



**Minutes of the Executive Committee Meeting
December 3, 2009
Orange Beach, Alabama**

I. Welcome and Introductions

The Executive Committee commenced its meeting at 8:35 a.m. Central Time on December 3, 2010. The following participated either in person or *via telephone*:

Name	Affiliation	Name	Affiliation
Tim Russell	AL	Private Sector/Other	
Ben Miller	CA FTB	Todd Lard	COST
Steve Cordi, Chair	DC	John Allan	Jones Day
Ted Spangler	ID	Dan Robillard	Expedia
Richard Cram	KS	Jennifer Hays	Kentucky Legislature
Michael Fatale	MA	<i>Deborah Bierbaum</i>	AT&T
Donna Donovan	MI	Karen Boucher	Deloitte Tax
Lee Baerlocher	MT		
Wood Miller	MO	MTC Staff	
Rebecca Abbo	NM	Roxanne Bland	Greg Matson
Lennie Collins	NC	Joe Huddleston	<i>Thomas Shimkin</i>
Cory Fong	ND	<i>Les Koenig</i>	Shirley Sicilian
Eric Smith	OR	Bruce Fort	<i>Bill Six</i>
Bruce Johnson	UT		
Craig Griffith	WV		

II. Public Comment Period

A taxpayer addressed the Executive Committee expressing concern about the errors made by tax preparers when preparing returns for multiple states. He said that tax preparers preparing returns for multiple states should be held to a standard of practice like that used by the IRS, which should include an examination of the tax laws of several states. He supplied written comments explaining his concerns.

III. Approval of Minutes of the July 30, 2009, Executive Committee Meeting

After a motion duly made, the minutes were approved.

IV. Report of the Chair

The Chair had nothing to report at this time.

V. Report of the Treasurer

A. Financial Report for the Period July 1, 2009 – October 31, 2009

Ms. Donovan reported that the Commission is on track with its expenditures and that there was nothing unusual to report. However, she indicated that revenues are less than expected.

Mr. Huddleston said that the staff has been budget conscious and have responded well in managing the Commission's money.

After a motion duly made, the financial report for the period July 1, 2009 – October 31, 2009 was approved.

B. Approval of audited financial statements as reported in the independent auditor report for fiscal year July 1, 2008 – June 30, 2009

Copies of the Commission's independent auditor's report for fiscal year July 1, 2008 – June 30, 2009, had not arrived due to unforeseen circumstances encountered by the shipping company. Copies will be distributed by mail, and the committee will take the matter up via teleconference.

VI. Report of the Executive Director

Mr. Huddleston reported that the Joint Audit Program is on the road to having a great year and will even exceed what has been accomplished in the past few years. The program is a tremendous asset to the MTC because its focus is not only just on dollars but also on compliance, and he encouraged states to consider participating.

The groundwork for the National Nexus Program was laid 20 years ago, and the program has been exceedingly successful in bringing in new revenue. This year, the program is on track to break previous records of funds returned to the states; at this point, \$60 million has been remitted. The program provides a service not just to the states, but to taxpayers who wish to register in multiple states.

The legal staff continues to provide support and advice to all member states.

The Training Program has been unprofitable so far this year, which is indicative of the states weathering a difficult economic climate. Even so, the MTC has had requests for training in statistical sampling, computer assisted audits, and other areas. Faculty evaluation reports are usually very high. It illustrates the importance of the MTC's ability to provide training, even though it is losing money. The training will continue the

program as is, as its focus is on developing operating tools for tax personnel to perform their jobs.

Mr. Huddleston said there have been several internal operational changes. A new retirement plan has saved the Commission a great deal of money. The staff also continues to review budgetary considerations and review options for health care benefits.

VII. Committee & Program Reports

A. Reports

1. Audit Committee

Mr. Koenig reported that the Audit Committee met several times this last fiscal year, including a teleconference meeting in closed session, which enjoyed a very good turnout. The Audit Committee was pleased with its experiment in teleconferencing, and plans to hold more meetings via teleconference in the future.

2. Litigation Committee

Ms. Sicilian reported that the Litigation Committee met in July 2009. One of the ways in which the Legal Division supports the Litigation Committee is through bi-monthly teleconferences on important current issues to the states; the last teleconference concerned issues regarding satellite program providers and nexus. Ms. Sicilian recognized Bruce Fort and Sheldon Laskin for their work on behalf of the Litigation Committee.

