



**Minutes of the Multistate Tax Commission Executive Committee Meeting
May 10, 2012**

Hall of the States
444 North Capitol Street NW
Washington, DC 20001

I. Welcome and Introductions

The Chair called the meeting to order at 8:34 a.m. The following persons attended the meeting either in person or via telephone.

Name	Affiliation	Name	Affiliation
Julie Magee	Alabama	Private Sector	
Richard Moon	California SBE	Terry Frederick	Sprint
Carl Joseph	California FTB	Ferdinand Hogroian	COST
Phil Horwitz	Colorado	Todd Lard	
Stephen Cordi	D.C.	Michael Smith	John Hancock
Michael Fatale	Massachusetts	John Allan	Jones Day
Glenn White	Michigan	Bob Montellione	Prudential
Alana Barragan-Scott	Missouri	Carl Erdman	Skadden Arps
Wood Miller		Mitchell Bryk	Starwood Hotels
Cory Fong	North Dakota	Amy Hamilton	Tax Notes
Dee Wald		Diann Smith	Sutherland
Matt Peyerl		MTC Staff	
Myles Vosberg		Ben Abalos	Sheldon Laskin
Demesia Padilla	New Mexico	Elliott Dubin	Shirley Sicilian
Gary Humphrey	Oregon	Greg Matson	Thomas Shimkin
Nancy Prosser	Texas	Joe Huddleston	William Six
Bruce Johnson	Utah	Ken Beier	Len Lucchi, Patuxent
Tim Jennrich	Washington	Roxanne Bland	
Craig Griffith	West Virginia	Les Koenig	

II. Public Comment Period

Mr. Bryk, Starwood Hotels, recommended that the Executive Committee adopt the Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries. Mr. Bryk stated that he supports the conclusions reached by the hearing officer in her reported dated May 2, 2012, which supports both the single remittance model and the dual remittance model. Mr. Bryk noted that North Carolina and South Carolina use the single remittance model while New York uses the dual remittance model and Minnesota leans towards the dual remittance model.

III. Approval of the Minutes of the Executive Committee Meetings on December 1, 2011 and March 1, 2012

Ms. Prosser moved that the Minutes of the Executive Committee meeting of December 1, 2011 be approved. The minutes were approved unanimously.

Ms. Prosser moved that the Minutes of the Executive Committee meeting of March 1, 2011 be approved. The minutes were approved unanimously.

IV. Report of the Chair

A. Election of Executive Committee Member for Unexpired Term Following Vacancy by Operation of Bylaw 3(c) (3)

Robert Geddes, Chair of the Idaho State Tax Commission, resigned earlier this year, creating a vacancy among the 4 at-large members of the Executive Committee. The Chair informed the members of the committee that with only two months left in the fiscal year and no planned Executive Committee meetings, the vacancy will be filled with the election of new officers and committee members at the Annual Meeting on August 1st this year.

B. Resolutions and Nominating Committee

Mr. Cordi graciously volunteered to chair both the Resolutions and the Nominating Committees.

C. Strategic Planning Update

Mr. Fong introduced the members of the Strategic Planning Steering Committee which consists of Ms. Barragan-Scott, Ms. Prosser, Mr. Cordi, Mr. Huddleston, and himself. Elizabeth Harchenko, formerly with the Oregon Department of Revenue, is serving as the facilitator.

Mr. Fong told the members of the Committee that at the end of the first year of this project, the group had crafted statements of the mission, vision, values, and goals for the Commission. Currently, the group is focusing their efforts on the strategic goals related to compliance programs and engagement. Ms. Scott-Barragan added that the engagement group is ready to set targets and want to increase participation by the states and other stakeholders.

Mr. Fong also informed the committee that he and Mr. Johnson met with some of the members of the NCSL Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce (NCSL Task Force) to explore ways for the two organizations to work better together, possibly on uniformity projects.

