



**Minutes of the Executive Committee
Thursday, May 9, 2012
Washington, D.C.**

I. Welcome and Introductions

The Chair called the meeting to order at 8:31 a.m. Eastern Time and confirmed the presence of a quorum. The following persons were in attendance:

In Person			
Name	Affiliation	Name	Affiliation
Cory Fong	North Dakota	Kathryn Pittman Todd Lard	Sutherland
Julie McGee	Alabama	Ferdinand Hogroian	COST
Steve Cordi	District of Columbia	Jim Hall	ACLI
Shirley Sicilian Lila Disque Roxanne Bland Sheldon Laskin Bill Six Tom Shimkin Mia McCarthy Elliott Dubin Joe Huddleston Greg Matson	MTC	Joe Crosby	Multistate Associates
Nancy Prosser	Texas	Jim Rosapepe Len Lucchi	Patuxent Consulting
Bruce Johnson	Utah	By Telephone	
Demesia Padilla	New Mexico	Name	Affiliation
Rich Jackson Tom Katsilometes	Idaho	Les Koenig Ken Beier	MTC
Mike Kadas Gene Walborn	Montana	Wood Miller	Missouri
Gary Humphrey	Oregon	Tom Atchley Walter Anger	Arkansas
Michael Fatale	Massachusetts	Myles Vosberg Matt Peyerl Dee Wald	North Dakota
Michael Bryan	New Jersey	Charlie Lorenson	West Virginia
Robert Montellione	Prudential	Terry Frederick	Sprint
Deborah Bierbaum	AT&T	Jamie Fenwick	Time Warner
Michael Smith	Hancock	Amy Hamilton	Tax Analysts

The Chair also noted that the committee would not be discussing the Art. IV proposal since a hearing officer report was not ready.

II. Initial Public Comment Period

The Chair informed those in attendance that the committee would be taking up a number of uniformity proposals, and public comment would also be available then. He noted people had the option to wait until the proposal of interest came up. There were no public comments at this time.

III. Approval of Minutes of Executive Committee Meetings on December 6, 2012

Upon a motion duly made by Ms. Prosser, the minutes were approved.

IV. Report of the Chair

A. Election of Vice Chair and Treasurer for Unexpired Term Following Vacancy by Operation of Bylaw 3(c)(2)

The Chair recounted that Alana Barragán-Scott was appointed as the Director of the Missouri Administrative Hearings Commission in December, and this resulted in a vacancy in the office of vice-chair. He has appointed Ms. Magee, Alabama's Revenue Commissioner and the Commission's treasurer, to serve out the remainder of Ms. Barragán-Scott's term. This resulted in a vacancy in the office of treasurer, and the Chair appointed Ms. Padilla, New Mexico's Secretary of Taxation & Revenue, to serve out the remainder of Ms. Magee's term.

Upon a motion duly made by Mr. Cordi, the committee elected Ms. Magee and Ms. Padilla to their respective appointments.

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

The Chair further recounted that because Ms. Padilla was one of the at-large members of the committee, he appointed Mr. Jackson, Chairman of the Idaho State Tax Commission, to serve out the remainder of Ms. Padilla's at-large term.

Upon a motion duly made by Ms. Padilla, the committee elected Mr. Jackson to his appointment.

C. Resolutions Committee

The Chair asked for one or more persons to work with the Commission's legal division on reviewing resolutions and making recommendations to the Commission on renewal. Mr. Cordi volunteered and was identified as chair of the Resolutions Committee.

D. Nominating Committee

The Chair said that he would work with Mr. Huddleston to develop a slate of officers and at-large Executive Committee members to stand for election at the Commission's annual meeting, and so was identified as chair of the Nominating Committee.

