



To: Executive Committee
From: Gregory S. Matson
Date: April 21, 2022
Subject: **Report of the Executive Director**

This report is a summary of the Commission's organizational and staff activities from the beginning of the fiscal year, July 1, 2021, to February 28, 2022.

I. Membership

California upgraded its MTC membership to sovereignty membership, with the consent of the Executive Committee, effective October 1, 2021.

II. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed two (2) income tax audits and parts of six (6) income tax audits during first three quarters of fiscal year 2022. Audit staff also completed four (4) sales tax audits and parts of three (3) other sales tax audit. Currently, there are sixteen (16) income tax audits and twenty-five (25) sales tax audits in progress.

During the first three quarters of the fiscal year, the income tax program proposed net assessments of \$93,150,548 for partially completed income tax audits. Income tax program staff also proposed NOL and tax credit reductions of \$2,331,514. The sales tax program proposed net assessments of \$3,417,681 for completed and partially completed sales tax audits.

The following chart summarizes hourly data for completed audits during the first three quarters of the fiscal year:

	Income & Franchise	Sales & Use	Total
Total Audits	2	4	6
Total States Audited	44	46	90
Total Hours	8741	9089	17830
Average Hours per State	199	198	198

The Joint Audit Program director staffs the Audit Committee and, with a member of the legal staff, the State Intercompany Transactions Advisory Service Committee.

B. National Nexus Program

Multistate Voluntary Disclosure Program

The Nexus Program FY 2022 results through February 28, 2022 (July 1, 2021 through February 28, 2022) are provided below.

Nexus states' collections:	\$20,795,503	(\$20,269,587 FY 2021)
Nexus states' executed agreements:	100	(411 FY 2021)
Nexus states' average contract value:	\$207,955	(\$49,318 FY 2021)

The above amounts include checks received by the Commission or amounts 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. Applications continue to increase in the post-*Wayfair* era above what they were before that decision. The Commission received applications from 192 taxpayers in calendar year 2021. So far this calendar year 2022 (as of February 28, 2022), 25 taxpayers have applied. Most of the applications continue to be based on sales/use tax economic nexus.

Membership

There are currently thirty-nine participating states (including the District of Columbia) in the NNP. Commission staff continues to reach out to non-member states.

Outreach

Staff continues to urge states to put a link to the NNP on their voluntary disclosure web pages and provide other outreach. Nexus Director Richard Cram has participated in numerous events which are listed under item III.

Nexus School

Discussions are underway to schedule a Nexus School for income tax sometime in October 2022 in Salem, Oregon. When that is finalized, dates and registration information will be published on the MTC website. Please let a member of the Commission staff know if your state would like to host a Nexus School.

Amnesties

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

Staffing

The Program presently has four permanent full-time staff members: Richard Cram, Director, Diane Simon-Queen, Voluntary Disclosure Program Manager, Michelle Lewis, Paralegal, and James Lee, Program Specialist.

C. Legal Division

The six legal division attorneys:

- Staff the Uniformity Committee and its various work groups (including research, drafting, presentations, and reports);
- Staff the Litigation Committee;
- Staff the State Intercompany Transaction Advisory Service (SITAS) Committee (with the Joint Audit Program director);
- Provide attorney and other training;
- Offer litigation and amicus support and legal advice to states;
- Provide legal support to the Commission and its programs and projects, including the Joint Audit and National Nexus Programs and general administrative functions;
- File amicus briefs on behalf of the Commission;
- Oversee the MTC Alternative Dispute Resolution Program established and governed by Bylaw 14;
- Publish articles in tax journals;
- Speak at conferences and seminars (as detailed elsewhere in this report); and
- Oversee the annual Paull Mines Award, which the Litigation Committee established to recognize contributions to state tax jurisprudence by public-sector attorneys.

Uniformity Work

The Uniformity Committee submits a separate report to the Executive Committee detailing the status of projects undertaken by that committee. This section of the executive director's report summarizes the support to this committee provided by the legal division.

On behalf of the state partnership taxation work group, the uniformity counsel presented the group's completed comprehensive issue outline, prepared with the assistance of the legal division, to the Uniformity Committee on November 9, 2021. The Uniformity Committee agreed with the proposal that the work group should next prepare a white paper on state taxation of investment partnerships and requested MTC staff to also provide a training course on the basics of federal partnership taxation.

Since that meeting, the legal division has been staffing the work group and assisting the group in drafting the investment partnership white paper. The legal

division has also been preparing and providing the requested federal partnership taxation training through the MTC's Learning Management System.

We also had an opportunity to discuss partnership issues with staff of the comptroller's office in Jersey – as in Jersey of the Channel Islands – due to an existing relationship between the MTC and that British territory.

