



**Minutes of the Executive Committee Meeting
May 7, 2009
Alexandria, Virginia**

I. Welcome and Introductions

The Executive Committee commenced its meeting at 8:35 a.m. Eastern Time on May 7, 2009. The following participated either in person or *via telephone*:

Name	Affiliation	Name	Affiliation
Tim Russell	AL	Private Sector/Other	
<i>Fred Campbell Craven</i>	CA FTB	Todd Lard	COST
Marcy Jo Mandel	CA BOE	John Allan	Jones Day
Roxy Huber	CO	Nicola White	Tax Analysts
Steve Cordi, Chair	DC	Dan Robillard	Expedia
<i>Joan Wagnon</i>	KS		
Earl Millet	LA	MTC Staff	
Dan Bucks	MT	Ken Beier	Greg Matson
<i>Rebecca Abbo</i>	NM	Roxanne Bland	Thomas Shimkin
Nancy Prosser	TX	Joe Huddleston	Shirley Sicilian
Bruce Johnson	UT	<i>Les Koenig</i>	Bill Six
<i>Tremaine Smith</i>	WA	MTC Consultants	
Andrew Glancey	WV	Len Lucchi	Jim Rosapepe

The chair noted that a quorum was present and that the Executive Committee is now using Mason's rules, which do not require that motions be seconded.

II. Public Comment

There was no public comment during the public comment period.

III. Approval of Minutes of Executive Committee Meeting on January 8, 2009

Texas moved approval of the minutes of the January 8, 2009 Executive Committee Meeting. This was passed.

IV. Report of the Chair

The Chair indicated that discussion of Legislative Day would occur later in the day when Jim Rosapepe provided an overview of political changes for the administration and the congress and their implications for state tax issues. Dan Bucks noted that while the Obama tax proposals do address deferral of income tax un-repatriated profits of U.S. corporations, that they do not address transfer pricing. He identified the need for briefing the States on the effect of these proposals, and other proposals which may be forthcoming. Mr. Huddleston responded that MTC staff would support this work. Mr. Lucchi then reported on contacts and issues from the May 6 Legislative Day.

V. Report of the Treasurer

A. Financial report for the period July 1, 2008 – March 31, 2009

Mr. Russell directed the committee's attention to his written report for the nine month period ending March 31, 2009. Bill Six noted a typo in the first paragraph on page two of the report—the text should read “funds held at BB&T Bank.” Joe Huddleston commented that the staff has been anticipating difficult times and has kept some positions unfilled. In the new budget, some unfilled positions have a start date of January 1, 2011. He also reported the movement of reserve funds to U.S. Treasuries and other government-backed securities. This provides better returns to the Commission; however only 60% of expected income from reserves is reflected in the budget.

Mr. Bucks commented on deposit guarantees for public entities in Colorado and the movement of funds from Colorado to its current banking arrangement. Bill Six, in response to a question from Mr. Bucks, on the guarantees under current banking arrangements, stated that we have a bank guarantee of 102% of deposits. Joe Huddleston also confirmed Mr. Buck's statement that the Commission is moving funds to U.S. Treasury instruments. Montana moved approval of Report of the Treasurer. This was passed.

B. 2009-2010 Revenue Budget Review & Approval

Joe Huddleston explained that the budget for the next fiscal year has member and program fees at the same level as the current year. In response to a question from Mr. Cordi regarding program participation, Mr. Huddleston noted that MTC staff members have heard about difficulties for some states, and Washington in particular, about meeting their obligations for the coming year. He added that the State of Washington has increased their out-of-state audit capability. Tremaine Smith of Washington added that Cindy Yates, Director of the Washington Department of Revenue, wants the Executive Committee to know that her state is completely supportive of the MTC, but that they have to reduce their level of participation. Joe Huddleston noted that the budget package before the group reflects the State of Washington's absence from the Audit Program.

Tim Russell moved approval of the revenue side of the Fiscal Year 2010 Budget. This was passed.

VI. Report of the Executive Director

Mr. Huddleston referred to his written report and cited excellent results from the Audit Program. He encourages states to increase their participation in MTC audits where the same companies are not being audited by their state.

