



MULTISTATE TAX COMMISSION

Executive Committee Meeting
January 4, 2007
Holiday Inn on the Bay
1355 North Harbor Drive
San Diego, California

I. Welcome and Introductions

The Chair called the meeting to order. The following individuals attended:

Name	State or Affiliation	Name	State or Affiliation
Joan Wagnon	Kansas	Jan Goodwin	New Mexico
Carl Joseph	California FTB	Lennie Collins	North Carolina
Andrea Chang	California FTB	Elizabeth Harchenko	Oregon
Ben Miller	California FTB	Carl Erdmann	Skadden, Arps, Slate
Charles Wilson	District of Columbia	Todd Lard	Sutherland Asbill Brennan
Ted Spangler	Idaho	Nancy Prosser	Texas
Dan Salomone	Minnesota	Bruce Johnson	Utah
Julie Allen	Missouri	Tremaine Smith	Washington
Dan Bucks	Montana		
Private Sector			
Deborah Bierbaum	AT&T	Robert Montellione	Prudential
Kim Reeder	Baker & McKenzie	Carl Erdmann	Skadden, Arps, Slate
Diann Smith	COST	Todd Lard	Sutherland Asbill Brennan
MTC Staff			
Joe Huddleston	MTC	Shirley Sicilian	MTC
Gregory Matson	MTC		

II. Public comment

There was no public comment.

III. Approval of Minutes

After a motion duly made and seconded, the minutes of the Executive Committee meeting open session of November 16, 2006 were approved.

III. Report of the Chair

The Chair congratulated Ward Einess, who was appointed Minnesota Commissioner of Revenue effective January 2, 2007, and Dan Salomone who was appointed Deputy Commissioner. The change in Minnesota creates a vacancy in the Commission's office of Treasurer. The Chair filled that vacancy by appointing Mr. Einess as Acting Treasurer. Dan Salomone has been designated as his alternate. Dan Bucks moved to ratify the appointment, Elizabeth Harchenko seconded, and the motion passed unanimously.

The Chair also reported that an RFP for advocacy services was issued on January 2, 2007. A copy is available on the MTC web site. Proposals are to be submitted the first week in February.

V. Treasurer's Report

Mr. Salomone gave the Treasurer's report for the five-month period ending November 30, 2007. Page one of the report highlights important points. Over the prior five-month period, revenues have been consistently above the amount budgeted and expenditures consistently below. Variances on the expense side reflect vacancies that should be filled before the next report.

Mr. Salomone noted that a copy of the audited financial statements for FY2006 was distributed in November. It is included in the binder. Mr. Salomone moved for adoption of the statements, Ms. Harchenko seconded, and the motion passed.

VI. Executive Director's Report

Joe Huddleston referred the Committee to his written report for the prior five-month period, including a written report on congressional activity from Patuxent Consulting.

In response to a question from Mr. Bucks on Commission discussions with the IRS, Mr. Huddleston noted that the Commission has been very active on this topic and is encouraged because the IRS has set deadlines to establish acceptable structures that would enable us to access and exchange tax information directly. Tom Shimkin, Commission Counsel, has also been working the tax shelter VCI program and Antonio Soto, Commission Training Manager, has developed a process that enables us extract exactly the information we need from contact information data provided by the states. North Carolina just this morning accomplished a physical transfer of that data. Each state has a few unique wrinkles.

Mr. Bucks noted that we have come through an adversarial period between congress and the states and perhaps there are now prospects for change. It may be a time for us to work on ideas for developing a positive relationship between congress, the federal government, and the states. Mr. Bucks remarked that, with the exception of the streamlined topic, much of the report reflects a continuing defensive posture. Perhaps there are opportunities for a positive posture. We need a process for members to explore ideas with delegates and for us to gather those ideas together. The Federalism at Risk

Report may be a good place to start. We should dust them off and talk about both positive and other agendas. The Chair agreed and commented that one thing that attracted her to the Commission was its strong presence on federal legislation. The Commission provides states a way get some insight on state issues at the national level and to work with this broader agenda. The partnership between NGA, our Governors' association, and the Commission is very productive. The Federalism at Risk Report represents a significant amount of work. In the Chair's experience, being able to deliver a positive message is just as important as being able to kill legislation. We have a tremendous ability to marshal forces and get our message out. We need a positive message and also need to be organized. Our next meeting May 9-11 is a good time for a significant discussion of this issue. The Chair asked that this be put on the agenda for a discussion around legislative day, so that we can work legislative day with a positive agenda as well as what we are opposed to.