V. Report of the Treasurer

A. Financial Report for the Period July 1, 2011 – March 31, 2012

Ms. Magee reported that the operating budget surplus, up until this point, is larger than expected, due in large measure to the expectation that Illinois would not be participating in the audit program but they did, and the hiring of two additional auditors was postponed, reducing the budgeted compensation expense.

Ms. Magee moved that the audit report be accepted as read. The motion passed unanimously.

B. 2012-13 Budget review and Approval

Ms. Magee directed the committee to the budget materials in the binder and Mr. Huddleston provided an overview of the salient features of the proposed 2012-2013 budget:

- No increase in the general membership assessment
- No increase in Joint Audit Program fees
- No increase in National Nexus Program fees
- Fees for training events set to achieve full cost recovery
- Budgeted increase in health insurance costs of 10%
- A 2½% across the board salary adjustment
- Hire one more auditor for the Joint Audit Program
- Hire one more attorney for the legal division
- Headquarters lease renewal results in one month rent “holiday” in 2013, 2014, and 2015
- Funding for policy research and legal interns trimmed
- Projected budget surplus of \$212,000 in 2013 and approximately break-even in 2014 and in 2015.

Ms. Barragan-Scott moved that the proposed 2012-2013 budget be approved. The motion carried unanimously.

VI. Report of the Executive Director

Mr. Huddleston highlighted certain items in his written report to the committee. The Joint Audit Program completed two income tax audits and parts of eight others during fiscal year 2012. They also completed four sales tax audits and parts of four others during the same period. Audit staff also participates in training classes.

Mr. Huddleston noted that the Voluntary Disclosure Program’s collection of back taxes peaked in 2010 due to a single taxpayer with significant liabilities. Collections of back taxes are now running at pre-2008 levels. Nexus and legal staff conducted Nexus schools in Little Rock and Jefferson City this fiscal year.

Mr. Huddleston noted that the legal division had worked on 16 uniformity matters and worked on two Whitepapers during the fiscal year. In addition to the uniformity work, the legal division conducts information and training teleconferences for state tax attorneys, and the legal staff provides training support for the nexus schools and corporate income tax schools, and other training programs. They also file amicus briefs on behalf of states, for example, a brief filed was in the *Gillette Company, et. al. v. California Franchise Tax Board*.

The Commission's first web-based training seminar has been scheduled and 90 participants have registered for the webinar.

The Commission is trying to take better advantage of technology and we have contracted for registration and online payment services, and are working on a project to systematize contact management and reporting. Lastly, two new auditors have been hired.

VII. Committee and Program Reports

A. Audit Committee

Mr. Koenig directed the committee to the written report. He noted that members of the Audit Committee had followed up on issues that were raised in the "environmental scan" phase of the strategic planning process and the Audit Committee has been working on revamping the audit selection process and is now finalizing the procedures.

B. Litigation Committee

Ms. Sicilian directed the committee to the written report. She noted that the last Paull Mines Award had been awarded to Ted Spangler of Idaho for his service to Idaho and to the MTC. The award was written up in *State Tax Notes*. She asked for nominations for this year's award.

C. Nexus Committee

Mr. Shimkin directed the committee to the written report. He informed the committee that the Nexus Committee will be investigating the tax consequences of "cloud computing" at its next meeting and they are working on amending its rules and processes.

D. Uniformity Committee

Ms. Sicilian directed the committee to the written report. She highlighted three projects completed last year: a model Mobile Workforce statute; amending the combined reporting models statute to revise the definition of "tax haven," and a model add-back statute for captive REITS.

E. Training Program

Mr. Beier directed the committee to the written report. He noted that training event fees would be slightly increased in the next fiscal year, the first increase in fees in five years.

F. Other Committee & Program Business

There was no other committee or program business.

