



**Minutes of the Multistate Tax Commission Executive Committee Meeting
Friday, December 12, 2014
Nashville, Tennessee**

I. Welcome and Introductions

The Chair called the meeting to order at 8:35 a.m. The following persons attended the meeting either in person or *via telephone*.

Name	Affiliation	Name	Affiliation
Julie Magee, Chair	Alabama	Gary Humphrey	Oregon
Holly Coon	Alabama	<i>Anita Connor</i>	Pennsylvania
Joe Garrett	Alabama	Nancy Prosser	Texas
Robynn Wilson	Alaska	Karolyn Bishop	Washington
Deanna Munds-Smith	Arkansas	Gil Brewer	Washington
Phillip Horwitz	Colorado		
Andrea Taylor	Connecticut	Public Attendees	
Kathryn Lewis	Connecticut	Deborah Bierbaum	AT&T
Stephen Cordi	District of Columbia	Karen Boucher	Deloitte Tax LLP
Richard Jackson	Idaho	Amy Hamilton	State Tax Notes
Richard Cram	Kansas	Virgil Helton	Fast Enterprises, LLC
<i>Ann Oakman</i>	Kentucky	<i>Ferdinand S. Hogroian</i>	Council on State Taxation (COST)
<i>Don Richardson</i>	Kentucky	Todd Lard	Sutherland
J. A. Cline	Louisiana	Michael Paxton	Deloitte Tax LLP
Michael Fatale	Massachusetts	Greg Turner (not on sign-in sheet)	Council On State Taxation (COST)
Wood Miller	Missouri		
Lee Baerlocher	Montana		
Gene Walborn	Montana	MTC Staff and Consultants	
<i>Dan Amer</i>	New Mexico	Ben Abalos	Joe Huddleston
Demesia Padilla	New Mexico	Ken Beier	Sheldon Laskin
Lennie Collins	North Carolina	Dan Bucks	<i>Len Lucchi, Patuxent</i>
<i>John Seibert</i>	North Carolina	Lila Disque	Greg Matson
Matt Peyerl	North Dakota	Bruce Fort	Jim Rosapepe, Patuxent
Myles Vosberg	North Dakota	Keith Getschel	Thomas Shimkin
Dee Wald	North Dakota	Helen Hecht	<i>William Six</i>

The Chair acknowledged that a quorum was present.

II. Initial Public Comment Period

There were no public comments during this portion of the meeting.

III. Approval of Minutes of the Executive Committee Meeting on July 31, 2014

Ms. Prosser moved that the minutes of the Executive Committee for July 31, 2014 be approved. The minutes were approved unanimously.

IV. Report of the Chair

The chair noted that this is the first time for a “paperless” meeting and asked that participants provide feedback on this approach. She then noted the vacancy on the Executive Committee, since Michigan is no longer a compact member. Ms. Padilla moved that Stephen M. Cordi, Deputy Chief Financial Officer, D.C. Office of Tax and Revenue, as an at-large member to fill the remainder of the term left vacant by Michigan’s repeal of the Compact. This was approved unanimously.

V. Report of the Treasurer

A. Financial Report for the 4-month period July 1, 2014 – October 31, 2014

Mr. Jackson commented on the financial report, saying that the report looks good and that he does not see anything out of the ordinary. Ms. Padilla moved approval of the financial report. This was approved unanimously.

B. Approval of audited financial statements as reported in the independent auditor report for fiscal year July 1, 2013 – June 30, 2014

Mr. Jackson stated he was very pleased with the audit report, including the management letter. Ms. Prosser moved approval of the independent audit report. This was approved unanimously.

VI. Report of the Executive Director

Mr. Huddleston thanked the members of the Executive Committee for their approval of the financial report and auditor’s statement, noting that the Commission is a conscientious steward of the states’ resources. He also reported that the Commission expects to be adding two audit staff members prior to the annual meeting, but that this could be affected by events in a couple of states. He also cited new audit program members—Iowa, Rhode Island, and Pennsylvania—adding that a number of additional states are looking at joining this program and some of the existing program members are considering expanding their involvement.

