



MULTISTATE TAX COMMISSION

Executive Committee Meeting

June 6, 2011

Via teleconference

I. Welcome and Introduction

The Chair called the meeting to order at 2:01 p.m. Eastern. Following a roll call directed by the Chair, it was determined that the following individuals attended the meeting:

| Name | Affiliation | Name | Affiliation |
|----------------------|--------------------|------------------------------|--------------------|
| Ben Miller | California FTB | Members of the Public | |
| Steve Cordi | D.C. | Jim Hall | ACLI |
| Bob Tennen | Idaho | Allan Stein | AIA |
| Ted Spangler | | Dan Shibley | CCH |
| Michael Fatale | Massachusetts | Todd Lard | COST |
| Alana Barragan-Scott | Missouri | Tracy Williams | Sidley Austin LLP |
| Wood Miller | | Amy Hamilton | Tax Analysts |
| Dan Bucks | Montana | Warren Townsend | Wal-Mart Stores |
| Jeff Folkes | West Virginia | Ethan Sonnichsen | NAIC |
| Cory Fong | North Dakota | Commission Staff | |
| Mary Loftsgard | | Joe Huddleston | Greg Matson |
| Gary Humphrey | Oregon | Shirley Sicilian | Les Koenig |
| Nancy Prosser | Texas | Ken Beier | William Six |
| Bruce Johnson | Utah | Tom Shimkin | Bruce Fort |
| Russ Brubaker | Washington | Sheldon Laskin | Elliott Dubin |

II. Public Comment Period

The Chair invited public comment, but there was no public comment at this point in the meeting.

III. Approval of the Minutes of the Executive Committee Meetings on December 9, 2010; March 10, 2011; April 18, 2011; and May 12, 2011

After a motion duly made by Ms. Prosser, all these minutes were approved.

IV. Report of the Chair

The Chair asked Ms. Sicilian, the Commission's General Counsel to report on the status of active bylaw 7 surveys. Ms. Sicilian said that thus far there were 6 favorable responses for the

Model Mobile Workforce Statute and 7 favorable responses for the Model Statute for Disallowance of Deductions for Certain Payments to Captive Real Estate Investment Trusts. The Chair urged those states that had not yet responded to get their survey responses in as soon as possible.

V. Report of the Treasurer

A. Financial Report for the Period July 1, 2010 – April 30, 2010

Mr. Huddleston, as acting treasurer, and Mr. Six presented the financial report for the period of July 1, 2010 to April 30, 2011. Mr. Huddleston informed the committee that all budget areas showed favorable balances. Further, all assets are held in inflation protected government securities and in cash. He noted that travel expenses have been significantly reduced, in part because of Executive Committee meetings having been held primarily by teleconferences this fiscal year.

Upon a motion duly made by Mr. B. Miller, the Financial Report for the Period July 1, 2010 – April 30, 2010 was approved unanimously by roll call vote.

B. 2011-2012 Budget Review & Approval

Mr. Huddleston presented the 2011-2012 budget for approval. He noted that both the revenue and expenditure budget were being presented for approval, rather than the customary two-stage process used in the past. Mr. Huddleston highlighted the proposed fee increases for the next fiscal year:

| | |
|--------------------|--|
| General membership | 0.0% |
| Nexus Fees | +1.0% |
| Audit | +2.0% of base (state participation affects the base) |

Two states joined or increased their participation in the audit program – Tennessee and South Carolina. This is the first year of participation for South Carolina. Mr. Huddleston noted that the resulting increase in audit fees makes it feasible to hire an additional auditor.

Mr. Bucks commented that the unappropriated fund balances act as a reserve for the programs, observing that the Nexus program has reserves in excess of 100% of annual expenditures. He asked why that program needed a fee increase. Mr. Huddleston replied that the Nexus program funds were being built up in anticipation substantial expenditures related to technology improvements in near the future.

