



To: Executive Committee
From: Joe Huddleston
Date: November 23, 2011
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2011, through October 31, 2011 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The audit division completed parts of 4 income tax audits. The audit division also completed 3 sales tax audits and parts of 2 other sales tax audits. There are currently 20 income and 24 sales tax audits in progress. Proposed assessments through October 31 for this fiscal year from these audits total \$6,004,649.

The following chart summarizes hourly data for completed audits through October 31st:

	Income & Franchise	Sales & Use	Total
Total Audits	0	3	3
Total States Audited	0	33	33
Total Hours	0	3492	3492
Average Hours per State	0	106	106

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.

Audit division staff provided instruction at one income tax training class and one sampling class so far this year.

B. National Nexus Program

Voluntary Disclosure — FY 2011 revenue was about in line with historical trends after a phenomenal year in FY 2010. Revenue in the first quarter of this fiscal year is down from the historical trend and there is a corresponding drop in the number of executed contracts, but the sample period is too short to draw any firm conclusions. See graphs, *Back Tax Collected by Fiscal Year* and *Executed Contracts by Fiscal Year*. FY2010 results were largely caused by a single large taxpayer. Commission staff is working with another large taxpayer that may choose to enter multi-state voluntary disclosure.

The good news in the first quarter data is that the annualized number of applications for multi-state voluntary disclosure is up compared to FY2011 and 2010. See graph, *New Contracts by Fiscal Year*. This augurs well for a good revenue result after these starts complete the process later in the fiscal year.

[Note: All referenced graphs and charts may be found at the end of this document]

The Commission provides multi-state voluntary disclosure service to states not members of the National Nexus Program. Doing so increases the one-stop value of the Commission's program to taxpayers and thereby helps member states by attracting participants. Providing these services is also a way to introduce the multi-state program to non-members who may later choose to join.

Business activity revenue collected in the first quarter of FY2012 exceeds those of use tax, although the trend over ten years is that use tax creates the most revenue. FY2009 and FY2010 were outliers on the trend due to the income tax disclosure of a single large taxpayer.

Nexus School — Nexus and legal staff conducted a well-attended Nexus School in Little Rock on October 26 and 27. Discussions with states about two future schools are under way.

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 12 uniformity matters during this period:

- *Amendments to UDITPA and Compact Art. IV related provisions*
 - Definition of "sales" (Compact Art.IV(1)(g)) (pending executive committee consideration for public hearing)
 - Sales factor sourcing (Compact Art.IV.17) (pending executive committee consideration for public hearing)
 - Factor weighting (Compact Art.IV.9) (under development at Uniformity Subcommittee)
 - Definition of "business income" (Compact Art. IV.1(a)) (under development at Uniformity Subcommittee)
 - Distortion relief (Compact Art. IV.18) (under development at Uniformity Subcommittee)
- *Model Statutes for Telecommunications Transaction Tax Centralized Administration* (under development at Uniformity Committee)
- *Model Statutes for Associate Nexus Presumption (NY-style "Amazon" Law)* (under development at Uniformity Committee)
- *Amendments to MTC Model Financial Institutions Apportionment* (under development by a Uniformity Subcommittee Work Group)
- *Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax* (pending executive committee action on hearing officer's report and recommendations, request for additional uniformity committee input)
- *Model Sales & Use Tax Notice and Reporting Statute* (pending executive committee consideration after late passage of bylaw 7 survey)
- *Possible New Project Regarding Interpretation of Art.IV.3 (Taxable in Another State)* (under consideration by uniformity committee)
- *Model Statute on the Tax Collection Procedures for Accommodations Intermediaries* (Executive Committee referred back to Uniformity Committee)

Litigation Committee Work

The legal division supported the Litigation Committee by organizing and making presentations for the July, 2011 in-person meetings. In addition, legal division organized three state tax attorney teleconferences. All meetings were well attended. Attendance for teleconference meetings generally included representatives from approximately 40 states.