Regarding health care benefits, he reminded the committee that this is a significant part of the Commission's budget, adding that deductibles were increased this year. He cautioned the committee that the health insurance cost situation is precarious, and that a double digit increase in premiums would present a major challenge.

VII. Strategic Planning Report

Ms. Prosser, chair of the Strategic Planning Steering Committee, provided an update on strategic planning activities, including the December 11 meeting of the Steering Committee. She noted that the Commission has been engaged in strategic planning for four years, and that it has now become a regular part of activities of the organization. She also reported on the December 11 session, where the steering committee updated its environmental scan, reviewed progress on goals areas, including one area that has not received significant attention—the vitality and reputation of the Commission. She also reminded the committee of the composition of the Steering Committee—the officers of the Commission plus Mr. Huddleston, Mr. Humphrey from Oregon, and herself. She concluded by expressing her anticipation that members of the Executive Committee will be involved in the vitality and reputation goal area.

VIII. Review of Draft Design for an Arm's Length Adjustment Service

Joe Garrett, chair of the Arm's Length Adjustment Service (ALAS) Advisory Group reported that the group has completed the first stage of its work—the draft design document. He thanked all the members of the committee and Dan Bucks, in particular, for developing a quality plan.

Mr. Bucks reported that the group has accomplished a substantial amount of work since it started in June of this year. He cited the support of Mr. Garrett and Holly Coon of Alabama, and Lennie Collis of North Carolina, in addition to participants from seven other states.

Mr. Bucks noted the openness of the process for development of the design and suggested that this should help build trust with stakeholders. He then reviewed some highlights of the preliminary design for the project, noting that everything in the design came from the states. He explained that the project anticipates involvement of ten or so states and that the assessment estimates in the executive summary are conservative. He also emphasized the service elements in the proposal are mutually supportive—that is they should not be viewed as stand-alone options. He also explained the four-year development period and that that states will be asked for a four-year commitment to the program.

In response to comments from Mr. Humphrey, Mr. Bucks confirmed that there is no expectation that states will need regulatory changes to participate in

the program. He said, however, that states are likely to make some process improvements and may see the need to add questions on tax returns.

Mr. Garrett suggested that the Commission will need to have commitments from states to participate in the project before the Executive Committee votes on the project in May. The Chair stated that since she did not hear any opposition to seeking this commitment from the states that the Commission should precede on that path.

IX. Uniformity

A. Hearing Officer Report on Proposed Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions

Ms. Hecht noted an oversight that preempted discussion, particularly from some states on the telephone, at the Executive Committee meeting in Albuquerque regarding the hearing officer's recommendations for a de minimis exception for incidental receipts that fall below a threshold of 1% of total receipts, where these receipts would be sourced in a similar manner to all other receipts. So this item was placed on the agenda again for this meeting. Following discussion of the merits of this proposal, it was noted that the forthcoming revisions to regulations for Article IV, Section 17, of UDITPA could consider a de minimis provision for receipts. Karen Boucher asked the committee members if they could provide direction to the legal staff and the work group to include a de minimis provision in the Section 17 proposal. Helen Hecht indicated that they were on that track to include this in the proposal.

A motion to adopt the hearing officer's report without the de minimis proposal was made by Mr. Walborn. The motion was approved unanimously.

B. Sales and Use Tax Nexus Model Statute

This item was not before the committee for consideration.

C. Resolution on ABA Transaction Tax Overpayment Act

The Chair noted that the Uniformity Committee recommends Executive Committee endorsement of state passage of this act. Deborah Bierbaum thanked the Commission for its support of the model act and Ferdinand S. Hogueian expressed the support of the Council on State Taxation for the model act. Following a review of options by the Chair, Ms. Padilla moved approval of the model act for consideration by the Resolutions Committee in the spring so that it can be considered by the Commission at its annual business meeting. This was approved unanimously.

D. Model Sales and Use Tax Notice and Reporting Statute – Status of Litigation Report

Helen Hecht provided an update on *Direct Marketing Association v. Brohl* and no action was taken on this topic.

E. Other Uniformity Matters

There were no other Uniformity matters before the Committee.