V. Report of the Treasurer

A. Financial Report for the Period July 1, 2012 – March 31, 2013

Mr. Huddleston presented the financial report for the nine-month period July 1, 2012 – March 31, 2013. There was a current deficit in General Operations for the current fiscal year due to California's withdrawal from the Commission; the effect of which was reduced by waiting to fill the counsel position on January 1, 2013. There was a Joint Audit Program surplus of \$388 thousand. The Commission had originally planned a surplus of \$141 thousand for this period for the audit program. There were small deficits in the training program, and the Commission remains committed to providing training services on a cost basis. There were also variances in audit reimbursements and training fees due to timing. Salaries and retirement showed a positive variance due to the delay in filling certain positions until January 1, 2013.

Upon a motion duly made by Ms. Magee, the financial report was approved.

B. 2013-2014 Budget Review & Approval

Mr. Huddleston provided the committee with a budget review for the coming year and projections based on the best estimates for the succeeding three years. He is recommending membership, nexus, and audit program fee increases of 2%. The Commission took a large hit in potential revenues when California left the Commission, but made substantial adjustments, so that with a minimal increase we will be able to meet our budgetary goals. He pointed out that the general membership assessment has not been raised since 2009. Total membership assessment for 2014 is slightly over \$1.2 million. Important factors listed in the expenditure budget section of the budget memo include reducing total operational expenses slightly over \$110 thousand. The Commission eliminated funding for policy department interns and eliminated two administrative positions. The budget includes an 8% healthcare premium increase, although the actual percentage increase is currently unknown. In addition, it proposes a 2% overall salary adjustment. Mr. Huddleston offered to answer any questions.

Ms. Prosser asked whether the 2% increase was being proposed for the next 4 fiscal years. Mr. Huddleston confirmed it was, but noted it was for planning only, as increases have to be approved each year. Mr. Johnson expressed his appreciation for keeping MTC operations in the black, but questioned whether such a large surplus was necessary. Mr. Huddleston explained there are future audit positions we anticipate having to fund out of the surplus for at least a

couple of years. The Chair expressed his appreciation to Mr. Huddleston for maintaining the budget, as well as to the staff for its efforts to reduce costs.

Upon a motion duly made by Ms. Magee, the financial report was approved.

VI. Report of the Executive Director

A. Report

Mr. Huddleston presented his report, which outlined all program activities for the previous nine months. He noted the list of outside presentations and activities. The Commission tries to interact with both the public and private sectors as often as possible, and to maintain as much transparency as possible. Mr. Huddleston asked Mr. Matson to address the technology addendum to his report. Mr. Matson reminded those present that the committee directed technology updates from the Executive Director following suspension of the Technology Committee. He called attention to the upgrades that have been made at the Commission, including new VoIP phones. Staff has also been working on a state contact portal. Regarding the website, he said that we are looking at replacing the content management system, which will improve the look and feel of the website.

B. Discussion of Multi-state Transfer Pricing Audits

Mr. Huddleston noted that the Uniformity Committee had considered a § 482 project but ultimately decided not to pursue it. Their general consensus was that states are largely unable to effectively do those types of audits, and various states have already adopted statutes to address transfer-pricing situations. The Commission has been approached about starting a multi-state transfer-pricing audit program, and Mr. Bryan, Director of the New Jersey Division of Taxation, joined the meeting to discuss his request.

Mr. Bryan noted IRC § 482 is a complex body of tax law, and taxpayers are often large, well-resourced, and well-prepared. New Jersey feels there is potential there for audits, but finds it difficult to attract and compensate talent. So he thought about using the Joint Audit Program at the Commission or something analogous to it. Mr. Huddleston stated he had let Mr. Bryan know that if there was sufficient interest among the states, we could begin to think about laying the groundwork for such a program. He added this is a project that would have to be multi-year in scope and we would have to have a separate funding mechanism agreed to by the states who wanted to participate.

Ms. Magee stated Alabama is very interested as well. Mr. Johnson stated he understood there are cross-border issues, but wondered how much of it was based on separate reporting state vs. combined reporting states. He's unsure how much benefit there would be to Utah, a combined

state. Mr. Bryan stated he hasn't quantified it, and is unsure whether it would be of much benefit to a combined filing state.