Legal Assistance to States

The legal division consulted with individual states regarding significant on-going litigation strategy and briefs, draft legislation, and draft regulations. An *amicus curiae* brief was filed in *The Gillette Company et al. v. California Franchise Tax Board*, (1st App. Dist., Div. 4, Case No. A130803) on November 14, 2011.

Commission Support

During this fiscal year so far, 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 division provided legal assistance to the Commission's audit division on a number of challenging audit related procedural and substantive issues. Legal division (along with the National Nexus Program staff) taught MTC nexus training in Little Rock, Arkansas. Division staff also taught Corporate Income Tax and Combined Reporting Training in Madison, Wisconsin. The division monitored and reported on the activities of the Streamlined Sales and Use Tax Governing Board and its committees. In addition, the division assisted in communicating the Commission's position on bills before Congress, including BATSA, Digital Goods, VoIP, Mobile Workforce, and others.

D. Policy Research

BATSA — The policy research director has been working with state revenue estimators to develop estimates of revenue impact of H.R. 1439, "The Business Activity Tax Simplification Act of 2011."

Uniformity Project on Revising Model Statute on Apportioning Income of Financial Institutions — 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. Policy Research staff helped develop methods for situsing loan bundles for property factor in apportionment formula.

Uniformity Project on Recommended Amendments to Compact Art. IV [UDITPA] — *Section 9, Factor weighting* — The policy research director is working with other MTC staff and the Uniformity Committee on this project.

Multistate Tax Commission Review —

- Article by Elliott Dubin and former Research Intern André Barbé on a comparison of sales taxes and gross receipts taxes
- Article by Elliott Dubin and former Research Intern Yi Feng, with input from Professor Richard Harvey, Villanova University, on Uncertain Tax Positions and State Corporate Income Tax

Other Activities —

- An article by the policy research director entitled, “State and Local Governments: Cash-Strapped but not Broke,” published by Tax Analysts, *State Tax Notes*, August 8, 2011, pp. 363-371
- Nominated to advisory board of National Tax Association
- Monitor state adoption of MTC model statutes, regulations, and guidelines.

E. Training

The Training staff supported the following training activities since July 2011:

Computer Assisted Audit Training Using Excel and Basic Random Sampling (combined course) — August 22-25, 2011 in Albuquerque, New Mexico for 26 students—25 students from New Mexico and 1 from South Carolina

Corporate Income Tax — September 19-22, 2011 in Madison, Wisconsin for 33 students—30 from Wisconsin and 3 from South Carolina

Nexus School — October 26-27, 2011 in Little Rock, Arkansas for 37 students—22 from Arkansas and 15 additional students from Alabama, Idaho, Minnesota, Missouri, South Carolina, Virginia, West Virginia, and MTC.

The director of training was the principal coordinator of the July 27th annual meeting conference.

II. Administration

Beginning with the new fiscal year the MTC has changed the bank it uses for its operations from Wachovia (Wells Fargo) to BB&T. This was done in order to reduce the level of bank fees, to provide a better fit in regards to the size of the bank compared to the MTC, and to establish better relationships with banking personnel.

André Barbé, Ph.D. candidate in Economics, Rice University; and, Yi Feng Accounting Major, University of Iowa, successfully completed their internships and are currently back at their respective universities.

Ted Jutras, paralegal in the National Nexus Program, resigned effective September 30, 2011, to take a position with the District of Columbia.

Amber Kirby began employment with the Multistate Tax Commission on October 3, 2011 as an assistant to the Director of the National Nexus Program. Amber will be involved all aspects of the National Nexus Program including the voluntary disclosure program tasks previously performed by Ted Jutras. Amber is a graduate of the Wake Forest School of Law. She is currently enrolled in a dual degree program (Master in Public Policy & Master of Laws) at American University.

Ben Abalos was hired on November 1, 2011 as Project Manager, Data Sharing Initiative, a one-year appointment to initiate then evaluate Commission use of federal tax information on behalf of audit program states signing an MOU with the MTC. Ben is both an attorney and a CPA. Benjamin's previous professional experience includes the Department of the Navy (both active duty and reserve status) and the District of Columbia.