Mr. Huddleston noted we would be remiss not to give tremendous credit to NGA for bringing substantial resources and clout to the table. Our states individually have also done a great job - North Carolina, Missouri, Washington, Louisiana – standing up and making issues known before Congress. NGA has encouraged us to provide an alternative to the BAT framework. We intend to pursue that and to supply more reasonable options.

Ben Miller noted that if we want to go forward with positive agenda we will want it available in May and that will require some pre-meeting work to put together. The Chair will get the RFP responses for federal legislative consulting services back in February. If we have a teleconference on those RFP responses, perhaps the teleconferences can also take on this topic. From a California perspective, it has been very important to be involved with the Commission. The involvement provides an ability to speak with a collective voice and that has been very important for California on these matters. While California has lots of votes – that can backfire in terms of generating cooperation. The existence of a collective effort it is very effective. These things certainly get noticed. Mr. Bucks added he would like to see some process for putting some positive ideas together. For example, some of the nuts and bolts like the IRS relationship with the states and making that work more smoothly. Ms. Harchenko pointed out that we should look for this philosophy of building positive relationships in the RFP responses.

VII. Preliminary Discussion of “Housekeeping” Amendments to Bylaws

Greg Matson and Shirley Sicilian discussed a possible project to amend the Bylaws and referred to a memorandum on this topic that had been distributed to the Committee.

Mr. Bucks stressed that staff should be sure to discuss any proposed changes to the terms or designation of Project Member status with the Project Member states before any changes are recommended.

Ms. Harchenko asked that the red line version be circulated several weeks before the May meeting so there is an opportunity for iterative feedback. Some of oddities in the current bylaws are necessary to recognize the diverse needs of our various member states. We'll

need to take into account that history and make sure we are taking it into account. She also suggested we consider putting the public participation rules in the by-laws.

Andrea Chang raised a concern that perhaps states would not be as inclined to attend the meetings if their physical attendance was not necessary in order to vote. Mr. Bucks agreed and said he would support a continuation of the physical presence requirement. The bylaws should allow for a procedure that automatically applies where necessary to hold open the roll call if the only reason a uniformity measure fails is due to absences. If a measure passes the required 60 percent majority by number of votes but if absences otherwise prevent it from passing the 50 percent population threshold, then there should be an automatic procedure which gives an opportunity for states to vote and cure their absence.

Julie Allen noted that every body must provide some type of interaction but it doesn't always need to be face to face. There are more and more meetings and we may need to accept telephone attendance. We need to be cognizant of this fact and conduct meetings, when we can, in a way that allows for telephone participation.

Ms. Harchenko stressed the importance of keeping in mind that the Commission is an intergovernmental organization, unlike others, as we draft possible amendments. In the past, we adhered to an open meetings philosophy as a way of preserving public accountability, similarly to that required of government. This is in contrast even to organizations like the FTA, which is an association. Our states are members by virtue of the Multistate Tax Compact, and our process for determining representatives is statutorily designated.

Ted Spangler commented that the bylaws reference Robert's rules, and suggested that Mason's rules may be more appropriate for legislative type bodies such as the Commission.

The Chair directed staff to produce a clean and redline version of draft amendments and to bring those back for discussion at the next Executive Committee meeting at least two weeks in advance of the meeting. Mr. Matson asked members to send an e-mail if they had any thoughts in the meantime.

Diann Smith, COST General Counsel, thanked Mr. Huddleston and others for allowing the public to call in to the meetings when they cannot attend in person.

VIII. Report on Process for Streamlining the MTC Audit Process

Mr. Matson informed the Committee that staff has heard concerns and suggestions from both taxpayers and our auditors about the processes by which we conduct joint multistate audits. There are suggestions related to the audit manuals and work papers from both the states and taxpayers. We have a number of technical ideas for better communication with both taxpayers and our audit program member states. We want to provide taxpayers with as much information as possible on what we're doing and how we do it. The taxpayer

can be driven to future compliance with explanations and education. He and Les Koenig, Director of the Joint Audit Program, have been looking into best practices at the state and federal levels to learn more on how to improve our process with auditors in field, states and taxpayers.

Mr. Spangler asked if it is part of the scope of this project to consider what happens after audit report goes back to states and states are dealing with administrative protest processes and how the Commission can continue to facilitate states coordination. Mr. Huddleston answered that that is an integral part of what we're trying to deal with. We want to eliminate points of confusion between the three parties involved: the states, the Commission, and the taxpayer. Streamlining and demystifying that process we should resolve some of the questions that arise after the audit recommendations have been turned over to the states, so those post-audit procedures are part of this review.

