



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

To: Executive Committee
From: Joe Huddleston
Date: November 17, 2008
Subject: Report of Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2007 through November 10, 2008.

I. Programs & Activities

A. Joint Audit Program

The audit division completed 2 income tax audits and parts of 3 other income tax audits for the first quarter of this fiscal year. The audit division also completed 4 sales tax audits and parts of 1 other sales tax audit during the same period. There are 19 income and 28 sales tax audits in progress.

As of September 30 there was an income tax auditor vacancy and a sales tax auditor vacancy. Interviews were held in September for both positions. Terry Daehn, a former California Franchise Tax Board auditor with 30 plus years of experience, was hired to fill the income tax position. Ki Yun, a former Ohio auditor with 6 years experience, was hired to fill the sales tax vacancy. With these two hirings, the MTC audit division is fully staffed.

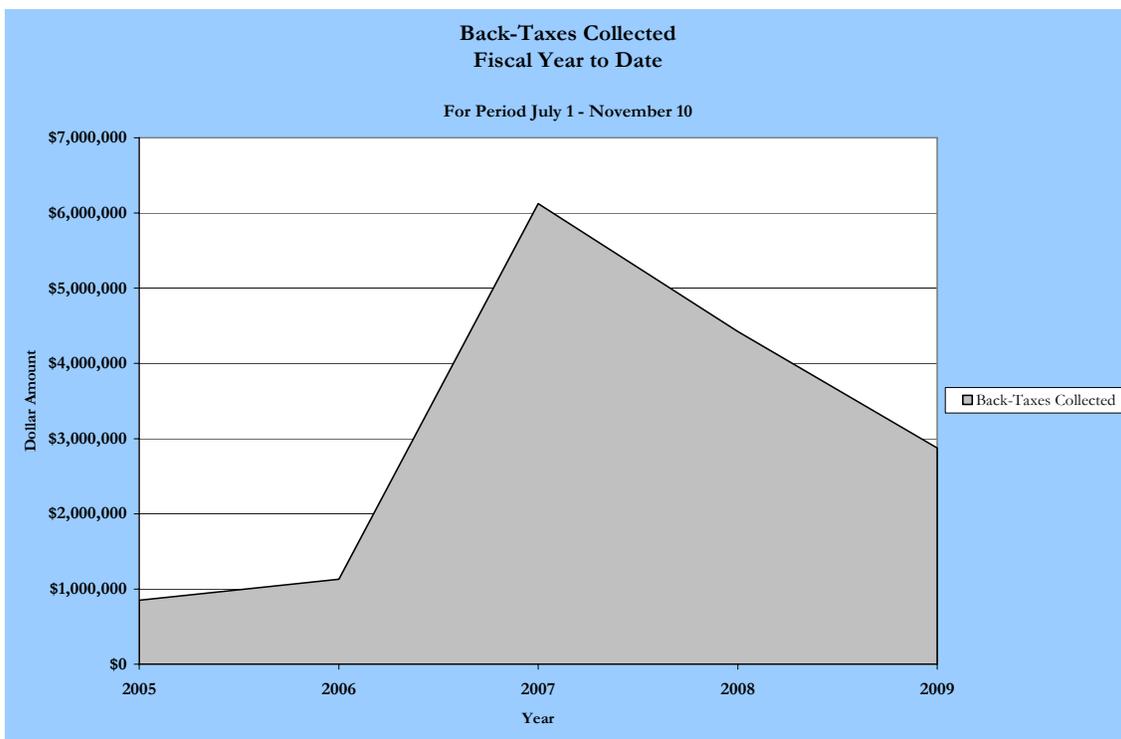
Members of the audit division staff, with the MTC deputy director, continue work on revising the MTC Income and Sales Tax Audit Manuals.