3. Nexus Committee

Mr. Collins gave the report. The Nexus Committee met twice this year and sponsored a number of nexus schools, the last one in Topeka, Kansas. Currently, the committee is working on written documentation of its guidelines for voluntary disclosure. It is also working to develop software to provide online registration for taxpayers. Phase II of this project is in the planning stages; it would allow states to interact with taxpayers on disclosure issues. The Nexus Committee also had a roundtable discussion on active litigation which was well received. It was decided to keep the litigation discussion as a regular agenda item for future meetings.

4. Technology Committee

Mr. Matson reported that the online application process for the Voluntary Disclosure Program is complete. A request for information for the Automated Audit Program Software Project was issued on November 23, 2009, with a March 10, 2010 deadline for responses.

5. Uniformity Committee

Mr. Spangler reported that the committee voted to retain its current schedule of three meetings per fiscal year. He also expressed appreciation for the extent of personal participation at committee meetings, including a significant amount of participation by telephone.

Regarding current projects, the committee, with the participation of industry, is making progress with its financial institutions project. The project to craft a regulation regarding withholding requirements for mobile employees is moving expeditiously, and a draft should be available after one or two more teleconferences. The committee also began its assignment from the Executive Committee to look at revisions of certain sections of UDITPA. The committee started with an educational component of the five provisions the MTC recommended to the uniform law commission project, and it will also study the evaluation criteria for these sections as a means of guiding how the project will move forward.

6. Training Program

Mr. Beier summarized the audit and nexus courses presented since July 2009. He also noted that some of the training courses have been opened to the private sector.

B. Other Committee & Program Business (if any)

There was no other business.

VIII. Other Reports

Mr. Matson reported on the Joint Audit Program Manual Revisions Project for income and franchise as well as sales and use tax audits. The income and franchise portion has been circulated to industry representatives and the audit committee. Comments will be incorporated into the final draft and circulated after the holidays. The sales and use tax portion of the manual will be circulated to industry representatives by the end of January 2010. The goal is to institutionalize the processes and procedures so that new auditors will be able to work efficiently.

IX. Uniformity

A. Uniformity Proposals before the Executive Committee

1. Uniformity Recommendations for Review

- a. Uniform Principles Governing State Transactional Taxation of Telecommunications – Vendor and Vendee Versions:
Recommendation for Public Hearing on Proposed Repeal

Ms. Sicilian explained that the reason this adopted recommendation has been recommended for a public hearing to repeal is because federal law has superseded it. After a motion duly made, the committee voted to accept the Uniformity Committee's recommendation and referred it to public hearing.

b. Proposed Amendments to Uniform Regulation IV.18.(A)
Amendments: Recommendation for Public Hearing

Mr. Fort explained that the Uniform Regulation IV.18.(A) amendments dealt with the Section 18 distortion provisions, and that the proposal modified the "unique and non-recurring" language. After a motion duly made, the committee voted to accept the Uniformity Committee's recommendation and referred the matter to public hearing.

2. Hearing Officer Recommendations for Consideration

Model Statute on Tax Collection Responsibilities of Accommodations
Intermediaries

Ms. Bland described the proposal and its intent. Comments from the public sector during the hearing indicated an assumption on their part that the proposed model is a tax imposition statute. Ms. Bland clarified the model is not a tax imposition statute but assumes that the state has already taken the position that tax is due on the price paid by the consumer for accommodations.

The hearing officer report recommends three changes to the proposed model statute. The first and second amendments concern travel packages. According to industry, the travel package provision is too vague, and secondly, it is impossible to value of the components of a travel package (accommodations, with rental car and airfare, for example) because the costs cannot be separated. The first amendment adds the definition of "travel package," which consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price. The second amendment requires accommodations intermediaries to separately state the tax on the customer's invoice. The third amendment provides the method for determining the value of each travel component, calculated from the taxpayer's books and records, tax and non-tax records, kept in the ordinary course of business.

Mr. Allan of Jones Day distributed a letter dated December 2, 2009, from Professor Walter Hellerstein. Ms. Bland said that she would need additional time to review this information if the committee wanted her, as hearing officer, to consider it.

Mr. Spangler questioned the appropriateness of reviewing Professor Hellerstein's letter, especially since the time for public comment has closed. Mr. Cram shared Mr. Spangler's concern that the project needs to move forward, but while there has been a great deal of input from the industry, he supports the idea to give time for the hearing officer to consider the latest public comment.

Ms. Donovan said that the group needs to be mindful about putting this proposal out to the states for guidance. It might be that states and industry will have to agree to disagree, but the process for adoption has to move soon. Mr. Fong asked whether it is appropriate to define the limits to this process, so that only this new information will be considered.