For the National Nexus Program, Tom Shimkin noted the quick response of the program to taxpayers and Mr. Huddleston remarked on the excellent results for the program during his tenure with the Commission. In response to Mr. Cordi's query about the cause of increased program activity, Mr. Shimkin suggested that it does have something to do with FIN 48 and other financial disclosure requirements. Mr. Huddleston concluded the discussion of the Nexus Program by emphasizing that the program numbers only reflect initial benefits to the States; however the benefits over and above the reported amounts continue to accrue to the states as these taxpayers continue to file and pay.

For the Legal Division, Ms. Sicilian noted the Polar Tankers case, which could have implications for throwback and throwout; however a narrower ruling could have implications only for the tonnage clause.

For Policy Research, Mr. Huddleston noted that, following last year's experience with a summer interns, the Commission will be hiring an intern this summer via the Washington Intern Center.

For Training, Mr. Beier referred to course schedule and noted a fee reduction for private sector participants in the Commission's courses.

Mr. Huddleston noted the recent activity with IRS on sharing of information. Greg Matson added that the Commission has presented state MOUs for exchange of information to the IRS, who now views the Commission as a contractor to the states. Commission staff members have met with the IRS Office of Safeguards, and some minor construction in our server room has been done to meet IRS requirements. The Commission will be providing a 45-day letter which includes a statement of actions taken to meet IRS safeguard requirements. The MTC will then be prepared to handle federal tax information. Initially, this will be done with a small number of states using physical media. Subsequently this will shift to moving data in secure form over the Internet.

Mr. Huddleston continued his report with mention of recent staff presentations and their importance to the success of our National Nexus program.

A. Report on Meeting with Representatives of the States of Jersey

Mr. Huddleston noted that the Commission should revisit its tax haven language in the model combined reporting statute, since the Organization for Economic Cooperation and Development (OECD) has completely revised its listing and listing process for tax havens. He also noted recent discussions with representatives of the Isle of Man and States of Jersey. In these discussions, the representatives were advised that MTC states are unlikely to have the resources to evaluate tax and financial reporting practices of specific jurisdictions, and it is efficient for them if they can rely on OECD designations. Shirley Sicilian noted that Attachment A, in the May 4, 2009 Memo, Model Combined Reporting Statute – Tax Haven Provisions (in the Executive Committee meeting materials) further describes the OECD process. Mr. Huddleston then invited comments from the Executive Committee members on whether changes in the tax haven reference in the model statute are appropriate.

Mr. Bucks noted the limited usefulness of information sharing by among OECD countries to the States, and the need to look at substantive tax policies. He then moved that this issue be moved to the Uniformity Committee for its review. This was passed.

B. Recommendation Regarding the Commission's Meeting Cycle

Greg Matson referred to the proposal to reduce the number of in-person meetings. Discussion ensued on how this would work with the FTA December board meeting and state legislative sessions, and the possibility of having in-person committee meetings in November or December instead of March. Bruce Johnson noted that fall in-person meetings would put pressure on committee chairs to make productive use of the fall season. Mr. Huddleston added that the states have indicated that in-person meetings are valuable and that consideration can be given to re-instituting the March in-person meetings in the future. At the end of the discussion, Mr. Cordi indicated that there seemed to be a consensus favoring the staff proposal, and that a formal vote was not needed.

VII. Committee and Program Reports

A. Audit Committee

Mr. Koenig presented the report for the Audit Committee and Mr. Russell asked Todd Lard of COST to comment on the final two questions from the COST white paper on the MTC Audit Program. Regarding the number of states in an audit, Mr. Lard noted that staggering the audit work can accommodate the concerns about having a large number of states in an audit. On the second question, he noted that States have stated their intent not to start an audit with less than one year remaining on the statute of limitations.

B. Nexus Committee

Tom Shimkin presented the report for the Nexus Committee and commented on the voluntary disclosure software that will support faster processing of taxpayer requests. He also noted that documentation of voluntary disclosure guidelines is nearing completion.