At the request of the Chair, Mr. Koenig opined that no one currently on staff could perform the type of work New Jersey is looking for, and it would require special training or new staff or both. Mr. Johnson pointed out a Congressional Research Service report that came out a couple months ago looked at several tax havens and the amount of income apportioned to Bermuda for some years was 200-300% of the GDP of Bermuda. So transfer pricing issues are a real concern internationally.

Mr. Huddleston noted that we have a number of separate entity states participating in the audit program, and wondered how many of those would be interested, and how many combined reporting states would want to look at international transactions. He recommended speaking with other separate entity states that might be interested in participating. The Commission can figure out what it would cost to start up and maintain the dedicated staff necessary to do this. The Chair asked Mr. Huddleston and the audit staff and Audit Committee to look into the issue and report back at the next meeting.

VII. Committee & Program Reports

A. Audit Committee

Mr. Koenig noted that the Audit Committee has met three times in this fiscal year. There was excellent participation at these meetings and the vast majority of the audit program states have been present. Most meetings were spent on two compliance strategic planning projects.

B. Litigation Committee

Ms. Sicilian presented the Litigation Committee report. The Litigation Committee has met twice in person over the fiscal year. In Grand Rapids, Michigan, the committee reviewed congressional and Supreme Court activity and heard a report on sourcing income from sales and licensing of pre-written software. At the March meeting in St. Louis, Missouri, the committee heard staff presentations on federal activity affecting state taxation, Compact Article III election litigation, and class actions and the false claims act. The Litigation Committee also held informational and training sessions for state tax attorneys, two in person and four by teleconference, where attorneys heard presentations on state litigation of multistate interests. Michael Fatale was this year's winner of the Paull Mines award.

C. Nexus Committee

Mr. Shimkin reported that the Nexus Committee oversees voluntary disclosure, and so far this fiscal year they have raised a little over \$7 million for the states. The committee has been focused on three different projects: (1) updating the disclosure agreements, (2) updating the

procedure for voluntary disclosure, and (3) updating the nexus charter. A copy of the draft charter is included in the report. Ohio withdrew from the nexus program earlier this year, as did California's Franchise Tax Board. The committee recommends meeting thrice annually, instead of twice, and has had confidential meetings regarding compliance projects.

D. Uniformity Committee

Mr. Miller, chair of the Uniformity Committee, presented the committee's report. The committee has met in person twice, and has met with the sales and use tax subcommittee twice by teleconference. Several drafting groups and workgroups have met regularly including an industry-state work group for financial institutions apportionment. Robynn Wilson, chair of the Income & Franchise Tax Uniformity Subcommittee, has taken up and led that subcommittee on a process improvements project that will feed into the Commission's strategic planning effort. They are also implementing advances through technology. In the Sales & Use Tax Uniformity Subcommittee, chaired by Richard Cram, work continues on an affiliate nexus statute. In December, the committee expanded that concept to take into consideration additional nexus guidance. There will be teleconferences in April, May, and June to continue that work.

E. Training Program

Mr. Beier provided the Training Program report. He added that since the current training report was written, the Commission has added a statistical sampling course for October, in Colorado. Mr. Huddleston stated there is a bit of a backlog for training requested by the states, and training is currently being scheduled for next winter. He also noted the training events put tremendous strain in the audit, legal, and nexus staff, but we endeavor to provide the highest level of training on a cost basis.

F. Other Committee & Program Business (if any)

There was no other business. The Chair thanked all the committee chairs for their time and effort.

VIII. Recommended Amendments to Public Participation Policy and Bylaws Regarding Notice Requirements

Ms. Sicilian provided background on this item at the request of the Chair. She said that at its December meeting, the Executive Committee considered a report regarding a complaint pursuant to the Commission's Public Participation Policy § 24. The Commission had issued a notice for a strategic planning compliance project working group meeting in Michigan, and staff received a complaint that the notice was not timely. This revealed that the rule in question is open to interpretation. After discussion, the Executive Committee asked staff to further develop suggested amendments to both the Commission's Public Participation Policy and bylaws to

clarify the notice requirements for meetings and public hearings, and also to address procedures when a requisite notice period is not met.