X. Committee & Program Reports

The Chair acknowledged the departure of Rick DeBano as chair of the Audit Committee due to his retirement, and that current vice-chair Frank Hales (Utah) will become the chair and Lee Baerlocher (Montana) will be the new vice chair of the Audit Committee.

A. Audit Committee

Mr. Getschel noted that he would have some comments during the closed session.

B. Litigation Committee

Ms. Hecht noted the last meeting of the committee and recent training sessions via teleconference.

C. Nexus Committee

Mr. Collins cited work on two strategic planning efforts—membership and streamlining voluntary disclosures—and said he did not have anything more to add to the written report.

Mr. Shimkin reported that year-to-date voluntary disclosures were at \$3.1 million, which is a little lower than recent years; and reminded the committee that the National Nexus Program is no longer providing services to non-member states.

D. Uniformity Committee

Mr. Miller recalled that the directive of the Executive Committee has been to pursue Article IV work and, in particular, market sourcing rules and the definition of receipts. Work groups have been meeting weekly on these items, and

the Uniformity Committee at its session this week suggested the work group on market sourcing use Massachusetts regulations as a starting point for this work. The committee also heard a presentation on trusts, but decided to set this project aside, and maintain the focus on Article IV. The sales and use tax subcommittee continues to work on the nexus model statute—work on this is expected to be completed at the March meeting so that this can be moved on to the Executive Committee in May.

Mr. Huddleston relayed his remarks on administrative issues, including IRS revenue agent reports, that were made earlier in the week to the Uniformity Committee. He commented on the positive reaction he has had from stakeholders on addressing this area and has suggested that staff invite interested parties to provide input on this at the committee meetings in March.

Mr. Miller closed his report by thanking Commission staff members for the support provided on a Rabbi trust case in Missouri.

E. Training Program

Mr. Beier referred committee member to the training update in their materials and reviewed the schedule of upcoming courses.

F. Other Committee & Program Business

There were no other committee or program reports.

XI. Federal Issues with State Tax Implications

Mr. Rosapepe and Mr. Lucchi provided an update on final actions of the 113th Congress and forthcoming changes with the 114th Congress. In addition to comments on the prospect for passing a continuing resolution for the federal budget for this fiscal year, Mr. Rosapepe reviewed expected changes in committee leadership, which accompany the Republican majority in both the House and Senate for the 114th Congress. He thinks that without the split in party control between the House and Senate, more legislation affecting state and local taxation could have traction. He also advised the committee not to dismiss the prospect for tax reform, which is supported by the leadership and the business community. In addition, the administration seems open to some type of tax reform. He added that the Marketplace Fairness legislation is less likely to pass, but that Representative Chaffetz has a remote transaction parity act that may be introduced.

In response to a comment from Mr. Cordi, Mr. Rosapepe said the dynamic in the Senate on Marketplace Fairness or similar legislation may be interesting, since both Senators Alexander and Enzi support this, but Senator Cruz and others do not. At the end of the remarks on federal issues, Joe Huddleston cautioned the

committee to look closely at the legislation introduced in the new Congress, since all of the bills will be new.

XII. Upcoming Meetings & Events

Mr. Matson reviewed the schedule of upcoming meetings, noting that the May Executive Committee meeting is yet to be scheduled. Mr. Huddleston added that he is looking at several potential locations for the 2017 annual meeting of the Commission and solicited suggestions and volunteers.

XIII. Consideration of Confidential Matters during Closed Session

The meeting recessed for a closed session at 10:50 a.m.

XIV. Resumption of Public Session and Reports from Closed Session

The open session resumed at 11:00 a.m. There were no reports from the closed session.

In response to a question from Mr. Humphrey about current Bylaw 7 surveys, Ms. Hecht explained that if the two surveys that are currently before the states receive sufficient support, that these items go directly to the Commission at its meeting in July.

The Chair reminded participants to provide feedback on the virtual (paperless) presentation approach for the current meeting. Mr. Huddleston recognized the tremendous work done by the Commission's Washington, D.C., staff in getting this meeting organized.

XV. Adjournment

The meeting was adjourned at 11:08 a.m.