B. National Nexus Program

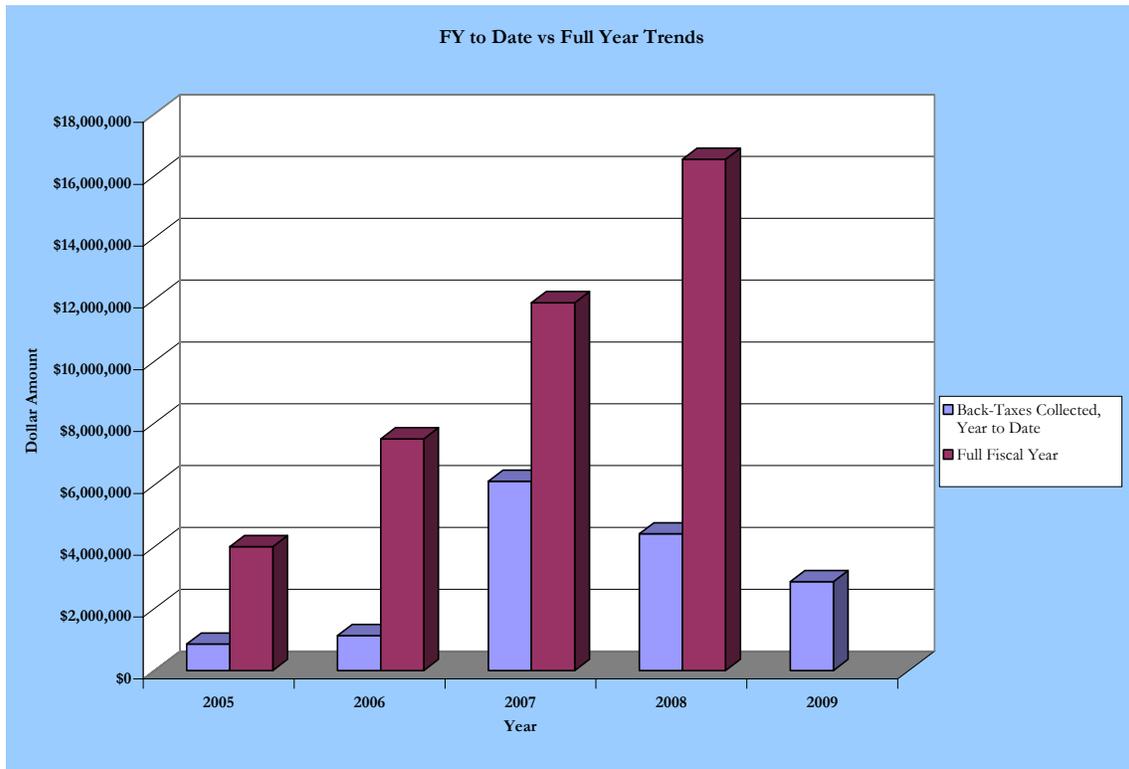
The Voluntary Disclosure Program executed contracts with 33 taxpayers, which resulted in 125 separate contracts with states and collected \$2,875,327 of revenue on behalf of member states. The program has opened 28 new files (representing 221 potential disclosure contracts).

Brochures advertising the Voluntary Disclosure Program were distributed by states, mostly Texas, New Jersey, and Connecticut (they give them to auditees and others at the end of their process in case the auditee has a problem in another state). In addition, a number of applicants state that they learned of our multi-state program from a state's website. States are encouraged to put a link on their voluntary disclosure pages to the multi-state program, and to inform taxpayers at the end of a nexus examination that any multi-state issues may be addressed through the Commission.

The chart below shows revenue trends for the time period July 1 – November 10 from Fiscal Years 2005 to 2009:



The chart below shows the comparison of year-to-date trends against the end of fiscal year totals:



While the totals for 2009 to-date are lower than they were for 2007 and 2008, two things should be taken into account: (1) the correlation between the year-to-date numbers and the end-of-fiscal-year numbers is weak, and (2) the 2009 year-to-date numbers are likely to increase as recently-executed contracts are entered into the database.