C. Uniformity Committee

Shirley Sicilian presented the report for the Uniformity Committee and commented on the Model Statutes on Administration of Certain Aspects of Telecommunication Taxation. She noted the language on telecommunications transactions taxes in the federal streamlined sales tax legislation and the request from the Income Tax Subcommittee and Uniformity Committee chairs for guidance from the Executive Committee on this topic. Members of the Executive Committee were supportive of the committee's involvement with this, and suggested that they continue the telecommunications tax project with local government input. Some of this discussion noted that some MTC states do not have sales taxes or are not involved with the Streamlined Sales Tax Governing Board or the State and Local Advisory Committee of the governing board; thus it is valuable for these states to be able to address this issue through the Commission.

Dan Bucks stated a need for uniform wage withholding for circumstances addressed in the federal mobile workforce legislation. A uniform standard would answer the question, when is withholding triggered? Mr. Bucks moved referral of this topic to the Uniformity Committee as an expedited project. This was passed.

D. Litigation Committee

Ms. Sicilian presented the report for the Litigation Committee and also noted the bimonthly state attorney teleconferences.

E. Technology Committee

Greg Matson presented the report for the Technology Committee and cited developments on website hosting, online registration for MTC events, and audit program software.

F. Training Program

Ken Beier reviewed the Training Program report. Dan Bucks suggested using leadership of MTC committees to initiate development of pass through entity training.

VIII. Uniformity Projects

A. Update on UDITPA Revision Project and Related Matters

Ms. Sicilian reported that issues under review by the Uniform Law Commission (ULC) will be reported to their Executive Committee in Santa Fe this July. The MTC UDITPA drafting group, consisting of Ben Miller (CA), Joe Garrett (AL), Ted Spangler (ID), and MTC staff, has been meeting weekly. Joe Huddleston commented on the wide ranging discussion at the recent ULC meeting in Chicago and noted that Dale Higer of Idaho has replaced Charlie Trost as chair of the study committee.

B. Proposals before the Executive Committee for Action

1. Uniformity Recommendations for Review

Roxanne Bland summarized the proposed Model Statute Clarifying the Tax Collection Responsibilities of Accommodation Intermediaries and the recommendation that it be submitted to public hearing. John Allan then suggested that there is bias in the proposal title for taxing services that he believes are not currently in the tax base of some states. Mr. Johnson suggested replacing “clarifying” with “on” in the title of the model statute, and moved that the model statute be submitted to the public hearing process. This was passed with abstentions from California and Texas. Mr. Huddleston noted that there is still plenty of time for industry comment in the hearing process.

IX. Election of Vice Chair and Executive Committee Member for Unexpired Term Following Vacancy by Operation of Bylaw 3(c)(1).

Mr. Huddleston explained that Steve Cordi’s elevation to Chair left the Vice Chair position vacant. Mr. Bucks moved that Tim Russell of Alabama be appointed as Vice Chair and that Joe Huddleston serve as Treasurer, on a temporary basis, until the next meeting of the Commission. This was passed.

X. Establishment of the Nomination and Resolutions Committee

It was noted that Elizabeth Harchenko has chaired the Nominating Committee in the recent years. She will be joined this year by Roxie Huber and one other member to be appointed. Mr. Bucks suggested that there is a need for a cross section of large and small states in this committee.

Steve Cordi suggested that Bruce Johnson chair the Resolutions Committee with two additional members to be identified, likely himself and Dan Bucks.

IX. Review of Upcoming Meetings & Events Schedule

Mr. Huddleston noted the upcoming 42nd annual meeting in Kansas City and the fall or early winter meeting in Alabama. Mr. Russell reviewed the options of meeting either on Mobile Bay or on the Gulf of Mexico.

[The committee recessed and went into closed session at 2:00 pm (approximately)]

X. Resumption of Public Session and Reports from Closed Session

The public session resumed at 3:00 pm. The Chair indicated that there was no action to report from the closed session.

XI. Adjournment

A motion for adjournment was made and passed, and the Executive Committee adjourned at 3:05 p.m.