



MULTISTATE TAX COMMISSION

Meeting of the Executive Committee

July 28, 2011

Whitefish, Montana

I. Welcome and Introductions

The meeting was opened at 8:30 am by the Chair, Cory Fong, who determined that a quorum was present. The following individuals attended the meeting either in person or *via telephone*.

Name	State	Name	Affiliation
Mike Mason	AL	Private Sector/Other	
Robynn Wilson	AK	Trip Baltz	Bureau of National Affairs
John Theis	AR	Dara Bernstein	NAREIT
Walter Anger	AR	<i>Deborah Bierbaum</i>	AT&T
Regina Evans	CA BOE	Todd Lard	COST
Ben Miller	CA FTB	Amy Hamilton	Tax Analysts
Steve Cordi	DC	Michael McLoughlin	Verizon
Bob Geddes	ID	<i>Bob Monteleone</i>	Prudential Insurance
Glenn White	MI	Brian Pietsch	Ameriprise Financial
Alana Barragán-Scott	MO	<i>Dan Schively</i>	CCH
Wood Miller	MO	Verenda Smith	FTA
Dan Bucks	MT	Tracy Williams	Sidley
Lennie Collins	NC	MTC Staff	
Cory Fong	ND	Ken Beier	Les Koenig
Ryan Rauschenberger	ND	<i>Roxanne Bland</i>	Greg Matson
Donnita Wald	ND	Elliott Dubin	Thomas Shimkin
Gary Humphrey	OR	Joe Huddleston	Shirley Sicilian
Nancy Prosser	TX		Bill Six
Bruce Johnson	UT	MTC Consultants	
Gil Brewer	WA	Jim Rosapepe	Elizabeth Harchenko

II. Public Comment Period

Mr. Fong encouraged members of the public to wait to speak until the agenda item of interest is under consideration.

III. Approval of Minutes of the Executive Committee Meeting on June 6, 2011

Alana Barragán-Scott (Missouri) moved acceptance of the minutes from the June 6, 2011 meeting. This was approved unanimously by a voice vote.

IV. Report of the Chair

Mr. Fong expressed his excitement to be working with the newly elected officers and members of the Executive Committee.

V. Report of the Treasurer

Joe Huddleston presented the Financial Report for July 1, 2010 – June 30, 2011 for the newly elected treasurer. Steve Cordi (District of Columbia) moved acceptance of the report. This was approved unanimously by a voice vote.

VI. Report of Executive Director

Mr. Huddleston referred to his July 22, 2011 memo, Report on Appropriated Funds & Recommendation, and described the funds as of June 30, 2011, and his recommendation for transferring residual fund balances for Nexus Activities, Membership Development and Relations, Federalism at Risk, and State Tax Compliance funds into the Enterprise Automation Fund. In response to a question from Nancy Prosser regarding the membership development funds, Mr. Huddleston pointed out that there is a line item in the budget for this activity. Dan Bucks (Montana) commended Mr. Huddleston for undertaking this review of funds, expressed his support for the recommendation to transfer funds during the coming fiscal year (2011-2012), and moved for approval of the recommendation. This was approved unanimously by a voice vote.

VII. Other Reports

A. Reports by Committees & Programs Not Covered in Their Annual Report to the Commission

Wood Miller, chair of the Uniformity Committee, reported on that committee's discussion of digital goods sourcing, including current definitions and the potential for federal legislation. In deference to concerns from Scott Peterson, Executive Director of Streamlined Sales Tax Governing Board, about this being undertaken as a uniformity project, the sales tax subcommittee did not vote to take this up as an active project. However, the subcommittee would like to consider the digital goods sourcing issues and then, as an MTC body, provide input to Streamlined. The Subcommittee asked the executive committee for

guidance on whether that is an appropriate endeavor. In response to a question from Mr. Bucks on the overlap between the Streamlined Sales Tax and Sales and Use Tax Subcommittee participants, Mr. W. Miller identified Richard Cram of Kansas and Myles Vosberg of North Dakota as participants in both groups. Mr. Huddleston also noted that MTC counsel Roxanne Bland is also tracking Streamlined Sales Tax activities.

Mr. W. Miller also reported that the Income and Franchise Tax Subcommittee, in its review of Article IV of the Multistate Tax Compact, approved two items—section 17 sourcing rules and definition of “sales”—to the full committee, which then approved them for Executive Committee consideration.

