



Working Together Since 1967 to Preserve Federalism and Tax Fairness

Minutes of the Executive Committee Meeting
 December 9, 2010
 Via Teleconference

I. Welcome and Introductions

The Chair called the meeting to order at 10:00 A.M. The following persons participated in the meeting:

Name	Affiliation	Name	Affiliation
Richard Moon	California (SBE)	Tremaine Smith	Washington
Carl Joseph	California (FTB)	Public	
Roxy Huber	Colorado	Diann Smith	Sutherland
Stephen Cordi	D.C.	Todd Lard	COST
Nancy Prosser	Texas	John Allan	Jones Day
Cynthia Bridges	Louisiana	MTC Staff	
Donna Donovan	Michigan	Joe Huddleston	Roxanne Bland
Alana Barrigan-Scott	Missouri	William Six	Shirley Sicilian
Wood Miller	Missouri	Greg Matson	Thomas Shimkin
Dan Bucks	Montana	Elliott Dubin	Bruce Fort
Lennie Collins	North Carolina	Les Koenig	Len Lucchi *
Cory Fong	North Dakota	Ken Beier	Jim Rosapepe *
Rebecca Abbo	New Mexico		

* Patuxent Consulting

The Chair determined, via a roll call of the states, that a quorum was present.

II. Public Comment

Ms. Smith of Sutherland commented that her firm had worked with MTC on the telecommunications apportionment project. Sutherland argued against special apportionment for telecommunications service providers. Ms. Smith told the Committee members that Massachusetts has substantially adopted this regulation and that Montana's proposed rule takes out substantial portions of the model legislation that Sutherland had worked on. Ms. Smith claimed it was disconcerting for Sutherland's staff and clients to work with MTC on these projects and then have individual states adopt only portions of the model statute or regulation.

Mr. Huddleston suggested that Ms. Smith should put her concerns in writing to the Executive Committee so that the Committee can respond.

Mr. Bucks informed Ms. Smith that Montana has open rule making procedures so that members of the public and affected businesses can voice their opinions regarding the adoption of any rule. He further explained that Montana had adopted its telecommunications tax rules in 1999 so that telecom companies are familiar with Montana's regulations. Mr. Bucks further noted that states frequently adopt MTC regulations with changes; and, that legislative decisions carry more weight than MTC recommendations. Mr. Huddleston added that the MTC staff understands that its recommendations are subject to each state's legislative changes.

III. Approval of Minutes of the July 2010 meeting

There were no corrections to the minutes. Following a motion duly made by Ms. Huber, the Minutes of the July 29th meeting were approved.

IV. Report of the Chair

The Chair did not have a report.

V. Report of the Treasurer

Ms. Donovan presented the financial report for the period July 1, 2010 to October 31, 2010. Ms. Donovan after providing an overview of the report, she noted that much of the unfavorable balance in the training program was due to timing differences.

Mr. Fong asked how the funds from the dissolution of TaxNet were to be used. Mr. Huddleston responded that one possible use may be to fill a currently vacant auditor position.

Upon a motion duly made by Mr. Fong, the financial report for the period July 1, 2010 to October 31, 2010, was approved.

Ms. Donovan then directed everyone's attention to the audited financial statements as reported in the independent auditor report for fiscal year 2010, which had been distributed prior to the meeting via e-mail. She reported that the Commission's financial statements received an unqualified opinion from the auditors. The Chair noted that printed copies would be mailed to those states who request one.

Upon a motion duly made by Mr. Fong, the audited financial statements as reported in the independent auditor report for fiscal year 2010 were approved.

VI. Report of the Executive Director

Mr. Huddleston thanked Ms. Donovan and Mr. Six for keeping MTC's finances on track, and then referred everyone to his written report.

With respect to the Joint Audit Program, Mr. Huddleston pointed out that filling the currently vacant auditor position is important for fulfilling MTC's mission, as well as helping secure revenues for the states.

On the National Nexus Program, He noted that last year was a record year and thanked Mr. Shimkin and the nexus staff for their work. Mr. Shimkin stated that the program's revenues are back their 2008 levels.

Mr. Huddleston then noted that the activity of the legal staff is growing because of a greater number of state requests of assistance. He lauded the legal staff for their expertise and work.

Mr. Huddleston then highlighted items for other divisions and programs. He remarked that the Policy Research Department provides a unique perspective on MTC policy work, as well as representing the MTC at business and academic groups. He said that with Tennessee and South Carolina joining the audit program, the training budget for auditors would be increased. And he thanked the training staff for their work in setting up excellent training for the states.

Mr. Huddleston then turned to the dissolution of TaxNet Governmental Communications Corporation (TGCC), a joint effort of the MTC and FTA. The TGCC board approved distribution of the funds currently residing in the TGCC bank account equally between FTA and MTC and dissolution of TGCC upon distribution of the funds and payment of any fees or costs involved. He said that the increasing use of electronic means to disseminate this information has made TaxNet redundant. Mr. Huddleston asked that the Executive Committee accept the dissolution of TaxNet and distribution of the remaining funds.

After a motion duly made by Mr. Fong, the dissolution of TGCC and distribution of the remaining funds as directed by its board was accepted.

Mr. Huddleston referred the committee members to the newly assembled MTC Organizational Source Book, which contains the history of the MTC, a description of its processes and programs, as well as founding and other significant documents. This material is very helpful for strategic planning. He stated that it consideration is being given whether to bring in a third-party facilitator to assist the Executive Committee with this process, and that it would likely begin in earnest with a session in conjunction with the MTC's legislative day in May.

