



MULTISTATE TAX COMMISSION

MINUTES OF MEETING HELD DECEMBER 15, 2016 IN HOUSTON, TEXAS

Multistate Tax Commission Executive Committee

Westin Houston, Memorial City
945 Gessner Road
Houston, Texas 77024

December 15, 2016
8:30am-3:00pm Central Time

I. Welcome and Introductions

Executive Committee chair Demecia Padilla, N.M., called the meeting to order at 8:31am and confirmed the presence of a quorum. She asked members and participants to introduce themselves. The following is a list of members and participants:

Julie Magee	Alabama Dept. of Revenue	Katie Lolley	Oregon Dept. of Revenue
Phillip Horwitz	Colorado Dept. of Revenue	Nia Ray	Oregon Dept. of Revenue
Richard Jackson	Idaho State Tax Commission	Glenn Hegar	Texas Comptroller of Public Accounts
Luke Morris	Louisiana Dept. of Revenue	Nancy Prosser	Texas Comptroller of Public Accounts
Krystal Bolton	Louisiana Dept. of Revenue	Drew Shirk	Washington State Dept. of Revenue
Michael Fatale	Massachusetts Dept. of Revenue	David Hesford	Washington State Dept. of Revenue
Wood Miller	Missouri Dept. of Revenue	Gil Brewer	West Virginia State Tax Dept.
Lee Baerlocher	Montana Dept. of Revenue	Melissa Smith	Amazon
Gene Walborn	Montana Dept. of Revenue	Deborah Bierbaum	AT&T

Richard Cram	Multistate Tax Commission	Beth Sosidka	AT&T
Lila Disque	Multistate Tax Commission	Tripp Baltz	Bloomberg BNA
Keith Getschel	Multistate Tax Commission	Nikki Dobay	Council on State Taxation
Helen Hecht	Multistate Tax Commission	Karl Friedan	Council on State Taxation
Greg Matson	Multistate Tax Commission	Joe Huddleston	EY LLP
Thomas Shimkin	Multistate Tax Commission	Shirley Sicilian	KPMG LLP
Marshall Stranburg	Multistate Tax Commission	James Rosapepe	Patuxent Consulting
Sheldon Laskin	Multistate Tax Commission	Todd Lard	Sutherland
Joan Wittig	New Mexico Taxation and Revenue	Appearing by Phone:	
Lennie Collins	North Carolina Dept. of Revenue	Len Lucchi	Patuxent Consulting
Matt Peyerl	North Dakota Office of State Tax Commissioner	Bill Six	Multistate Tax Commission
Ryan Rauschenberger	North Dakota Office of State Tax Commissioner	Wendy Margolis	Multistate Tax Commission
Dee Wald	North Dakota Office of State Tax Commissioner		
Don Jones	Oregon Dept. of Revenue		

Ms. Padilla informed the committee that she had to return to New Mexico to attend to a personal matter, and asked Vice Chair Richard Jackson, Idaho, to conduct the remainder of the meeting.

II. Initial Public Comment Period

There was no public comment at this point.

III. Approval of Minutes of Executive Committee Meetings on July 28, 2016, and October 4, 2016

Julie Magee, Ala., moved for approval of the minutes. The motion passed by voice vote.

IV. Report of the Chair

A. Election of Executive Committee Member for Unexpired Term Due to Vacancy

When Nia Ray left the Missouri Department of Revenue, this created a vacancy in one of the committee's four at-large positions. Ms. Ray has now been confirmed as the Director of the Oregon Department of Revenue, and the Chair appointed her to complete the unexpired term. Wood Miller, Mo., moved to confirm her appointment. The motion passed by voice vote.

B. Annual Meeting Date

The Commission's bylaws state that the annual meeting of the Commission is to be held during July of each year, unless otherwise specified by the Executive Committee. Since the annual meeting in 2017 is scheduled for August 2 in Louisville, Kentucky, the Executive Committee was asked to approve holding the annual meeting on this date. Nancy Prosser, Texas, moved to approve the meeting date. The motion passed by voice vote.

V. Report of the Treasurer

A. Financial Report for the 4-month Period July 1, 2016 – October 31, 2016

Ryan Rauschenberger, N.D., reported that in October, the MTC purchased software for \$50k in order to allow MTC staff to securely manage and control data flow. The actual year to date deficit in the General Operations program is substantially the result of the allocation of the administrative services expenses, which includes the allocated cost of the software and support. The Audit and Nexus programs have a surplus due to unfilled positions – a situation that also positively affected salaries, retirement, and employee insurance. The Training program has broken even. Delaware joined the Nexus Program effective July 1, 2016, causing a small favorable variance.

After reviewing the report, Gene Walborn, Mont., asked whether it might be time to relabel the 4R account or reassign it. Greg Matson agreed. Mr. Walborn moved to have staff make a recommendation for use of that money at the next executive committee meeting. The motion passed by voice vote.

B. Approval of audited financial statements as reported in the independent auditor report for fiscal year July 1, 2015 – June 30, 2016

Mr. Rauschenberger confirmed that the report of the independent auditors contains an unqualified opinion that the "financial statements ... present fairly, in all material respects, the financial position of the Multistate Tax Commission as of June 30, 2016 and 2015 ..."

Mr. Jackson noted the correction of a clerical error that does not affect the overall

statement. Ms. Prosser moved to approve the statements as amended. The motion passed by voice vote.

VI. Report of Executive Director

Greg Matson, MTC Executive Director, presented his report, and added that in January the MTC and FTA will have a midwinter seminar for new state tax commissioners. Mr. Jackson expressed his thanks to the MTC staff for their work, Mr. Stranburg in particular for his assistance with the Idaho agency's move.