Whereupon Mr. Russell offered the following motion: that the Executive Committee take the matter under advisement, and expeditiously hold an Executive Committee teleconference to review comments from the public and the states regarding the three changes in the hearing officer's report. The motion passed.

B. Other Uniformity Matters

There were no other uniformity matters discussed.

X. Establishment of Resolutions Committee

Mr. Huddleston explained that the purpose of the Resolutions Committee is to review the Commission's older resolutions to determine whether they need to be repealed. Additionally, when new issues arise, the Resolutions Committee determines whether it should draft a stand-alone resolution or whether it is covered by the Commission's policy statements. Volunteers for the committee should contact Mr. Huddleston.

XI. Federal Issues with State Tax Implications

Mr. Lucchi reported that Congress had intended to adjourn in October, but because of the healthcare issue, they will not adjourn until December. He expects that here will not be much focus, if any, on federalism issues. He also provided updates on the following legislation:

A. Mobile Workforce State Income Tax Fairness and Simplification Act

This bill has been withdrawn.

B. Business Activity Tax Simplification Act

There are not as many cosponsors for this bill as in past years. The bill's proponents want to go straight to the floor this year, but that is not likely.

C. Main Street Fairness Act (sales tax simplification)

The bill's proponents would like to have a bill introduced by the end of the year, but the effort is becoming more difficult. Drafts of the proposed language are currently being circulated among the states. Vendor compensation and telecommunications tax

collection are major obstacles, but the largest obstacle in getting a bill introduced will be opposition by eBay.

D. Cell Tax Fairness Act

Now with 174 cosponsors, the bill is still a solution in search of a problem, and the stakeholders (state and local governments and the cellular industry) will hold a meeting on December 11, 2009, to decide whether to hold a hearing and mark up the bill next year.

E. Hotel Intermediaries

Proponents have attempted to attach the language exempting intermediaries from all state and local taxes, but have been unsuccessful.

F. Other Federal Legislative Activity

Regarding Voice over Internet Protocol (VoIP) sourcing, the industry wants to do something similar to the Mobile Telecommunications Sourcing Act with VoIP. However, the problem is that some providers aren't based anywhere. States are firm that any language must have nexus provisions, while the communication companies are resisting the idea.

The Military Spouses Resident Relief Act grants military spouses the same right to choosing a state for tax purposes regardless of where they live. The bill was signed on November 11, 2009.

Mr. Rosapepe reported that healthcare will be the issue for the rest of December. He believes that work will be completed by then, or it may spill into January. The relevance is that states may garner more attention from Congress than in the past.

Congress and the Administration are also focusing on the deficit and employment. Employment is not dealt with directly; rather the discussions have centered on extending unemployment benefits. This option might be a way to get more relief money out in the country without calling it a second stimulus.

The White House and the Treasury Department are very serious about deficit reduction. In the Senate, Kent Conrad (D-ND) has introduced S. 1934, designed to foster foreign tax compliance in the U.S. Some bills introduced could be revenue raisers, some might cost the states. He expects that economic conditions in the states will be a strong lever to keep preemption bills from going through the legislative process.

The Chair asked whether Mr. Rosapepe thought the health care bill would be signed before the end of the year. Mr. Rosapepe said the Senate will pass it. The Chair then asked whether there had been any discussions in Congress about the federal estate tax. Mr. Lucchi said that part of the reason for the push for foreign tax compliance is to keep the estate tax as it is. Additionally, because the Congress is consumed with health

care and tax extenders, refund offsets for nonresident taxpayers will be addressed next year.

XII. Review of Upcoming Meetings & Events Schedule

Mr. Huddleston reported that the Audit Committee, the Litigation Committee, and the Uniformity Committee will hold their winter meetings March 2-5, 2010.

Mr. Huddleston asked the committee whether, given the hotel prices in the Washington D.C. metro area, it wished to hold legislative day at the usual time or whether it would like staff to coordinate visits at any time. He also asked whether the committee would like to hold its May meeting via teleconference.

Mr. Russell said that he is a strong supporter of legislative day. It is useful to see the states' congressional delegations, and to compare notes at the close of the day. The Chair said he saw no reason why legislative day couldn't be held in person and then hold the committee meeting via teleconference either in conjunction or at some other time. There was a consensus that this approach would be used.

[The Committee then recessed and went into Closed Session]

XIII. Resumption of Public Session and Reports from Closed Session

There were no reports from the closed session.

XIV. Adjournment

Upon a motion duly made, the meeting was adjourned.