The MTC legal division, along with the MTC National Nexus Director, have also been conducting discussions with various stakeholders on the proposed project to study and prepare a white paper on sales taxation of digital products. At the date of this report, there have been dozens of these discussions with taxpayers, practitioners, policy groups, academics, and states.

In addition to these two major projects, the legal division regularly consults with states on the adoption of MTC models. During this fiscal year, MTC attorneys have consulted with state representatives on the Commission's adoption in August 2021 of updated guidance concerning P.L. 86-272. States are also continuing to adopt provisions to assess tax on federal audit adjustments under the new partnership audit regime, based on the model adopted by the MTC.

Litigation Committee Support

The Litigation Committee has traditionally held in-person training and informational sessions (commonly referred to as roundtables) 2-3 times a year where state tax attorneys in departments of revenue and attorney general offices around the country discuss current and recent tax cases and key litigation issues and share ideas with colleagues in other states. Because of the pandemic, these roundtables were shifted to the web. Post-pandemic, at least some of the roundtables and informational sessions will continue to occur virtually to reach more attorneys across the country.

To ensure that interested state attorneys are aware of Litigation Committee programs and other MTC programs that may be of interest to them, and to identify attorneys that may be a resource to attorneys in other states, MTC legal staff continues to update and expand the Litigation Committee attorney roster, which includes more than 300 attorneys. This project is ongoing.

Training

The legal division traditionally provides a combination of in-person and online training programs for both state attorneys and other state tax personnel. This fiscal year, the legal division has supported development of online training on market-based sourcing that will be delivered through the MTC's learning management system. Division attorneys also organized a virtual informational session entitled "The Recently Revised MTC Statement of Information, Applying P.L. 86-272 to Modern Business Activities." This session, held on December 1, 2021, attracted more than 200 state attorneys, auditors, and policy staff. On December 14, 2021,

the legal and audit staffs presented an “End-of-Year Ethics Extravaganza 2021,” which was attended by over 150 state employees.

In addition, the legal staff, working with the leadership of the Litigation Committee, organized and conducted a full day of attorney training on November 8 in conjunction with the MTC’s fall meetings. This program included six substantive panels. It also included a presentation by Georgetown Law Professor Brian Galle and an attorney roundtable and informational sharing session.

MTC attorneys were also responsible for organizing a presentation that was open to the public during the November 2021 meetings in Alexandria, Virginia, by staff from the U.S. Senate Finance Committee and the U.S. House of Representatives Ways & Means Committee. They explained current tax issues and legislation before Congress.

Litigation Support and Legal Advice

The legal division regularly consults with state attorneys and other state representatives by request on litigation matters, including strategy, issues, arguments, and by serving as expert witnesses. MTC attorneys also work on legislative and policy issues, including review of draft legislation, assist states to implement MTC model laws and other guidance, and provide testimony on SALT issues.

During this fiscal year, legal staff has worked with the following states on litigation support and legal advice: Alaska, California Franchise Tax Board, Colorado, Kansas, Maryland, Massachusetts, Nebraska, New Hampshire, New Mexico, Montana, North Carolina, Oregon, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia.

Support for the Commission’s Programs and Projects

The legal division supports the Commission’s Joint Audit and National Nexus Programs and other Commission programs and projects as requested. It also 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 and drafting contracts, and filing corporate registrations and reports.

Amicus Briefs Filed on Behalf of the Commission

- *Santa Fe Natural Tobacco Co. v. Department of Revenue, State of Oregon*, Case No. 5372. The MTC filed a brief addressing the application of P.L. 86-272 when an out-of-state business selling into a state contract with in-state businesses to perform certain activities.
- *VAS Holdings & Investments LLC, v. Commissioner of Revenue*, Commonwealth of Massachusetts Supreme Judicial Court No. SJC-13139.

The MTC filed a brief addressing Massachusetts' right to impose income tax on the capital gain realized by an out-of-state S corporation, on the sale of its 50% ownership in a limited liability company that was actively engaged in business in Massachusetts in the years immediately preceding the sale.

- *Quad Graphics, Inc. v. North Carolina Department of Revenue*, No. 407A21-1, Tenth District, Supreme Court of North Carolina. MTC National Nexus Director Richard Cram was lead drafter of this brief in support of North Carolina, arguing that *McLeod v. J.E. Dilworth Co.*, 322 U.S. 327 (1944), has been superseded by current Commerce Clause jurisprudence and cannot thwart use tax assessed on printed material sent into North Carolina by the taxpayer.

Publications

Uniformity Counsel Helen Hecht is a member of the *State Tax Notes* Advisory Board and submits periodic "board briefs" on various topics.