Annual Report of the Commission

Article IV.1.(l) of the Compact and Bylaw 3(g) require preparation of an annual report. Mr. Matson distributed a draft report this year so members of the committee may read it in advance and provide the committee with an opportunity to make suggestions or comments on how the report may be improved.

VII. Committee Reports

A. Audit Committee

Keith Getschel, MTC, reported that the audit committee met on July 25, 2016, in Kansas City, Missouri. During the public session the audit committee reviewed a proposed audit evaluation survey for the audit program and moved forward with that project. In the closed session the audit committee reviewed the status of all the audits in progress. A discussion was held on 16 income tax and 6 sales tax audits that had significant issues. This discussion included a recommendation from one of the MTC auditors to close one of the audits based on the program's early closure guidelines. The committee took action to approve this recommendation.

B. Litigation Committee

Helen Hecht, MTC, stated that the Litigation Committee is looking at developing a more formalized operating document. The operating document would help familiarize non-participating states with the committee, and will help develop and better program and agenda for the committee. The proposed document will be shared with the litigation committee shortly.

C. Nexus Committee

Richard Cram, MTC, reported that the nexus states' collections thus far for FY 2017 total \$8,695,808. The Nexus Committee has met twice, and worked on improving the Nexus website. The group has also shortened and clarified the Standard Voluntary Disclosure Agreement form. In response to requests from the committee, MTC staff has been researching how states determine "who is the taxpayer" in unitary groups, and how they treat net operating losses in voluntary disclosures. Mr. Cram added that that Nexus has embarked on a Strategic Planning project regarding voluntary disclosure.

D. State Intercompany Transactions Advisory Service Committee

Marshall Stranburg, MTC, stated that during its August meeting, the committee completed work on a participation commitment and information sharing agreement and approved a name change for the committee (from Arm's Length Adjustment

Service (ALAS) Committee to State Intercompany Transactions Advisory Service (SITAS) Committee. Nine states participated in the training and information session which consisted of training presentations and case example discussions. The committee tentatively plans to hold another training and information session in the spring of 2017. Further activities of the committee and next steps for the committee to consider continue to be discussed.

E. Strategic Planning Steering Committee

Ms. Magee informed the Executive Committee that during FY17, Strategic Planning will work on projects including updating Commission Bylaws; training; and audit satisfaction survey for taxpayers. She expressed her thanks to Elizabeth Harchenko, who recently retired as strategic planning consultant, and asked Mr. Matson to continue to seek participants for this committee.

F. Uniformity Committee

Mr. Miller summarized the Section 18 project and Partnership project the committee is currently working on. During the Uniformity Committee meeting the day before, the committee decided to proceed with the partnerships project to the extent there are aspects with certainty.

G. Other Committee Business

Mr. Jackson encouraged commissioners to attend all committee meetings because of their value as training tools and exchange of knowledge.

VIII. Uniformity

A. Model Sales and Use Tax Notice and Reporting Statute - Status of Litigation Report

Ms. Hecht updated the committee on the status of the *DMA* litigation. Previously, the Tenth Circuit had determined that Colorado's sales and use tax notice and reporting statute was constitutional. The Supreme Court denied certiorari on December 9, so the Tenth Circuit's decision is final. Ms. Hecht noted that the decision is available online, as is the MTC model statute based on Colorado's. The model had been tabled due to Colorado's litigation, pending the Executive Committee's decision to revive it. Ms. Magee recommended that the committee meet to refresh their memory and understanding of the model. Ms. Prosser, however, noted that it has not been adopted as a formal model; it had gone through a survey but did not receive enough positive results from affected states. Mr. Matson recommended that it be considered in May, recirculated for another Bylaw 7 survey in light of *DMA*, and possibly put it before the commission for adoption. He did note that there remain some loose ends as far as litigation, which MTC staff will continue to monitor.

B. Other Uniformity Matters

Ms. Hecht informed the committee that the MTC's proposed amendments to its general allocation and apportion regulations have been out on Bylaw 7 survey, but MTC staff has not received all responses yet. Mr. Matson polled the group for interest in a special commission meeting to consider adoption of the regulations.

Ms. Magee requested a special commission meeting.

IX. Preliminary Discussion of Amendments to Bylaws

Mr. Stranburg has been reviewing the MTC bylaws, and noticed some areas that are in need of updating or clarification – mostly regarding gender pronouns and use of the word “shall.” He presented the proposed changes in detail, but noted no decisions need to be made at this point. Ms. Magee moved to approve the bylaw changes. Ms. Prosser supported the motion with the request that they do another review and make sure all gender references are fully changed. The motion passed by voice vote.

X. Federal Issues with State Tax Implications

Jim Rosapepe and Len Lucchi, Patuxent, predicted federal developments that might affect state taxation. At this point it looks like federal tax policy is likely to end up being negotiated in the Senate with the participation of both parties and with Republican Senators having significant leverage. In terms of actual dynamics of tax policy, things haven't changed much, with one exception: with one-party control of both houses and the presidency, there is high potential for federal tax reform.

XI. Upcoming Meetings & Events

Mr. Matson reminded the committee of upcoming meetings:

2017 Winter Committee Meetings, March 8 to 10, 2017 (Wed-Fri) — San Diego, California

50th Annual Conference & Meetings, July 31 to August 3, 2017 (Mon-Thur) — Louisville, Kentucky

XII. Consideration of Confidential Matters during Closed Session

The committee went into closed session at 10:42 a.m.

XIII. Resumption of Public Session and Reports from Closed Session

The open session resumed at 10:53 a.m. There were no reports from the closed session.

XIV. Adjourn

The meeting adjourned at 10:55am.