



MULTISTATE TAX COMMISSION

**Multistate Tax Commission Executive Committee Meeting
Hall of the States, Washington, DC
May 8, 2008**

I. Welcome and Introductions

The following persons attended the Executive Committee Meeting

Name	State or Affiliation	Name	State or Affiliation
Omar Davis	Missouri	Private Sector	
Tim Russell	Alabama	Deborah Bierbaum	AT&T
Ramon Hirsig	California BOE	Beth Cooley	COST
Steve Cordi	District of Columbia	Jana Malone	
Charles Wilson		Todd Lard	
Joseph Tuchy	Hawaii	Jim Eads	Ryan
Tu Duc Pham		Diann Smith	Sutherland, Asbill, & Brennan
Royce Chigbrow	Idaho	John Buhl	Tax Analysts
Joan Wagnon	Kansas	Jamie Fenwick	Time Warner Cable
Dan Bucks	Montana	Geoff Lanning	White, Case, LLP
Lennie Collins	North Carolina	Linda Carlisle	
Linda Milsaps		Patrick Holten	
Rick Homans	New Mexico	MTC Staff and Consultants	
Elizabeth Harchenko	Oregon	Joe Huddleston	
Nancy Prosser	Texas	Greg Matson	
Bruce Johnson	Utah	Shirley Sicilian	
Mark Shimmin	Isle of Man	Ken Beier	
Mary Williams		Elliott Dubin	
		Sheldon Laskin	
		Les Koenig	
		Thomas Shimkin	
		William Six	
		Jim Rosapepe	Patuxent Consulting

II. Public Comment

Public comment was deferred until the appropriate section of the meeting.

III. Approval of Minutes of Executive Committee Meetings: January 3-4, 2008

Ramon Hirsig of the California Board of Equalization was added to the list of attendees. Oregon moved that the minutes, as amended, be accepted. The minutes were approved unanimously.

IV. Report of the Chair

Montana moved that Steven Cordi (Maryland) and Tim Russell (Alabama) be elected to the position of Vice Chair and Treasurer respectively with both serving as members of the Executive Committee. The election of both candidates was unanimous.

The Chair then reviewed legislative day (May 7) activities. The general response, on the part of the members, to Legislative Day was positive. Elizabeth Harchenko (OR) noted that members of Congress and their staffs have little or no information on states' positions on various issues. She asserted that MTC and other organizations must keep up communication. North Carolina noted that Congressman Jones (NC) is a cosponsor of the BATSA bill and Congressman Watt (NC) was approached to be a cosponsor of HR 6167, the bill to restrict states' ability to impose personal income taxes on employees working in the state for fewer than 60 days.

V. Report of the Treasurer

Joe Huddleston, Executive Director, gave the Treasurer's Report for Tim Russell. Mr. Huddleston noted that the balance of unappropriated funds was \$387,000 for the 9 month budget, and the balance of the restricted funds was \$205,000. Mr. Huddleston informed the Committee that the Enterprise Automation Project is a multi-year project and that balances keep rolling over. In addition, expenditures were less than the budgeted amounts for all items. Oregon moved that the Treasurer's Report be adopted. The motion passed unanimously.

2007-2008 Budget Review

Mr. Huddleston reminded the Committee that there would be no increase in dues over what was previously enacted. There will be a 2% upward adjustment in Nexus Program fees; Guardian Insurance stated that there would be an upward adjustment of 20% to 30%; and employee salaries would be adjusted taking into account the changes in the salaries of state employees.

Dan Bucks (MT) expressed concerns about whether the amount budgeted for Federal Relations is sufficient in light of all issues arising in Congress. Elizabeth Harchenko (OR) asked Mr. Huddleston whether he thought the reserves were adequate. Oregon moved that the budget request be accepted. The motion was passed unanimously.

VI. Report of the Executive Director

Mr. Huddleston informed the Committee members that Georgia and Illinois have joined the MTC Audit program. In addition, he reviewed the following Commission activities:

- Personnel matters: A new Sales Tax Auditor has been hired.
- Audit: Draft revisions of the income and sales tax manuals are moving along.
- Nexus: Mr. Huddleston noted that the Nexus Program has been very active lately. Two Nexus Schools have been held in this fiscal year, and two additional schools are scheduled for the fall. The Nexus Program has been working with the Technology Committee to improve the efficiency of the Voluntary Disclosure Program. A Request for Proposals has been issued to select a contractor to set up the voluntary disclosure database. The voluntary disclosure program has netted an additional \$13 million in new revenue.
- Legal: The Legal staff supports the work of the uniformity and litigation committees. It has been hosting bi-monthly teleconferences for state tax attorneys in addition to our semi-annual in-person litigation committee meetings. This year, additional teleconferences were held after significant legal events, such as the U.S. Supreme Court oral arguments in *Kentucky v. Davis* and *Meadwestvaco*, and the release of the U.S. Supreme Court's opinion in *Meadwestvaco*. The legal staff has filed 9 *amicus curiae* briefs so far this fiscal year. Three were filed with the U.S. Supreme Court. Mr. Huddleston stated that there is need for an additional attorney due to the increasing legal workload. The legal staff also works with the MTC Training Program to teach the MTC Corporate Income Tax class.
- Policy Research: The Policy Research Department continues to edit and publish the Multistate Tax Commission Review and provides support for the Uniformity Committee when appropriate.
- Training Program: 2 Statistical Sampling classes and one Corporate Income Tax Class are scheduled. The British Columbia and the Irish Revenue Office as well as private sector staff have taken MTC training. The Statistical Sampling course in Denver was the first one open to the private sector. Ken Beier, MTC Training Director, said the class went well. Dan Bucks (MT) urged legislative staff to take these training classes.
- The Memorandum of Understanding regarding information sharing with the Internal Revenue Service has been sent to 24 states; 23 states have already signed the Memorandum.

VII. Report on Process for Streamlining the Commission's Audit Process

Greg Matson, MTC Deputy Director, informed the Committee members that the revisions to the Income Tax Audit Manual are ready to be closed out. The staff is still making revisions to the Sales Tax Manual. The manuals are process oriented.

VIII. Committee and Program Reports

A. Audit Committee

Les Koenig, Director of MTC Audit Program, informed the Committee members that he met with representatives of COST during the MTC meetings in Tucson to discuss their concerns. COST had 7 major concerns regarding MTC joint auditing:

1. MTC erroneously applies one state's laws to all other states in the audit whenever a particular issue arises.
2. The number of states in an audit should be limited.
3. The time to complete an audit should be limited to a maximum of two years. A binding audit plan should be in place before the audit begins.
4. MTC auditors should obtain tax returns before the audit begins.
5. Audits should not be started close to the expiration of the statute of limitations.
6. COST believes MTC is improving its audit concepts.
7. There should be no audits by individual states subsequent to an MTC audit.

The Executive Committee formed a Working Group consisting of: Dan Bucks (MT), Cindi Holmstrom (WA), and Elizabeth Harchenko (OR), plus any others who wish to voluntarily participate, to address these issues. An equal number of representatives from the Audit Committee would be invited to participate in the work group as well.

B. Nexus Committee

Tom Shimkin, Director of MTC's National Nexus Program, told the Executive Committee members that the Voluntary Disclosure Program had brought in approximately \$13.5 million in the past fiscal year. Also, the Nexus Committee is working on a manual to provide guidelines for the Voluntary Disclosure Program.

C. Uniformity Committee

Shirley Sicilian, MTC General Counsel, gave the Uniformity Committee Report. She noted current Uniformity Committee projects, including revision of the Model Regulation for Section 18, models for streamlining the filing of returns and collection of transaction taxes on telecommunications service providers, amendments specific to the apportionment of income of financial institutions, and a model statute for application of lodging taxes to hotel intermediaries. Lennie Collins of North Carolina is chair of the work group for the financial institutions project.

The Uniformity Committee will take up a new project: how to account for the income of a pass-through entity that is owned by an entity, such as an insurance company, that is not subject to income tax—the Uniformity Committee will receive additional information on this subject at its meeting in July.

D. Litigation Committee

Shirley Sicilian reported that the Litigation Committee heard presentations from a number of state attorneys which were useful to Committee members from other states. The Litigation Committee will receive regular presentations on specific aspects of federal tax law that are relevant to state taxes.

E. Technology Committee

Greg Matson, MTC Deputy Director presented the Technology Committee report. He informed the Executive Committee members that Tim Blevins (KS) won an FTA Leadership award. All present expressed their appreciation for Mr. Blevins' work.

Mr. Matson related that Chris Lane, MTC Network Administrator, gave a presentation of the full-encryption secure email on a laptop at the Tucson meetings.

Dan Bucks (MT) wanted to know the scope of MTC secure communications and what technology was used. Mr. Matson explained that the secure email was only a piece of the overall secure communications package. Eventually, the states will be able to use many forms of secure communications. Mr. Matson further explained that the Enterprise Automation Project was funded by savings from other projects.

F. Training Program

The training courses offered were described previously. Ken Beier, MTC Training Director encouraged states to host training courses.

IX. Uniformity Projects

A. Hearing Officer Recommendations for Consideration: Model Telecommunications Apportionment Regulation

Sheldon Laskin, MTC Counsel, was the Hearing Officer for this Uniformity Project. Mr. Laskin related how UDITPA did not specifically address apportionment of income for telecommunications service providers; and, the use of greater cost-of-performance to apportion this income resulted in grossly distorted geographic assignment of income. Mr. Laskin related that the telecommunications service providers (telcos), through their testimony – both oral and written – stated that this projected should not be considered at this time because the National Conference of Commissioners of Uniform State Laws (NCCUSL) is currently reviewing UDITPA; or that the U.S. Congress should address this issue. Industry testimony indicated that a major consideration is the lack of data on the geographic characteristics of wholesale revenues, which are not always captured by the companies. The telcos have also stated that the Federal Communications Commission's (FCC) Table 15.6 is too biased to be used as a proxy for wholesale sales because the data contained in that table are industry aggregates and thus will not represent any specific telco. Elliott Dubin, MTC's Director of Policy Research, suggested that

telcos use data from FCC Form 499A which requires filers to source wholesale sales of affiliated groups, not individual companies, on a regional basis.