Senior Counsel Bruce Fort wrote a two-part article "Would-Be Privateers Flounder on Shoals of Confusion," published February 17 and 18, 2022 in Bloomberg Tax's *Tax Insight and Commentary* on-line magazine. The article suggested the states are not constrained by the Constitution from taxing a non-resident owner of a pass-through entity on its capital gains recognized on the sale of those ownership interests. The article relates to the *VAS Holdings* amicus brief identified above.

III. Administration

Staffing and Administration

No employees were hired during the period of October 1, 2021 through February 28, 2022. Two employees retired during this period. Tom Shimkin retired in December having joined the MTC in 1998 as Director of the National Nexus Program. Later in his time with the Commission Tom served as legislative counsel and director, and as a legislative advisor. George Fung, a senior auditor for sales & use tax, retired in February 2022 having been with the MTC since 1990.

Melody Moncrief has joined the MTC staff as a part time Administrative Assistant for the Audit Program. Melody previously worked for the Alabama Department of Revenue.

The Commission is in the process of migrating its Microsoft Dynamics SL (server-based) accounting software to Microsoft Dynamics BC (cloud-based) accounting software. The plan is to have this migration completed by May 31, 2022.

The Commission is also in the process of changing its bank from Truist to Sandy Spring Bank. Sandy Spring Bank is a Maryland based bank which is the 137th largest bank in the United States with over \$12 billion in assets.

MTC's financial staff recently changed the payroll processing company. That transition went smoothly.

All D.C.-based staff work remotely and also come into the office one or more days per week. The D.C. office has been open throughout the pandemic with very strict health protocols being followed. Loretta King, our staff assistant, comes in daily. Members of the D.C. office staff have ensured smooth and uninterrupted regular operations at the MTC.

Technology Addendum

The normal maintenance of server hardware in the D.C. office occurred on a regular basis through on-site visits by the network administrator during this time.

Maintenance of the off-site backup server in the Covington, KY location has been completed.

The network administrator continues to prepare for multi-factor authentication. There are issues that need to be navigated prior to implementation of a two-factor authentication solution. The network administrator continues to work on those.

The CLEO file sharing platform is needing to be replaced. Because CLEO has focused its resources to web based and online application, the portion of the on-premises application that we currently use is end of life regarding support. The latest software update provided by CLEO would render the portion of the application that we use useless. Because CLEO does not support Pub. 1075 compliance in their online datacenters we would not be looking to move to the cloud with CLEO. A replacement solution for CLEO has been identified and testing has been done amongst some of the MTC users. The feedback has been very positive and we hope to be purchasing this solution soon.

With the changing of banks at MTC, the network administrator has been working on changing the auto-pay information on all MTC business internet connections. While doing so, a review is being done to see if accounts could receive better pricing or faster speeds.

Training and Events

The first in-person MTC committee meetings in two years took place successfully at the Westin Hotel in Alexandria, Virginia, November 8-11. All of the committees met and conducted their business with in-person participants and virtual access provided for those unable to attend in-person.

These in-person meetings were an important opportunity for state tax officials from around the country to meet up, discuss issues and share ideas. Participants came from as far away as Alaska, where the MTC summer meeting will be held in Anchorage, July 31-August 4th.

The training work group of the Strategic Planning Committee continues to discuss and review MTC training programs and ways to effectively deliver the training courses. A recent meeting was held Tuesday, January 25th. The work group received an update on training activities of the MTC and work group members also discussed aspects of future MTC training and weighed in with suggestions.

IV. Outside Presentations & Events

The executive director serves on the advisory boards for the Hartman State and Local Tax Forum, the New England State and Local Tax Forum, and New York University's State and Local Tax Institute.

The executive director served as a member of the Virginia General Assembly's Work Group to Assess the Feasibility of Transitioning to a Unitary Combined Reporting System for Corporate Income Tax Purposes. He attended two work group meetings in person in Richmond, Virginia, in August and September.

The following are the programs, conferences, and other events of outside organizations at which MTC staff represented the Commission:

JULY 2021

- SALTovation Podcast, *Multistate Tax Commission with Helen Hecht*, available here: <https://saltovation.podbean.com/page/2/> (Hecht, presenter); virtual
- Update on sales/use tax economic nexus and marketplace facilitator laws, current Uniformity Committee projects, and Multistate Voluntary Disclosure Program, New Mexico Legislative Finance Committee (Cram, presenter), virtual

AUGUST 2021

- 2021 Texas Comptroller's Annual Briefing; *Multistate Update – What is Happening Around the Nation* (Prosser, presenter); virtual
- MSATA 2021 Annual Conference; *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Decision Making* (Pattison, presenter); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, panelist); *Applying P.L. 86-272 to the Modern World: The MTC's Project to Update its Statement of Information on P.L. 86-272*, (Hamer, presenter); Grand Rapids, Michigan (Matson, Prosser)
- *Seller issues with sales/use tax economic nexus and marketplace facilitator laws, and explanation Multistate Voluntary Disclosure Program*, MyCPE.com platform and on CPAacademy.com platform (Cram, presenter); virtual

