



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

To: Executive Committee
From: Joe Huddleston
Date: December 3, 2010
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2010 through November 30, 2010 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The audit division completed 1 income tax audit and parts of 5 other income tax audits as of November 30, 2010. The audit division also completed 2 sales tax audits as of November 30, 2010. There are currently 22 income and 30 sales tax audits in progress. Proposed assessments as of November 30, 2010 from these audits total \$14,786,113.

The following chart summarizes hourly data for *completed* audits through November 30 for fiscal year end June 30, 2011:

| | Income & Franchise | Sales & Use | Total |
|--------------------------------|-------------------------------|------------------------|--------------|
| Total Audits | 1 | 2 | 3 |
| Total States Audited | 18 | 30 | 48 |
| Total Hours | 1,637 | 3,481 | 5,118 |
| Average Hours per State | 91 | 116 | 107 |

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

The revised Income and Sales Tax Audit Manuals final drafts were completed and posted to the website for any public comments. No public comments have come in,

though COST has indicated they would have comments. The manuals are now in use by the audit program.

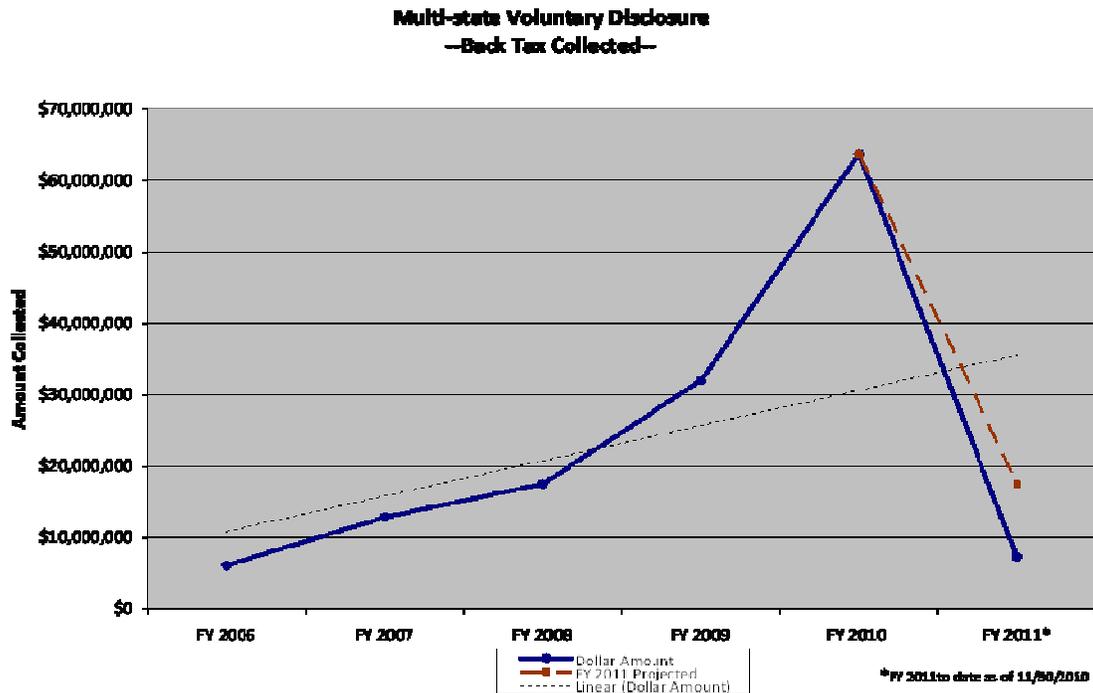
Audit division staff provided instruction at one income tax training class during this reporting period.

B. National Nexus Program

The National Nexus Program has opened files for 30 voluntary disclosure applicants and executed 194 contracts. The average contract value thus far this fiscal year is \$37,523. States have collected \$7,279,481 to date.

Please note: the collection amount includes only back tax actually collected (cash basis). It may also contain a trivial amount of penalty, interest, and miscellaneous fees if they were collected before conclusion of the voluntary disclosure. It does not include any tax, interest, penalty, or other thing of value collected after the voluntary disclosure process ended. States almost always collect substantial interest on back tax amounts after the end of the voluntary disclosure process, but the Commission does not include these amounts in its reports.

The graph below presents these data graphically. Note that FY2011 has two lines, the solid one representing actual collections for FY2011 to date. For contextual purposes, a clearly labeled dotted line shows what revenue would be in the unlikely event that revenue continues at the same pace as the first five months of the year.



FY2011 will likely have revenue similar to that of FY2008, which was substantially lower. This is because FY2009 and FY2010 revenue was due in large part to a single taxpayer. Such large taxpayers come along unpredictably and cause large spikes in revenue followed by large drops. Comparing FY2011 revenue to date to most previous years, however, reveals a very healthy voluntary disclosure program.

The Nexus division continues to respond to frequent requests from tax practitioners, taxpayers, and occasionally states, regarding nexus. This information is generally provided by telephone.