Mr. Huddleston called attention to the expenditure budget, noting the customary 15% budgeted increase for health insurance premium, which is actually renewed in September each year, so the actual increase isn't know until later; a 2.5% salary adjustment for staff, whose last salary adjustment was in 2008, and the cost of an additional auditor.

Mr. Bucks asked that staff study the appropriated funds, and provide a recommendation for the committee to consider at its next meeting in July, noting that most of these funds appear to be dormant or for programs no longer being pursued.

Upon a motion duly made by Mr. B. Miller, the 2011-2012 Budget was approved unanimously by roll call vote.

VI. Report of the Executive Director

Mr. Huddleston noted that staff had been very active during the year. The Joint Audit Program had issued proposed assessments in excess of \$50,000,000 so far this year. He noted the work of all standing committees and the strong evaluations of MTC training programs that had been received.

Mr. Huddleston noted the dwindling participation in the Commission's Technology Committee, which had been established in 2000 to help this committee monitor the technology projects of the Participation in the committee has been in steady decline since implementation of the website in 2006, despite periodic efforts by the chairs to bolster participation and interest. Since December of 2008, the committee has had few active participants; many teleconferences and meetings consisted of only of the committee's chair and MTC staff. It is currently without a chair. He recommended suspending the activities of the committee at this time, noting that a technology report addendum to this report would serve the function of providing information about the Commission's technology efforts to the Executive Committee. He added that the Technology Committee could be revived in the future by the Executive Committee if it was needed.

Upon a motion duly made by Ms. Prosser, the recommendation to suspend activities of the Technology Committee indefinitely and require a technology report as an addendum to each executive director report provided to the Executive Committee during the time the Technology Committee is inactive was approved unanimously by roll call vote.

VII. Committee & Program Reports

A. Audit Committee

Mr. Koenig gave the Audit Committee's report. Mr. Koenig remarked that the presentation on the IRS uncertain tax position requirements given in March was well received.

B. Litigation Committee

Ms. Sicilian provided the committee report for Marshal Stranburg, the committee's chair. She noted that last year's Paull Mines award had been presented to Mr. B. Miller, and encouraged everyone to submit nominations for this year's award to her, Loretta King, or to Mr. Huddleston.

C. Nexus Committee

Mr. Shimkin provided the report. This committee is chaired by Lennie Collins of North Carolina Department of Revenue. The voluntary disclosures program is operating as usual, and the program looks forward to upgrading its technology to process disclosures better and faster in the future.

D. Technology Committee

This Committee met twice since the Annual Meeting. The committee's chair, Gordon Smead of the Tennessee Department of Revenue, retired in April.

E. Uniformity Committee

Mr. W. Miller gave the committee's report. In the Sales and Use Tax Subcommittee, the major projects are the notice and reporting project and the centralized administration of telecommunications transactions taxes. The subcommittee is still working on the Hotels Intermediaries project.

The Income and Franchise Tax Subcommittee is working on Article IV of the Compact, amendments to section 17. The subcommittee is also working on the definition of gross receipts, and worked on the Mobile Workforce Project, the pass-through entity for non-income tax paying companies, financial institution apportionment, and the combined reporting tax haven project.

F. Training

Mr. Beier noted that the list of classes and courses for late summer and for the fall are listed in the report.

VIII. Uniformity – Hearing Officer Recommendations for Consideration

A. Proposed Amendment to Model Statute for Combined Reporting, Section 1.I (Definition of Tax Haven)

Ms. Sicilian informed the members of the committee of the options available for amending the combined reporting model statute. She asked Mr. Fort, the hearing officer for the proposal, to summarize it for the committee. Mr. Fort informed the committee that the purpose of the proposed amendment is to reevaluate the use of the original OECD list of tax havens. The OECD has since abandoned that list, but retains the definition of tax haven. He recommends that the model statute retain the definition of tax haven, but omit references to the OECD tax haven list.

Upon a motion duly made by Mr. B. Miller, the hearing officer's recommendation was approved unanimously by roll call vote and the proposal recommended for consideration for adoption by the Commission (triggering a bylaw 7 survey).