- National Association of State Auditors, Comptrollers and Treasurers (NASACT), *Impacts to Watch for on State Taxation Policy and Decision Making*, (Pattison, presenter); San Diego, California
- *The Salt Shaker Podcast*, Eversheds, provided online and available here: <https://www.stateandlocaltax.com/podcast/digging-deep-a-discussion-and-update-on-two-mtc-uniformity-projects/> (Hecht, guest), virtual
- *Learning from the 2021 Survey of State Tax Departments, Taxation of Pass-Through Entities Results*, Bloomberg Tax & Accounting, (Hecht, panelist); virtual

SEPTEMBER 2021

- NESTOA 2021 Annual Conference; *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Decision Making* (Pattison, presenter); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, panelist); *Voluntary Disclosure Issues* (Pattison, panelist); *Court Case Roundup* (Prosser, panelist); *Applying P.L. 86-272 to the Modern World: The MTC's Project to Update its Statement of Information on P.L. 86-272* (Hamer, presenter); Pittsburgh, Pennsylvania (Matson)
- *Seller issues with sales/use tax economic nexus and marketplace facilitator laws, and explanation Multistate Voluntary Disclosure Program*, MyCPE.com platform and on CPAAcademy.com platform (Cram, presenter); virtual
- *BakerBotts Quarterly SALT Update Webinar* (Prosser, presenter), virtual
- *Update on Multistate Tax Commission Uniformity Projects*, NCSL Fiscal Leaders Seminar and SALT Conference (Hecht, presenter); Santa Fe, New Mexico
- EY Quarterly Webcast – *State Taxation of Partnerships – MTC Work Group* (Hecht, panelist); virtual

OCTOBER 2021

- WSATA 2021 Annual Conference; *Voluntary Disclosure Programs* (Pattison, panelist); *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Decision Making* (Pattison, presenter); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, panelist); *Applying P.L. 86-272 to the Modern World: The MTC's Project to Update its Statement of Information on P.L. 86-272* (Hamer, presenter); Anchorage, Alaska (Matson)
- 28th Annual Paul J. Hartman State and Local Tax Forum; *Top Ten Income Tax Cases* (Fort, panelist); *You Sneezed! What Isn't Nexus Anymore?* (Cram, panelist); Nashville, Tennessee (Matson)

NOVEMBER 2021

- *New Federal Partnership Audit Regime & What it Means for the States*, Connecticut CPA Society, November 4, 2021 (Hecht, presenter)
- Bloomberg Tax Leadership Forum; *Maryland and the Expanding Map for Digital Advertising Taxes* (Prosser, panelist); virtual
- The New England State and Local Tax Forum; *Pass-Through Entity Taxation: 2021 and Beyond* (Hecht, panelist); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, panelist); virtual

DECEMBER 2021

- FTA Year-End Legislative Update (Shimkin, panelist); virtual
- *State Tax Issues Update*, AICPA State and Local Tax Technical Resource Panel, December 14, 2021 (Barber & Prosser, presenters)
- NYU State and Local Tax Institute; *State Income Tax Consequences of Wayfair* (Hamer, panelist); *Notable Developments Affecting State Taxation of Partnerships, LLCs and their Owners* (Hecht, panelist); virtual

JANUARY 2022

- ABA Virtual 2022 Midyear Tax Meeting (Prosser)

FEBRUARY 2022

- Virtual Testimony to Vermont Legislature's Senate Finance Committee on Corporate Tax Reform (Fort, witness)
- The National Multistate Tax Symposium sponsored by Deloitte Tax LLP and The Tax Section of The Florida Bar; *State Officials Panel: Perspectives on Reemergence and Preparing for What's Next* (Prosser, panelist); Orlando, Florida
- Talking Tax podcast produced by Bloomberg Tax; *State Auditors Also Bear Heavy Loads This Tax Season* (Matson & Prosser panelists)
- Presentation on State Taxation of Partnerships to the Louisiana Bar Tax Section (Hecht, presenter); New Orleans, Louisiana

MARCH 2022

- ABA/IPT Advanced Tax Seminars; *State Transfer Pricing: Challenges, Issues and Opportunities for Multistate Taxpayers* (Fort, panelist); *Public Law 86-272 Today and Tomorrow* (Hamer, panelist); virtual
- NYU State and Local Tax Study Group; *MTC Update* (Matson, presenter); virtual

- Tax Executives Institute 72nd Midyear Conference; *Been There, Done That – Lessons from State Corporate Tax Reform that the OECD Should Know* (Prosser, panelist); Washington, D.C.