Ms. Sicilian asked Mr. Laskin to summarize the recommended amendments. Mr. Laskin said the proposed changes clarify in the definition sections of the bylaws and the Public Participation Policy that “day” means a calendar day. It was best to do this through the definitions section because the word appears frequently. The recommended amendments also had to address how you count the days. In counting the 30-day notice requirement and the 10-day notice requirement, the amendments make clear that day one is the day after the notice.

Mr. Laskin explain further that when notice is not properly given, there must be a proper complaint, pursuant to § 24 of the Public Participation Policy. With respect to public hearings, the complaint must be made within 30 days of the hearing, or within 15 days of the completion of the hearing officer’s report. A hearing will be re-heard if there is a properly filed complaint. And for meetings, there has to have been some action taken at the meeting before a member of the public is entitled to a do-over. He also described provisions regarding the evidence and testimony that has already been presented.

Mr. Frederick asked what would be done under these amended procedures if we get a proper complaint prior to a meeting. Mr. Laskin stated the meeting could be postponed.

Ms. Prosser asked whether calendar day includes holidays and weekends. Mr. Laskin confirmed that it does. There was a discussion about whether this should be further clarified, but the ultimate consensus of the committee was that the recommended amendments were ready for publication and adoption and the committee should proceed.

Upon a motion duly made by Mr. Johnson, the committee approved the recommended amendments for adoption by the Commission and direct staff to ensure proper notice and publication under bylaw 12.

IX. Strategic Planning Report

The Chair reported on the previous day’s meeting of the Strategic Planning Steering Committee. The steering committee has focused on two goal areas—engagement and compliance. The engagement goal is to increase the level of institutional knowledge within the states about the Commission. He said that the steering committee is pleased with the results so far, and now it needs to be institutionalized. In the compliance goal area, there are two ongoing projects: the early no-change audit and the audit nomination process projects. The audit nomination project is nearly complete and we expect to have final reports for both compliance projects at by the time of the annual meeting.

X. Uniformity

A. Hearing Officer Recommendations for Consideration

The hearing officer report on Recommended Amendments to Compact Article IV was not discussed, since it was not finished.

B. Other Proposals before the Executive Committee for Action

1. Proposed Model Statute for Partnership or Pass-Through Entity Income Ultimately Realized By an Entity That Is Not Subject To Income Tax

Ms. Sicilian provided background for this item at the request of the Chair. She indicated that the project began in 2008, when the Executive Committee received a request from the Commissioner in Massachusetts. She identified the concern. The purpose of a pass-through entity is to address double taxation. Income realized by pass-through entities is not taxed at the entity level, but the income flows through to its owner and is usually taxed at that point. So the income is subject to tax once instead of twice. The Massachusetts Commissioner pointed out that sometimes the pass-through owners are entities that also do not pay corporate income tax, like insurance companies, banks, and telecommunications companies. If that type of entity owns a pass-through entity, the pass-through benefit can result in no tax ever being paid.

Ms. Sicilian noted that over the past few years, the Commission received input from several states and many groups, including the National Association of Insurance Commissioners, and assembled a proposal for public hearing. The hearing officer was Mr. Laskin. The Executive Committee asked for some additional information from the Uniformity Committee, which assembled the requested information, and last December there was still some concern raised by the insurance industry. Massachusetts proposed a solution, which went back to Uniformity Committee. After review of the additional draft solution, the proposal is now back before this committee.

Mr. Laskin added that the first paragraph of the proposal is the one that originally came out of the public hearing process. The new provisions are the two optional numbered provisions at the bottom. The first would disregard the disregarded entity's income if it arose as a result of a transaction between that entity and the insurance company that owned it and the 50% ownership was satisfied. The second one would disregard if it arose out of real estate transactions where at least 50% of the disregarded entity was owned by insurance company.