Les Koenig reported on the continuation of the strategic planning session during the meeting of the Audit Committee and the establishment of a small group that will be meeting, over the coming months, to follow up on the audit-related items identified during the initial phase of the strategic planning effort.

B. Other Business

There was no other business during this portion of the meeting.

VIII. Uniformity

A. Uniformity Proposals before the Committee for Action

Proposed Model Statute Regarding Partnership or Pass-Through Entity Income That Is Ultimately Realized by an Entity That Is Not Subject to Income Tax

Mr. Huddleston summarized a discussion that he and MTC General Counsel Shirley Sicilian had with a representative of the National Association of Insurance Commissioners (NAIC) earlier in the week. This discussion included the following:

- NAIC is unlikely to provide written comments at this time
- NAIC is willing to provide information on state insurance tax retaliatory provisions in support of this effort
- NAIC is willing to provide data on state insurance tax revenues in support of this effort
- A letter from the insurance commissioner in the District of Columbia on the subject of the uniformity proposal is expected

Ms. Sicilian then reviewed development of the proposal, which was initiated in 2008 at the suggestion of Commissioner Ball of Massachusetts. The Uniformity Committee received several presentations and input from the insurance industry and from two departments of revenue that either administer

insurance taxes or have legal experience with insurance industry issues- Texas, and Oregon. The Income and Franchise Tax Subcommittee considered an array of issues at the intersection of income and insurance taxes, and decided to focus on the specific issue raised by Commissioner Ball—income earned by an entity that is not subject to the corporate income tax. She also noted that MTC counsel Sheldon Laskin served as hearing officer on this proposal. In response to a question from Mr. Fong, Ms. Sicilian confirmed that the proposal could be moved forward to a Bylaw 7 survey.

Tracy Williams of Sidley Austin, representing insurance interests, indicated that she would be glad to work further with the committee on this project.

Dara Bernstein of the National Association of Real Estate Investment Trusts (NAREIT) recognized the desire to adopt legislation that would address inappropriate use of captive REITs, but reminded the group that a REIT is subject to federal income tax if 90 percent of its profits are not distributed. She added that most states follow the federal model of taxing REITs at the shareholder level. Following a description of the types of entities that own REITs, she raised concerns that the proposal has an ambiguous definition of what entities are not subject to income tax that seems to conflict with the MTC captive REIT model statute. In addition, she stated that there may be complications with non-profits that are subject to Unrelated Business Income Tax.

Shirley Sicilian commented that the hearing officer did receive comments from NAREIT and modified the proposal to reflect some of these concerns.

Brian Pietsch of Ameriprise Financial then commented on his communication with several people from the states on this proposal and indicated he believes there is another approach that is better and that he is willing to work with the MTC on that approach.

Bob Monteleone of Prudential Insurance commended Ms. Sicilian and Mr. Laskin for their hard work on this proposal, adding that he would be very glad to work with the MTC on further development of the proposal.

Ms. Sicilian then identified the options for Executive Committee:

- Recommend the proposal for consideration, which triggers a Bylaw 7 survey
- Continue consideration at the Executive Committee level
- Send the proposal back to the Uniformity Committee for further consideration, and
- End the project.

Mr. Huddleston expressed his appreciation for NAIC's belated entrance to the discussion and cited the willingness by NAIC and those in the room and on

the phone who have made comments on the proposal and expressed their willingness to contribute to further development of the proposal.

Bruce Johnson then expressed his concerns about the proposal and potential liabilities for charities. In addition, he cited his concern about “stuffing” insurance companies which is really not addressed by the proposal. Ben Miller noted California’s approach to this type of abuse, which is to reduce the dividend received deduction.

Ms. Sicilian noted that the draft proposal allows each state to define the entities to which it applies, and added that the committee did not address “stuffing” because this was addressed in the combined reporting model statute. Mr. Johnson then commented that he does not support the proposal because states could, on their own, impose taxes, in addition to premiums taxes, on insurance companies.

Following a direct inquiry from Mr. Fong, industry participants in the room each expressed their commitment to help the MTC craft a better proposal. Mr. B. Miller then expressed his concern about abuse with pass through entities and commented favorably on the industry offer to help with this proposal.