Public Comment:

Industry representatives again asked why telecommunications companies were being singled out for formulary apportionment. The staff responded that telecommunications service providers are not being singled out. UDITPA excludes rate-regulated public utilities. Some telecommunications companies are still rate-regulated and there is no model rule for apportionment of their income. Other telecommunications companies are no longer rate-regulated, and they are arguably coming under a rule that was never intended to apply to them. Of the Commission's seven special apportionment rules, four apply to industries that were once largely rate-regulated but are no longer so, and four apply to common carriers. The telecommunications rule would be the 5th special apportionment rule that applies to an industry engaged in common carriage, and 5th that applies to an industry that was once largely rate-regulated and not intended to be addressed by the general rule.

Industry representatives indicated that they presented alternatives to the uniformity committee regarding wholesale sales. The hearing officer indicated that no alternatives were suggested by the industry representatives at the public hearing.

Throwout: Throwout of outerjurisdictional property from the property factor: Industry representatives objected to the exclusion (throwout) of outer jurisdictional property from the denominator of the property factor. Further, telcos objected to throwout of sales attributable to states in which the taxpayer is not taxable.

Prepaid Phone Cards and Ancillary Property: Telcos objected to sourcing receipts from sale of prepaid phone cards using sales tax sourcing rules. Industry representatives explained that telcos book income from prepaid phone cards when purchaser actually uses the card.

The Executive Committee members discussed the issues raised by the industry representatives. Oregon moved to defer Executive Committee action on this project in order for the Committee to consider the proposal in more depth and then schedule a teleconference. The motion was carried unanimously.

B. Interim Report of the Commission Working Group on Revision of Compact Article IV & Discussion Regarding Commission Participation at NCCUSL UDITPA Drafting Committee Meeting on May 31, 2008

Shirley Sicilian informed the Executive Committee members that MTC is compiling the results of the survey of the states regarding which UDITPA provisions they believe are in need of revision. The survey responses showed that MTC member states agree that Section 17 (Cost-of-Performance), Section 18 Distortion Relief, Factor Weighting, the Definition of Sales, and the Definition of Business Income are in need of revision. Member states also agree that issues currently beyond the scope of UDITPA should not be included in the review.

Diann Smith of Sutherland, Asbill stated that her firm represented a group of companies that do not want NCCUSL to go forward because they believe NCCUSL is not following its own guidelines in determining what projects it undertakes. She added that some of her clients do not want uniformity in the apportionment of net income. Mr. Huddleston noted that the public can participate in NCCUSL's work.

Kansas moved that the draft report be accepted with Montana's suggested allowance for staff technical clean up where necessary. The motion carried unanimously.

C. Report on Bylaw 7 Survey Results

Ms. Sicilian reported that both the Model Statistical Sampling Statute and the Model REITs Statute passed their respective Bylaw 7 surveys and will be voted on at the Commission's Annual Business Meeting on July 31st in Santa Fe, NM.

X. Report on the Isle of Man Request to Change Model Combined Reporting Statute

Shirley Sicilian summarized the issue for the committee and provided some background. She explained that the MTC Model Combined Reporting Statute uses a list of criteria to define a "tax haven" that is based on the Organisation for Economic Co-operation and Development (OECD) definition. The model also refers to the OECD list of tax haven countries. The representatives of the government of the Isle of Man want the MTC to revise its model statute to remove its reference to the OECD tax haven list. The Isle of Man representatives reported that it has changed its rules and made its banking regulations more transparent; however, the OECD has not updated its list. The representatives of the Isle of Man suggested that the Model Combined Reporting Statute include, as tax havens, only those jurisdictions that meet the OECD definition.

Dan Bucks (MT) and Steve Cordi (MD) explained to the Isle of Man representatives that States are concerned about the large sums of money U.S. companies have assigned to Isle of Man based Intangible Holding Companies.

No action was taken on the Isle of Man designation.

XI. Future Meetings and Events

The Annual Meeting will be in Santa Fe, NM July 27- 31. The Fall Meetings will be held in San Antonio, TX.

The Open Session was then recessed. Proceedings of the closed session are reported elsewhere.

XII. Resumption of Public Session and Reports from Closed Session

The committee resumed its public session—there was nothing to report from the closed session.

XIII. Adjournment

The meeting was adjourned at 5:20 P.M.