VIII. Uniformity

A. Hearing Officer Recommendations for Consideration

1. Model Statutes for Telecommunications Transactions Tax Centralized Administration

A public hearing was held April 10, 2012 and a hearing officer's report was issued on April 30, 2012. Ms. Bland was the hearing officer for this project. She informed the committee that there are three (3) separate uniformity models included in the Hearing Officer's Report rather than the usual single model regulation, guideline, or statute due to differing modes of state administration and imposition. The first model is state imposition of the transactions tax and state administration; the second model is local imposition of taxes and state administration; and the third model is local imposition of the tax with centralized local administration. Ms. Bland noted that Comcast and Verizon offered no opinion on the report, while AT&T, Time Warner Cable, and Sutherland support this model statute. Ms. Bland recommends that this uniformity proposal be considered for adoption by the Commission, noting that this would trigger a bylaw 7 survey of affected states.

Mr. Jennrich, while supporting the idea that the statute should be moved to a bylaw 7 survey, proposed that report contain a definition of customer if it is different from the term purchaser.. Similarly, Mr. Johnson said that the language of Section VI (B) be tightened with regard to the sentence, "Such transactions taxes shall not be withheld or reduced by the [state legislature] for any reason," suggesting that this sentence or clause should contain language that defines these taxes as funds already collected but not yet disbursed. He suggested substituting "trust fund proceeds" for "transaction taxes."

Mr. Johnson moved that the uniformity proposal, with appropriate language changes, be considered for adoption by the Commission. The motion passed, with Oregon abstaining.

2. Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries

Ms. Sicilian explained that this uniformity proposal failed to receive the required number of affirmative responses in a bylaw 7 survey to be considered by the Commission at its annual meeting in 2010. It was subsequently revised by the Uniformity Committee at the request of the Executive Committee.

A second public hearing was held on April 10, 2012 regarding the revisions, and a hearing officer's report was issued on May 2, 2012. Ms. Bland, the hearing officer, believes that the proposal should contain both the single model of remittance and the dual model of remittance, as proposed by the Uniformity Committee. Mr. Allan of Jones Day opined that the model should contain only the dual remittance model because the cause of uniformity would not be served if the model statute had both forms of remittance, adding that a single model of remittance results in greater compliance costs for the intermediary and for the hotelier.

Mr. Erdmann of Skadden Arps opined that the North Carolina single remittance model is not workable, while the South Carolina single remittance model is preferable to the single remittance model in the uniformity proposal.

Ms. Prosser moved that the uniformity proposal, with all suggested changes recommended by the hearing officer and the Executive Committee be considered for adoption by the Commission. The motion passed, with California abstaining.

B. Other Proposals before the Executive Committee for Action

1. Model Sales and Use Tax Notice and Reporting Statute

Ms. Sicilian explained that this uniformity proposal failed to receive the required number of affirmative responses in a bylaw 7 survey to be considered by the Commission at its annual meeting last year. It was subsequently revised by the Uniformity Committee at the direction of the Executive Committee. Ms. Sicilian, who served as the hearing officer, said that this proposal is not inconsistent with the goals of the Streamlined Sales and Use Tax Act (SSUTA) e-commerce rules.

Ms. Sicilian explained the idea behind this project to the committee. She told them that remote sellers with no burden of collecting and remitting sales and use taxes would be required to notify their customers that tax is not being collected and may be due directly to the Department. The model also requires remote sellers to send a summary report to their customers and to the revenue agency. Ms. Sicilian said that, in her opinion, this is consistent with *Quill*. Ms. Sicilian discussed how this analogous to a Colorado statute which is the subject of ongoing litigation and that the federal district court had issued a permanent injunction against the state from enforcing the Act.

Mr. Huddleston suggested that the Executive Committee not take any action on this proposal until the appeals process in the Colorado litigation is finished.

Ms. Prosser moved that the Executive Committee hold this project until the outcome of the Colorado litigation is known. The motion passed, with California and Oregon abstaining.

