always available at the top of the page throughout the website to easily located webpages.

The new website has received overwhelming positive feedback from those we've heard from, and we continue to hunt down and eliminate missing links and other minor bugs. We will continue to monitor the site growth and online activity with cross-platform testing.