Nexus division staff provided instruction at one nexus school during this period. Staff had updated a portion of the material in advance of the school and will continue to update it into the future to ensure accurate and complete information for students.

C. Legal

The Legal Division staffs two standing committees: Uniformity and Litigation. The Division also holds regular state tax attorney teleconferences; files amicus briefs in state and federal courts; participates as speakers at conferences, symposiums and institutes; and teaches MTC training courses. The legal division provides individual state support by assisting in state litigation and reviewing states' draft statutes, regulations and legal briefs. The Division also provides legal support for the Commission's audit division, training division, and general administration.

Uniformity Work

The Legal Division staffed nine uniformity projects during this period:

É *Amendments to MTC Model Financial Institutions Apportionment Rule* (under development by a Uniformity Committee Work Group)

É *Amendments to Compact Art. IV and UDITPA* (under development at Uniformity Committee)

É *Amendments to Model Combined Reporting Statute Water's-Edge Tax Haven Provision* (under development at Uniformity Committee)

É *Model Statutes for Telecommunications Transaction Tax Centralized Administration* (under development at Uniformity Committee)

É *Pass-through to Non-Corporate Income Taxpayers* (under development at Uniformity Committee)

É *Model Sales & Use Tax Notice and Reporting Statute* (under development at Uniformity Committee)

É *Model Mobile Workforce Withholding and Individual Income Tax Statute* (referred back to Uniformity Committee after public hearing)

É *Model Add-back Statute to Address Captive REITs* (hearing officer's report prepared for consideration of Executive Committee)

É *Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries* (referred back to Executive Committee after failure to pass bylaw 7 survey)

Litigation Committee Work

Legal Division supported the Litigation Committee by organizing and making presentations for the July 2010 meetings. In addition, Legal Division organized three state tax attorney teleconferences which were each very well attended by approximately 40 state representatives.

Legal Assistance to States

The Legal Division consulted with individual states regarding significant ongoing litigation, draft legislation, and draft regulations. We participated in various moot courts. And during this period we filed a brief as *amicus curiae* in the U.S. Supreme Court case ó *CSX Transportation, Inc. v. Alabama Department of Revenue* (US SC no. 09-520).

Commission Support

During this fiscal year, the legal division provided support for the Commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, and filing corporate registrations and reports. The legal division provided legal assistance to the Commission's audit division on a number of challenging audit related procedural and substantive issues. Legal division provided instruction at one nexus school during this period. The legal division monitored and reported on the activities of the Streamlined Sales and Use Tax Governing Board and its Committees. In addition, the legal division contributed to state consideration of bills before Congress, including the VoIP, Mobile Workforce, Main Street Fairness (streamlined sales and use tax), and others.

D. Policy Research

MTC Project on Revising Model Statute on Apportioning Income of Financial Institutions ó The policy research director continues to work with other MTC staff, state revenue agency personnel, and industry representatives to develop model apportionment statute, and otherwise provide support for this project.

Administration of Telecommunications Transaction Taxes ô The policy research director is assisting the Sales & Use Tax Subcommittee of the Uniformity Committee with their project of developing models of centralizing administration of local telecommunications transactions taxes.

Multistate Tax Commission Review ô

- É Production of fall 2010 issue of the *Review* is in progress.
- É Writing article with Shan Chen, policy research intern, on State and Local Fiscal Conditions.
- É Editing article by Ken Beier on FCC National Broadband Plan.
- É Editing a response by Joe Huddleston to OECD on taxation of intangible capital.

Other Activities ô

- É Organized session at FTA Revenue Estimating Conference in Sun Valley, ID on incidence of state and local taxes initially imposed on business, September 2010.
- É Working with Census Bureau personnel (Governments Division) on improving quarterly estimates of state/local taxes; and, revising definitions of state/local taxes initially imposed on businesses and contents of 2012 Census of Governments; discussed a paper by Brian Zamperini and Marcus Graham at a session organized by Governments Division at annual National Tax Association meeting in November 2010.
- É Organizing meeting of Tax Economists Forum on State Fiscal Conditions December, 2010.
- É Monitor state adoption of MTC model statutes, regulations, and guidelines.

E. Training

The Training staff supported the following training activities since July 1, 2010:

- É *Corporate Income Tax Course*
October 12-13, 2010 in Columbia, South Carolina, for 24 students from the South Carolina Department of Revenue.
- É *Nexus School*
October 26-27, 2010 in Helena, Montana for 27 students from Alaska, Montana, South Carolina and Wisconsin.

The following course is currently scheduled:

- É *Statistical Sampling for Sales and Use Tax Audits*
March 28-31, 2011 in Chicago, Illinois

Discussions are underway with several states regarding scheduling of courses. This will be affected by the availability of funding and the priorities of new state administrations that take office in January.