Mr. Bucks suggested that it would be useful for the Uniformity Committee to do a practical analysis of each of the problems associated with entities that are not subject to income tax and where the situation [income earned by a taxpayer that is not subject to income tax] is addressed or not addressed under existing and proposed MTC models. He then moved that the proposal be sent back to the Uniformity Committee, with the direction that the committee should identify alternate approaches that could solve the problem, and consider suggestions from the states and other interested parties. He affirmed that the “problem” is that identified by the Commonwealth of Massachusetts which also been the primary focus of efforts by the Uniformity Committee. The motion passed with a unanimous voice vote.

B. Other Uniformity Matters

Proposed Model Sales & Use Tax Notice and Reporting Statute — Majority of Affected Members did not agree to Consider Adoption (Bylaw 7)

Ms. Sicilian reviewed the development of the proposed model statute, which is very similar to the Colorado statute on sales and use tax reporting, noting that four additional states have passed requirements similar to those in Colorado. She reported that an insufficient number of states had voted affirmatively on the Bylaw 7 survey for the proposal to be placed before the Commission at its annual meeting yesterday, but that additional positive responses had been received late.

Mr. Johnson then moved that this be returned for another Bylaw 7 survey. Mr. B. Miller raised a point of order that this should be carried over to the next

meeting of the Executive Committee. This was accepted as a friendly amendment by Mr. Johnson and the motion was approved unanimously by a voice vote.

IX. Strategic Planning Session

Mr. Fong provided a brief overview of the Commission's strategic planning effort and information gathering on strengths, weakness, opportunities, and threats (SWOT), referred to as an "environmental scan." He noted the role of the Steering Committee, but emphasized that the process belongs to the entire membership of the Commission. He cited Elizabeth Harchenko's unique qualifications to support the MTC strategic planning effort and expressed his appreciation for her support of this effort. Ms. Harchenko then provided a high-level overview of the initial findings regarding SWOT.

Strengths:

MTC staff- skill, knowledge, leadership, legal and policy support
MTC programs: all programs are valued highly by state staff
Relationships: State-to-state; states to MTC Staff; MTC to other governmental organizations
Policy development and advocacy: state and federal legislative activity
Uniformity recommendations

Weaknesses:

Insufficient Use of current technology and communication tools
Lack of actual uniformity among the states (many reasons)
Time-consuming processes for decisions and within some program areas
Relationships with business community; public participation policy
Relationship to legislative processes in the states

Opportunities:

New commissioners – MTC as a resource to them
Enhance relationships with other organizations
Influencing legislation
Outreach to states and to taxpayers
Enhancing processes (streamlining)
Use technology in different ways
Expand Training
Enhance audit program

Threats:

Financial condition of states for next several years
Retirement of knowledgeable staff at both the commission and in the states
Federal pre-emption
Legislator's lack of understanding and suspicion of executive branch
Mistrust and suspicion between state staff and taxpayers
Taxpayer behavior – tax avoidance; resistance to joint state audits
Restrictions on information sharing (many reasons)
Lack of engagement by states

Global economic change

Following this review, Ms. Harchenko posed some questions about the strategic planning process to the group. The first question was: What would help you in understanding the commission and your relationship to the Commission?

Roxy Huber suggested that it is important for commission members to reach out to new commissioners; emphasizing that there is some resistance to the MTC from state audit staff, and that the outreach seems like less of a sales job when contacts are made by tax administrators instead of MTC staff. These contacts, she added, can help new tax administrators understand the bigger picture of how MTC is a tool.

Mr. W. Miller suggested that an “MTC 101” document would be helpful. Mr. Fong responded that the MTC’s Organizational Sourcebook covers much of this.

Regina Evans noted that some conferences have sessions for first time attendees, adding that when she was first picked to attend this meeting, she learned that chair of the California Board of Equalization was not aware of the relationship with the MTC during his first two years in office. Following comments from Mr. Fong on the importance of tax administrator peer-to-peer contact, Ms. Evans cited the importance of these contacts to sustaining the organization.

Mr. B. Miller cited the importance of having a current directory of key state personnel on an annual basis. Mr. Bucks commented that Mr. Huddleston did get this done once and that responses from the states to MTC requests for updated information are needed to get this done.

Mr. Bucks, recalling his dissent with the recent uniformity proposal, suggested a serious appraisal of the uniformity process—stating that it is broken. He acknowledged that it is improved since the early 1990s when there was little state involvement. This appraisal, he suggested, should include a look at the roles of and relationship between the Executive Committee and the Uniformity Committee. For the Uniformity Committee, he cited the need to build consensus among the states. If this is not practical, then consensus should be sought among the compact and sovereignty states. Referring to the exemplary role played by Wade Anderson, he suggested that the involvement at the uniformity committee needs to be broadened to include the “builders” (those who deal with taxpayers on a regular basis) who are currently underrepresented, as well as the “architects” (those who have a more theoretical perspective) who are currently overrepresented in the work of the Uniformity Committee.