Mr. Hall, the regional vice president of ACLI, a member of the insurance industry coalition which has been working with the MTC, spoke on behalf of the insurance trades.

He asked the Commission not to go further with the proposal due to concerns that have been documented throughout the process. They believe the proposed model law is based on a faulty notion that the tax system favors insurance companies. In addition, they argue it results in discrimination against certain pass-through entities based on the entity that holds it, and will result in retaliatory taxes. Mr. Johnson asked Mr. Hall about the passage of the Gramm-Leach-Bliley Act, which allowed the trades to engage in other financial industries' activities in a manner they could not have before. Mr. Hall felt this had not changed things enough to justify new tax regulation, particularly because each industry would be subject to the other industry's regulator. He said many of the pass-through entities perform activities that could be performed by the insurance company itself, which would not be subject to the state income tax.

Mr. Crosby, a principal with Multistate Associates who serves as an advisor to the insurance industry, proffered that the project would affect the credibility and effectiveness of the Commission. He argued that the MTC's record in the legislative arena is mixed, at best. Legislative proposals are too frequently ignored and not implemented, and this leads the state legislative bodies to question the efficacy and utility of the MTC. He said the present proposal is an example of an attempt to develop model legislation that again is likely be ignored, and urged the Commission to review its legislative policy program. He also submitted letters into the record from NCOIL and NCSL. Mr. Johnson stated he was unsurprised that the insurance companies haven't gone to the legislature with concerns regarding their great tax savings, and asked if the Commission doesn't bring this to the attention of the legislators until the insurance industry tells us to, how do they get proposals to consider? Mr. Crosby countered that even with the Commission's adoption of this proposed model legislation, it would unlikely to be adopted by any state.

Mr. Huddleston mentioned the correspondence delivered by Mr. Crosby from NCOIL and other legislators. He received a transmission today from New Hampshire Representative Kenneth Wyland, who is a member of ALEC. It expresses the same sentiments as the NCOIL letter: The proposed model lacks support from state legislative bodies, and could result in discriminatory taxation.

The Chair then solicited opinions from the committee on how to proceed. Ms. Magee recommended not ending the project but keeping it at the Executive Committee level. Mr. Walborn pointed out that many things tax administrators do are unpopular, including proposing rules that are not popular which legislators may then consider, even if none of them do. He found value in model statutes even if not immediately adopted by states. He would recommend leaving this model here at this stage or proceeding to a bylaw 7 survey, which would indicate which states want to proceed.

The Chair asked whether it would be beneficial to ask the staff to turn this into a report or policy paper, to be used by the states that choose to follow it. He acknowledged Mr. Crosby's statements resonated with him, and some improvements could be made to the uniformity process that would be more collaborative on the front end and result in greater success ultimately.

Ms. Sicilian agreed that a final project report is something that could be put together and would be beneficial to any state that would be considering this issue in the future. Mr. Huddleston stated that if the Executive Committee wanted to conclude the project here, a final project report makes a great deal of sense because a summary of the disparate information we've received would provide a great resource for states to use in the future. He added that we take on difficult issues and after they go through the 'grinder' of the legislative process they do not always look the same, but that does not reduce the value of what the Commission does.

Mr. Walborn pointed out we have done white papers before, but now it sounds like the committee may be adopting something new to the uniformity process—would the tendency be to have more and more of what we do end up as a white paper or report? The Chair said that he believes it does not because we are looking for the best tax policy, and with this proposal, we touch upon another body of legislation that is not in our arena. He thinks we can still go down this path of looking at a final project report to capture the tremendous amount of input, work, and analysis, but distinguishes this from what we normally do when these proposals deal exclusively with corporate income tax issues.

Mr. Johnson characterized the discussion thusly: We're ending the project and creating a final project report to make sure the work we did will not be lost. The industry spent many hours responding to our concerns, and vice versa. If a state wants to proceed, they'll have the language and our analyses.