B. 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. Laskin was the hearing officer for this project. Mr. Laskin noted that the intent of this project is to impose income tax *once* on income earned by a pass-through entity that is owned by an entity that is not subject to income tax. The hearing officer's recommendation is that the dividends paid deduction available to a pass-through entity under the Internal Revenue Code be denied when those dividends are passed through to an entity not subject to income tax that holds a 50% or more ownership interest in the pass-through.

The Chair asked the public for their comments on this proposal. Mr. Lard commented on the public hearing process in general and the use of MTC staff as hearing officers. He noted the importance of the public hearing process and suggested that it would be much improved with the use of independent hearing officers.

Addressing the recommendation before the committee on this proposal, Ms. Williams and Mr. Stain reiterated their written objections and argued that Mr. Laskin did not adequately hear both sides of the argument, and said there had been an inadequate investigation conducted. Mr. Hall opined that Mr. Laskin failed to take into account the possible impact on insurance policy holders. Particular concern the relationship between the proposal and retaliatory taxes was expressed.

Mr. Bucks and Mr. Johnson responded that the Commission has used its public hearing format hundreds of times without such an acrimonious assault on the hearing officer, and pointed out that a public hearing officer is not a magistrate and should not have to perform independent research.

Mr. Sonnichsen said that the committee should hold off on taking action until insurance regulators can review and provide further input on the proposal. Mr. Huddleston read the message he had received earlier in the day from NAIC. Noting the unfortunate lateness of input from the NAIC, Mr. Bucks nevertheless agreed they should provide input, and urged them to make sure they fully appreciate the evolution of the taxation of business structures, noting that tax commissioners have much to learn about the insurance industry as well. Mr. Johnson strongly encouraged the insurance industry to provide further input with greater specificity.

Upon a motion duly made by Ms. Prosser that committee continue to consider this proposal at its next meeting in July to allow time for input from the insurance regulators, the motion was approved unanimously by roll call vote.

C. Proposed Model Sales and Use Tax Notice and Reporting Statute

Ms. Sicilian, the hearing officer for this proposal, informed the committee members that this project was initiated when the Colorado legislature introduced their bill requiring remote sellers to notify customers at the time of sale that there may be a tax liability associated with the purchase and to also report to the Colorado department of revenue about sales to customers. All taxpayer information is deemed confidential. Five states have enacted similar requirements and two other states are considering such legislation. This legislation makes for uniform legislation rather than the non-uniform result as individual states pass their own legislation. Ms. Sicilian also noted the pending litigation over Colorado's version of the statute.

Mr. Townsend of Wal-Mart stores supports this project because Wal-Mart wants "e-tailers" to be put on an equal footing with "bricks and mortar" retailers. He urged the Commission to pursue the measure and noted that it doesn't undermine the Streamlined Sales Tax Project. Mr. Brubaker stated that he has no problem with the direction of the proposal but that it is not ready; a consistent method of sourcing needs to be addressed for it to be workable. Without a consistent method of sourcing sales the model statute may run into problems.

Upon a motion duly made by Ms. Prosser, the hearing officer's recommendation was approved by five affirmative votes (Idaho, Missouri, North Dakota, Texas, and Utah), with one nay (Washington), and two abstentions (California and Montana; D.C. and Oregon did not participate) and the proposal recommended for consideration for adoption by the Commission (triggering a bylaw 7 survey).

IX. Review of Upcoming Meetings and Events Schedule

Mr. Matson reminded the committee about the hotel reservation deadline for the annual meeting in Whitefish, Montana, and also warned about the strict cancellation policy. He noted that the Uniformity and Executive Committees will meet in Charleston, South Carolina during the week of November 29th, and the winter committee meetings will be held March 6th through the 9th in Nashville, Tennessee.

X. Adjournment

Upon a motion duly made, the meeting was adjourned at 4:39 p.m.