Mr. B. Miller commented that part of this situation is that the uniformity committee deliberations reflect the representatives who are sent by the states and that there are three or four dominant voices in the Uniformity Committee. He added that the engagement of these “dominant” voices is still important. Mr. Bucks, in response to this, clarified that he is referring to the uniformity process, which is broader than the activities of the Uniformity Committee per se.

Ms. Harchenko then reviewed steps for moving forward with strategic planning activities—looking forward to the meeting in Charleston in last week in November.

Ms. Evans asked about engagement of other stakeholders. This led to some discussion of what has been done to date, the potential for involving additional states through the FTA, and the potential for involving Washington, D.C.-based organizations.

Ms. Harchenko then invited the group to provide input on the Commission's strengths, weaknesses, opportunities and threats. The following comments were made:

Strengths

Strong staff

Excellent public participation policy

The audit program—this is what distinguishes us from the FTA and it is done very well and of great value

Diverse membership

Weaknesses

Make better use of technology

A big limitation is the relatively limited involvement of other policy makers (governors, legislators and legislative staff) in proposals—this makes getting their support a challenge.

The uniformity process

Audit of financial businesses is very difficult and is a big challenge

The audit program needs more resources to fulfill its potential

The lack of single state resources makes cooperative efforts like the MTC essential

Lack of follow-up on uniformity recommendations—more outreach in general is needed

Audit staff could piggy-back on expertise in the states

Opportunities

In the area of pass through entities—non-resident owners are a challenge—the opportunity exists to create an exchange of information process and extend the audit program into this area. C corporations are declining in number and pass through entities is growing rapidly. States are not inclined to going toward entity level taxation, so tracking ownership of pass through entities is essential

We had an IRS presentation in San Diego on this a few years ago—this type of tool would be very helpful

We do some of this on a case-by-case basis. In a recent, relatively simple case involving pass through entities, several tax practitioners were involved, but none of them were aware of the big picture; that is, all of the related entities

Are there opportunities for mergers or acquisitions with other state organizations?

We are inherently different from FTA—we are a “.gov” and FTA is a “.org”

International Tax Sheltering

Threats

Trust in government is declining—we deal with the complexities of tax administration—perhaps we can work on making tax systems more transparent and understandable
Streamlined Sales Tax (SST) is creating uniformity in that area—we are not an SST state—thus, what does that mean for our involvement with the MTC?

Along with closing remarks by Ms. Harchenko, Mr. Johnson mentioned the value of the Federalism at Risk project and Mr. B. Miller suggested that the states can be “ringing the sovereignty bell.”

X. Upcoming Meetings & Events

Following an explanation from Mr. Huddleston of the requirement, under the MTC bylaws, to hold the Commission’s annual meeting in July, and the need to hold the 2013 meeting on August 1, a motion authorizing the Commission to meet on August 1, 2013 was made by Mr. Cordi (District of Columbia). This was approved unanimously by a voice vote.

Mr. Huddleston noted that a host state is needed for the 2014 annual meeting. Mr. Fong said he would follow up with California on this.

Mr. Rosapepe then provided an update on federal legislative activity, including: The Business Activity Tax (BAT) bill has been passed out of the House committee and will be scored by the Congressional Budget Office. Other bills, including Wireless Tax Fairness and Mobile Workforce, have been introduced, and are likely to see activity during the fall.

Mr. Bucks commented on the BAT bill; suggesting that MTC staff could provide the states with a definition of the bill and how it may affect the states. The MTC could subsequently survey the states on the revenue impact. He added the House committee has appreciated the input it has received from Montana on the BAT bill. Mr. Huddleston indicated his acceptance of the suggestion for gathering revenue estimates from the states.

[Closed sessions were then held on items relating to the Nexus Committee, National Nexus Program, Audit Committee, Joint Audit Program, pending litigation and commission personnel matters.]

XI. Resumption of Public Session and Reports from Closed Session

There were no reports from the closed session.

XII. Adjournment

Following a motion from Ms. Huber (Colorado), the meeting was adjourned at 12:45 pm.