Ms. Wald asked whether this white paper or project report would rise to the level of a policy statement and guideline. The Chair clarified that he is proposing a final project report to memorialize what we have done, to which the states could look for guidance. Mr. Johnson agreed, and said the industry should have an opportunity to comment on the white paper if necessary, and it should be presented to the committee but not approved, disapproved, or adopted as a reflection of our policy.

Upon a motion duly made by Mr. Johnson to terminate the project and instruct staff to prepare a final project report to incorporate and preserve the work that has been done and the policy arguments on both sides, and present the final project report to the Executive Committee but not for approval or disapproval, the motion passed.

2. Proposed Resolution in Support of State Consideration of the Streamlined Sales and Use Tax Agreement's Telecommunications Sourcing Rules and Definitions

Ms. Sicilian reported that this project came up in 2007 when Mr. Huddleston asked for industry suggestions regarding models that would be useful to them. This was one of the suggestions from the telecommunications industry. The Uniformity Committee thought the best approach was to draft a resolution recognizing the Streamlined Sales & Use Tax Project's good work and recommend the states consider the Streamlined Sales and Use Tax Agreement (SSUTA) telecommunications definition and sourcing language as an option. The Uniformity Committee is recommending the Executive Committee run this through the customary resolutions process managed by the Resolutions Committee. Ms. Sicilian pointed out that the resolution does not endorse or recommend SSUTA, but it does say we recommend states consider the telecommunications language within SSUTA.

The Chair then solicited public comments. Ms. Bierbaum stated that this resolution recognizes that the telecommunications industry has changed and many definitions are out of date, and by looking at this a state can see whether its definitions are out of date. She encouraged the committee to approve this resolution. Ms. Fenwick echoed Ms. Bierbaum's remarks.

Upon a motion duly made by the Chair that the resolution be processed by the Resolutions Committee for consideration by the Commission at its annual meeting in July, the motion passed.

3. Model Sales & Use Tax Notice and Reporting Statute

The committee has retained this proposal with no action, awaiting the outcome of *Direct Marketing Association v. Barbara Brohl* case in the U.S. Court of Appeals for the 10th Circuit. Ms. Sicilian reported that the case is still pending.

C. Other Uniformity Matters (if any)

There were no other matters to discuss.

XI. Federal Issues with State Tax Implications

Mr. Rosapepe and Mr. Lucchi of Patuxent Consulting provided an analysis of current federal legislative issues. Mr. Rosapepe provided some background on the current posture of the two political parties, and also discussed the prospects of federal tax reform.

Mr. Lucchi provided an update on the status of several pieces of legislation that had been introduced, and some that are expected to be introduced any time now. Regarding the Marketplace Fairness Act, he noted that it passed in the Senate on May 6 via a method that bypassed the Finance Committee. Now it goes to the House, where it has been referred to the Committee on the Judiciary. Mr. Lucchi indicated that it would unlikely come out of that committee without some things added to it, such as BATSA, or the digital goods bill. Regarding the Mobile Workforce Act, which models the MTC model law but changes the threshold, he noted that it passed the House last year and likely will again.

Another bill that has already been introduced is the permanent Internet Tax Freedom Act. This is a moratorium on taxing internet access, which was set to expire in 2014. This bill would make the moratorium permanent and get rid of the exceptions for the grandfathered states.

Two other bills likely to be introduced soon are the digital goods bill and the BATSA, which imposes a physical presence test for all state business activity taxes. So this should be an active year, in contrast with last year.

XII. Upcoming Meetings & Events

The Chair noted that the next Commission meeting will be the 46th Annual Conference & Meetings, July 22-25, 2013, San Diego, California. Mr. Huddleston also noted that the fall committee meetings will be held at the Hotel Monteleone in New Orleans, December 10-12, 2013.

XIII. Closed Session

The committee went into closed session at 1:42 p.m. Eastern Time.

XIV. Resumption of Public Session and Reports from Closed Session (if any)

The closed session ended at 1:57 p.m. Eastern Time. There was nothing to report from the closed session.

XV. Adjournment

The meeting adjourned at 2:03 p.m. Eastern Time.