Mr. Huddleston noted that MTC will be jointly hosting a New Commissioners Seminar in February with FTA.

VII. Committee and Program Reports

Mr. Koenig referred to the Audit Committee's written report. He informed the committee that the Audit Committee held two meetings, one at the annual meeting in Hood River

and a teleconference in November. Mr. Koenig noted that there were significant issues with a number of audits but he could not discuss them in open session.

Ms. Sicilian presented the Litigation Committee's report. Ms. Sicilian noted that Article III of the Multistate Tax Compact has generated a number of cases currently in litigation. Also, she added that MTC has filed an amicus brief in the *CSX v. Alabama* case.

Mr. Collins and Mr. Shimkin presented the Nexus Committee's report. The committee met at the annual meeting in Hood River, and discussed compliance issues in the closed session. There was an information sharing session for the states present at the meeting and the Nexus Committee approved the Voluntary Disclosure Guidelines.

Mr. Matson presented the Technology Committee's report. He informed the committee that there is no Chair for the Technology Committee and that a teleconference was scheduled for December 16, 2010. Mr. Matson also noted that a roll out of new computer equipment for Commission staff was almost complete, that during the next year an effort would be made to improve the ease of use of the MTC's website, and that the Commission was given ownership of TSEPWin, statistical sampling software, in exchange for making it available freely on the MTC website.

Mr. Miller presented the Uniformity Committee's report. He informed the committee that the Uniformity Committee met in Hood River and then in Atlanta just prior to this meeting. He noted that the Uniformity Committee approved three projects for the Executive Committee's consideration: the Model Statute for Disallowance of Deductions for Payments to Captive REITS; the Proposed Amendment to Model Statute for Combined Reporting, Section 1.I. (Definition of Tax Haven); and the Model Mobile Workforce Withholding Statute.

In addition to his written report for the Training Program, Mr. Beier told the committee that a corporate income tax course in Massachusetts and a Nexus School in Colorado are being considered for next year.

VIII. Other Reports:

Regarding the National Nexus Voluntary Disclosure Guidelines, Mr. Shimkin told the committee that the new guidelines are designed to bring clarity to the rules governing the program. The new guidelines place existing procedures in writing, clarify the eligibility standards, and continue to protect the anonymity of the "taxpayer" (anonymity increases the probability of participation).

Regarding the Audit Manuals revision Project, Mr. Matson reported that public drafts of the revised manuals were posted to the MTC website but there have been few comments. COST indicated they may be submitting comments, but they have not yet been received. Some states made some technical suggestions which will be reviewed. Mr. Koenig remarked that the audit staff is already using the manuals in audits. Mr. Huddleston lauded the audit staff for its work on these manuals.

IX. Uniformity

The Chair noted that the Hearing Officer Recommendations on the Model Statute for Disallowance of Deductions for Payments to Captive REITS was before the committee for Consideration. He asked Mr. Fort, who served as the hearing officer, to present his report.

Mr. Fort explained that this model statute works is analogous to the captive REIT statute than had been recently adopted by the Commission, but was designed specifically for separate entity states.

Upon a motion duly made by Ms. Prosser that the hearing officer's recommendation be approved and the model statute subjected to a bylaw 7 survey of affected states, the recommendation was approved.

The Chair noted that two additional uniformity items were on the agenda, and asked appropriate staff to provide their reports.

Ms. Sicilian reported on the Model Mobile Workforce Withholding Statute and said that the Executive Committee had directed the Uniformity Committee to consider several concerns raised by Montana. The Uniformity Committee has discussed these concerns at its in-person and teleconference meetings. At its December 2010 meeting, held just days ago, it decided to recommend two additional changes: (1) require an aggregated day count for employees that work for multiple affiliated employers, and (2) add language to ensure the exception for "key employees" applies to non-corporate as well as corporate employees. The first change is to address issues raised by Montana. The second is a clarification. There are also a few technical changes that the Committee is recommending.

Mr. Bucks said the Uniformity Committee has not been sufficiently responsive to Montana's concerns after he and his staff presented relevant information. He is highly dissatisfied with the process. Mr. Huddleston agreed that if the issues raised by Montana were not fully discussed there should be additional consideration. Mr. Fong requested that Mr. Bucks send a letter containing Montana's concerns and protest of ill treatment by the Uniformity Committee to the Executive Committee.

Ms. Bland reported on the Model Statute on the Tax Collection Procedures for Accommodations Intermediaries, which did not pass the bylaw 7 survey process earlier in the year. She reported on the results of a follow up survey that had been directed by this committee. She said that 14 states have responded to the survey, but that the results were "muddied." Ms. Prosser asked if the staff had any recommendations. Mr. Fong suggested that the project should not be simply abandoned at this point and suggested it be sent back to the Uniformity Committee for further consideration at their discretion.

Upon a motion duly made by Mr. Fong, this project was returned to the Uniformity Committee.

X. Review of Upcoming Meetings and Events Schedule

Mr. Matson highlighted the Winter Committee Meetings in Kansas City, Missouri, in early March and the Annual Meeting in Whitefish, Montana, in July.

XI. Adjournment

Upon a motion duly made, the meeting was adjourned at 11:55 a.m.