Mr. Miller mentioned that FTB undertook a similar project some while ago and suggested staff take a look at it. In general, it was favorably received. One caveat – they have had the experience doing focus driven audits and right behind the state auditor is the accounting firm doing the reverse audit. Sometimes the state has had to refer them back out to audit. California's procedures are in the form of regulations.

Mr. Miller asked if states are included on the project. Mr. Matson responded that staff would do the initial "shovel work" and then bring in the states for comment, through the audit committee forum. Bruce Johnson suggested it would be helpful at some point to have review by state people rather than waiting for add hoc comment. He also suggested more formal participation by taxpayers be considered. Mr. Matson indicated the timeline does include more formal state and taxpayer input. Mr. Johnson stated that there is a difference between asking for comments and identifying a group of people whose job it is to look at the recommendations and participate in their development. The Chair asked if the staff team should include state representatives as well. Mr. Johnson thought it should, although the initial drafting work could be completed first. Mr. Matson suggested staff make a progress report in May, and at that time the Executive Committee could advise on whether an additional group was needed. Mr. Bucks noted the Commission has an audit committee because those are the top or high level managers in the states. He would like to see the audit committee chair and vice chair on the team or in the alternative an audit committee subcommittee as a sounding board and then as team members. There should be an informational teleconference (not a public meeting) about a week before the audit committee March meeting so they are more prepared. Then opportunity for input from taxpayers can be structured as the project moves along.

Ms. Smith noted she has spoken to Mr. Matson and Mr. Huddleston about COST members comments and concerns. She noted all COST commenters related that the auditors were professional. COST has established a group of recently audited companies and would like to give their feedback to staff. Also, COST is interested in promoting a multistate audit taxpayer bill of rights. Many states have this, but there are issues that don't come up with single state audits that do come up in the context of multistate audits.

Mr. Bucks cautioned that questions about the new IRS processes have been identified – they may suffer from lack of ability to allow for a thorough enough audit. The new processes are simply not settled practice and the jury is still out on them. Second, unlike single state audits, Commission audits can detect when companies are telling two states different things. The ability of a Commission audit to detect and correct those problems should not be compromised. These are unique strengths of the MTC that should not be compromised. Mr. Huddleston agreed.

The Chair suggested that by March revisions to processes and the manuals should be suggested. Mr. Johnson suggested that by February, in anticipation of audit committee meeting in March, specific state representative team members should be identified. In February, staff should begin coordinating the process with the audit committee chair and vice-chair. The team will still be reporting to Mr. Matson. The idea is to prepare the state representatives in advance of the March meeting. Mr. Koenig suggested there should be two distinct staff working groups, sales and use tax, and income tax.

Ms. Harchenko noted that a lot of the process is internal to the staff and the states are oblivious to it. Mr. Matson should focus on that part of the process. States can best provide feedback on the interaction between the Commission and the states, and state representatives may be a resource for that aspect of the process. Another piece, as Diann Smith has pointed out, is the taxpayer side. Taxpayers are the ones who first interact with the Commission, before the states, and taxpayer input would be most beneficial before the team starts working on that process. She also supported a split between income and sales tax process reviews.

Mr. Matson suggested taxpayer input could be sought after the May meeting. Mr. Keonig suggested two different phases of input: There could be a first phase early in the process just to hear concerns, and then, after changes have been developed to address those concerns, we could go back to taxpayers for input on the suggested solutions. The The Chair emphasized that we need to involve the public at an earlier stage than we have been.

IX. Future Meeting and Event Plans

Winter Program Committee meetings, March 20-23, 2007, San Diego, California. The Chair noted that these meetings will be at this same hotel.

Executive Committee meeting & Legislative Day, May 9-11, 2007, Washington, D.C. Ms. Harchenko suggested that given the earlier discussion about Congress and legislative day, the Committee meeting would be better held before the legislative day.

th 40 Annual Conference & meetings, July 29 – August 2, 2007, Minneapolis, Minnesota. The Chair invited the Committee to provide ideas and suggestions in respect of celebrating the Commission's 40th anniversary to Mr. Huddleston and the staff.

X. Closed Session

At this time, the Committee adjourned the public meeting for a closed session on pending litigation.

XI. Resumption of Public Session and Reports from Closed Session

There was no action to report upon reconvening the public session.

XII. Adjournment

The meeting was adjourned.