2. Recommended Amendments to Compact Article IV [UDITPA] Section 17
3. Recommended Amendments to Compact Article IV [UDITPA] Section 1(g)
4. Recommended Amendments to Compact Article IV [UDITPA] Section 1 (a)

5. Recommended Amendments to Compact Article IV [UDITPA] Section 9
6. Recommended Amendments to Compact Article IV [UDITPA] Section 18

Items 2 through 6 were discussed collectively by the committee. Ms. Sicilian referred to the committee to a report on these five proposals, and explained the background of this uniformity effort, including an initial effort by the Uniform Law Commissioners (ULC) to start a project to consider amendments to UDITPA which was subsequently abandoned. After the ULC suspended its efforts, the MTC initiated a uniformity project to develop amendments to five specific areas of Compact Article IV (which is UDITPA). After much work and discussion, these five proposals are before the committee to consider whether they should be moved forward to public hearing, the next step in the Commission's uniformity process.

The Chair recommended additional time to ensure that the members of the Commission have ample opportunity to review this matter with their staff, legislators, and other state policy makers before taking action on this project.

Mr. Johnson moved that these five proposals be held at the Executive Committee to allow time for states, as well as stakeholders, to examine these revisions to Article IV in greater detail. The motion passed unanimously.

In response to a question by Ms. Prosser, the committee's consensus was items being held at the Executive Committee, such as these proposals, would be placed on the agenda of the next Executive Committee meeting.

IX. Presentation by the Staff of the MA Department of Revenue Regarding Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That is not Subject to Income Tax

At the request of the Executive Director, Mr. Fatale gave a presentation to the committee on the results of the research conducted by the staff of the Massachusetts Department of Revenue into the increasing use of pass-through entities (LLC's, LLP's, S Corps., etc.) by insurance companies to organize their business. The research showed that prior to 2000, three major insurance companies used the traditional "C" corporate form to own their real estate investments, and other business interests. These entities were subject to state corporate income tax laws, although the dividends paid to the parent company were not subject to state corporate income taxes.

After 2000, however, the forms of the businesses owned by the insurance companies were converted to pass-through entities. The income of the pass-through entities was not subject to state corporate taxation and the income passed to the parent company, which was also not subject to state corporate taxation (because they were insurance companies subject to the gross premiums tax), resulting in a substantial loss of income to Massachusetts.

Industry representatives stated that they did not see a problem with the use of pass-through entities and were quick to note that the conversion of their owned business interests from "C"

corporation form to pass-through entity form was not motivated by tax avoidance factors, but other factors, such as ease of creation and closing these types of entities. Industry representatives further warned the committee that imposition of taxes on the pass-through entities could result in states imposing retaliatory taxes.

State representatives noted that although tax avoidance may not have been the main motivation for the changes in organization, the states were nevertheless concerned about tax revenue losses.

Mr. Fatale's presentation was for the committee's information only, so no deliberation or action ensued.

X. Federal Issues With State Tax Implications

Mr. Lucchi of Patuxent Consulting provided information to the committee about recent congressional activity and the various federal bills currently in play. He said that because of the upcoming elections, there would most likely be no congressional action on any of the bills that have implications for state taxation. He pointed out, however, that there are three Streamlined Sales & Use Tax or related bills — H.R. 2701/S. 1452 the Main Street Fairness Act; H.R. 3179, the Market Place Equity Act; and S. 1832, the Market Place Fairness Act — under consideration that might have a chance of activity before the August recess.

XI. Upcoming Meetings and Events

Mr. Beier told the committee that the Annual Meeting Seminar on August 1st in Grand Rapids, Michigan, will have three speakers: Sanjay Gupta of Michigan State University will present on the impact of FIN 48 and Schedule UTP (UTP), Michael McIntyre of Wayne State University will discuss tax avoidance by multinational businesses, and John Kincaid will speak on federalism. He also noted that both the Paull Mines Award and the Wade Anderson Medal will be presented at the luncheon that day.

[Beginning at 2:50 p.m., closed sessions were then held on items relating to the National Nexus Program, the Joint Audit Program, and pending litigation and Commission personnel matters.]

XII. Resumption of Public Session and Reports from Closed Session

The open session resumed at 3:21 p.m. There were no reports from the closed session.

XIII. Adjournment

The meeting was adjourned at 3:26 pm.