III. Outside Presentations & Events

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

- NYU Summer Institute in Taxation, State Taxation II; New York, New York (Huddleston)

AUGUST

- NCSL Task Force Meeting; San Antonio, Texas (Huddleston)

SEPTEMBER

- 2011 Annual Meeting of North Eastern State Tax Officials Association; Wilmington, Delaware (Huddleston, Matson)
- Institute for Professionals in Taxation, Sales Tax Symposium; Orlando, Florida (Matson)

OCTOBER

- Georgetown University Law Center SALT Certificate Program Meeting; Washington, D.C. (Huddleston)
- COST 42nd Annual Meeting and Fall Audit Session; New Orleans, Louisiana (Huddleston)

- ABA Section of Taxation 2011 Joint Fall CLE Meeting; Denver, Colorado (Sicilian)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort, Matson, Sicilian)
- Pennsylvania Institute of CPAs' Multistate Tax Conference; Malvern, Pennsylvania (Dubin)
- 32nd Annual Conference of the National Association of State Bar Tax Sections; Washington, D.C. (Sicilian)

Technology Addendum

The Technology Committee was inactivated by the Executive Committee in June of 2011; during the time this committee is inactive, the Executive Director is responsible for providing this technology update with this report.

The Commission's computing assets and information security structures are appropriately maintained and operational. During the period covered by this report, a new Checkpoint Endpoint server has been configured (twice) and new endpoint software is being rolled out in December (Endpoint is the hard disk encryption system used for MTC laptops and desktops). New Checkpoint firewalls were installed and old firewall configurations were migrated to new ones. Hardware preparation (server, storage and thin client) and configurations for the data sharing initiative project have begun.

The network administrator has also been working with National Nexus Program staff in maintaining and assisting in troubleshooting issues with the voluntary disclosure application system. Also, he has been working with the publication coordinator regarding state contact data in preparation for a new directory.

The website continues to provide Commission news and event information. During period for this report, a total of 2,936 webpages were viewed 128,331 times. We received a peak high of 2,432 pageviews on Friday, July 22, 2011. The website undergoes daily maintenance to improve the functionality of the website.

A blog-forum section of the website was created and published on September 12, 2011 to provide a staging area for outside stakeholder input for the Strategic Planning Steering Committee's environmental scan process. Users had the ability to share and view comments on the website.

Interesting Facts —

- The 44th Annual Committee Meeting webpage attracted 2,332 pageviews.
- Internet Explorer is the a top browser used with 78.99% of all visits.
- 28,032 people visited our website.
- Average time on website was 2 minutes and 19 seconds.

Traffic Sources — All traffic sources sent a total of 41,484 visits to our website:

- 29.17% visit our website with no referral. A total of 12,100 visits came directly to www.mtc.gov.
- 21.88% of visitors were from referring sites. The Alabama Department of Revenue sent a total of 1,066 visitors to our website.
- 48.95% of visitors were sent from a search engine; 20,305 total visitors came via 9 sources such as the Google, Bing and Yahoo search engines.

Most Popular Pages of the Website

	Page Title	Total Page Views	Unique Views	Average Time on Page
1	Homepage	20,579	16,682	0:01:18
2	Sales & Use Certificate	20,254	15,111	0:02:20
3	State Map	6,260	3,914	0:01:55
4	MTC Compact	4,916	2,805	0:00:26
5	About Nexus Program	3,451	2,456	0:00:52
6	Overview Multistate Voluntary Disclosure Program	2,971	2,088	0:01:52
7	44th Annual Committee Meetings	2,332	1,060	0:00:47
8	FAQ Sales and Use Certificate	1,857	1,604	0:02:50
9	About Multistate Tax Commission	1,781	1,386	0:00:51
10	Scheduled Training Events	1,545	908	0:01:01
	Totals/Avg. (July 1 to Oct. 31, 2011)	128,931	91,940	0:01:06

National Nexus Program Graphs