The director of training coordinated the July 28 Annual Meeting Conference. He also wrote article on Federal Communications Commission Broadband Plan, Broadband Deployment Encounters State and Local Taxation, for the next issue of the *MTC Review*.

II. Administration

Shan Chen, policy research intern, has accepted a full time position with the International Monetary Fund as of November 15, 2010.

The Commission's executive director sits on the board of TaxNet Governmental Communications Corporation (TGCC), a joint effort of the MTC and FTA. The electronic communications products provided by TGCC were once needed by state tax agencies, but the development of the Internet has now made those products obsolete. The TGCC board met on November 22, 2010, to discuss disbursement of the remaining TGCC funds and dissolution of the corporation. The TGCC board approved distribution of the funds currently residing in the TGCC bank account equally between FTA and MTC, with each organization remaining subject to any restrictions on the subsequent spending of those funds based upon the TGCC bylaws. They also approved dissolution of TGCC upon distribution of the funds and payment of any fees or costs involved. The minutes of this meeting are attached. The Executive Committee should review the actions of TGCC and consent to the approved course of action.

III. Presentations

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission during the reporting period:

JULY

- BNA Webinar, Sales and Use Tax Notice and Reporting Requirements (Sicilian)
- Southeastern Association of Tax Administrators, Little Rock, Arkansas (Huddleston)

SEPTEMBER

- North Eastern States Tax Officials Association; Boston, Massachusetts (Matson, Sicilian)
- KPMG Payroll Forum; Chicago, Illinois (Sicilian)

OCTOBER

- COST Annual Meeting, Phoenix, Arizona (Huddleston)
- AICPA Tax Division State & Local Taxation Technical Resource Panel; Washington, D.C. (Matson, Sicilian)
- Chicago Tax Club; Rosemont, Illinois (Huddleston)

NOVEMBER

- Georgetown University Law Center SALT Certificate Program Meeting; Washington, D.C. (Huddleston)
- California Tax Policy Institute; San Diego, California (Huddleston, Sicilian)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort)
- Michigan Tax Conference; Detroit, Michigan (Sicilian)
- Institute for Professionals in Taxation; Miami, Florida (Shimkin)
- New Jersey Society of Certified Public Accountants; Roseland, New Jersey (Shimkin)
- NCSL Task Force Meeting; Scottsdale, Arizona (Huddleston)
- NTA Annual Conference on Taxation; Chicago, Illinois (Dubin)

TaxNet Governmental Communications Corporation
Nov. 22, 2010
Meeting of the Board
via Teleconference

In attendance:

Joe Huddleston, Executive Director, Multistate Tax Commission (MTC)
Verenda Smith, Interim Executive Director, Federation of Tax Administrators (FTA)
Cory Fong, North Dakota Tax Commissioner, MTC vice-chair
Mark Schuling, Iowa Department of Revenue, FTA President
Patrick Carter, Delaware Division of Revenue, FTA First Vice President

Staff:

Jonathan Lyon, FTA
Roxanne Bland, MTC

Not attending: Stephen M. Cordi, D.C. office of Tax & Revenue, MTC Chair

Mr. Huddleston called the meeting to order and provided a background summary of the history of the TaxNet Governmental Communications Corporation (TGCC, or TaxNet). The electronic communications products provided by TGCC were once needed by state tax agencies, but the development of the Internet has now made those products obsolete. It is now time to disburse the remaining TGCC funds and dissolve the corporation.

Mr. Huddleston said the bylaws indicate that the correct procedure is to have the TGCC Board approve an action for dispensing funds, and he added that the FTA and MTC Boards also should be notified.

Mr. Lyon noted that both FTA and MTC had each made initial loans of \$25,000 to fund TGCC, but those loans were repaid. The existing funds have been contributed by member tax agencies for services to be provided by TaxNet.

Mr. Huddleston recommended that remaining funds be distributed equally to MTC and FTA, and that subsequent to that action the TaxNet organization be disbanded.

Ms. Bland reported that organizational dues have been paid to D.C. and Virginia and there are no new expenses anticipated for a year, other than fees associated with filing a certificate of withdrawal and dissolution (\$20 in Virginia and a similar amount in D.C.).

The members generally discussed their high level of comfort with decision, agreeing that it falls within the requirements of the bylaws and articles of incorporation.

The motion was made by Mr. Huddleston, director of the corporation, that the funds currently residing in the TGCC bank account be distributed equally between FTA and MTC, with each organization remaining subject to any restrictions on the subsequent spending of those funds based upon the TGCC bylaws. Further, upon distribution of the funds and payment of any fees or costs involved, that TGCC be dissolved in its state of incorporation and in the District of Columbia.

Mr. Carter seconded the motion. The chair called for a voice vote. All votes were aye; there were no nays; the motion passed by unanimous voice vote.

Mr. Huddleston and Mr. Schuling noted their intent to have their respective Boards vote to approve the decision at their December meetings.

Mr. Carter motioned to adjourn, and the meeting was adjourned on a unanimous voice vote.