Nexus schools were held in September in Omaha, Nebraska, and in October in Boise, Idaho. A school is planned for December 16 and 17 in Olympia, Washington. Arkansas will likely host a school in Little Rock in the spring.

At the direction of the Nexus Committee, staff has opened an investigation of another remote vendor. This new investigation involved Nexus Program states testing the return policy to see whether the brick & mortar stores favor returns from its remote affiliate over those from competing vendors. The research verified that the target company's brick & mortar stores accept gift certificates sold by its remote affiliate. The results of the tests were inconclusive, however – there was no universal preference for the product of the remote company's affiliate, and the sample size was necessarily small.

Nexus staff continues to work with the Nexus Committee to develop guidelines for voluntary disclosure procedure. This is an effort to provide guidance to nexus staff, make voluntary disclosure more transparent to taxpayers, and increase efficiency through uniformity. The Nexus Committee committed the guidelines to another drafting group,

which met once, and returned a revised product to the Committee. The Committee will consider the entire document at its November 2008 meeting.

Nexus staff continues to work with the Technology Committee on a project to improve the program's voluntary disclosure management software, which will improve efficiency, reduce processing time, and thereby make the program more attractive to taxpayers. The Commission is finishing up its work with Revenue Solutions, Inc. (RSI) to develop the new system. The only major piece as yet undone is design and implementation of the online voluntary application process. The database portion for use by Commission staff is undergoing final testing by Commission staff and will be deployed within the next few weeks.

C. Legal

The legal division staffs the Uniformity and Litigation Committees; organizes bi-monthly state tax attorney teleconferences; files amicus briefs; participates as speakers at conferences, symposiums and institutes; and teach at MTC training. Upon request, the legal staff provides direct state support by reviewing and commenting on state's own draft statutes, regulations and legal briefs. They provide legal support for the MTC's audit division, training division, and general administration.

Over the period July 1 to November 10, 2008, the Legal staff worked on the following Uniformity Committee projects:

- ***Amendments to Compact Art. IV and UDITPA*** (under development at Executive Committee and at the Uniform Law Commission)
- ***Amendments to MTC Model Financial Institutions Apportionment Rule*** (under development by a Uniformity Committee Special Work Group)
- ***Model Audit Sampling Authorization Statute and Accompanying Regulation*** (adopted by the Commission – July, 2008)
- ***Model REIT Statute*** (adopted by the Commission – July, 2008)
- ***Model Telecommunications Special Apportionment Regulation*** (adopted by the Commission – July, 2008)
- ***Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries*** (under development at the Uniformity Committee)
- ***Amendments to MTC Model Regulation regarding Section 18*** (under development at the Uniformity Committee)

- ***Model Statutes for Telecommunications Transaction Tax Administration*** (under development at Uniformity Committee)
- ***New Project Addressing Issues Raised by Non-Corporate Income Taxpayers*** (under development at Uniformity Committee)
- ***Review MTC Model Sales & Use Tax Related Statutes and Regulations in light of Streamlined Sales Tax Agreement*** (under review at Uniformity Committee)

Legal staff supported the Litigation Committee during this period by organizing presentations and case summaries for the July meeting. They also organized a “satellite” Litigation Committee meeting, held in October 2008 in Nashville, Tennessee, concurrently with the Hartman Conference. In addition, legal staff hosted two bi-monthly teleconferences for state tax attorneys, one in September and one in November. These teleconferences generally involve two presentations on topics of current interest to the states and allow time for discussion. All government tax attorneys are invited to attend.

The legal staff filed one amicus brief during this period, *Commissioner of Revenue v. Comcast*, Massachusetts Supreme Judicial Court. Oral argument was held November 4, 2008. Members of the legal staff also worked on a memorandum to be offered to the California Board of Equalization in a case involving Article III of the Compact.

Legal staff provided input to several states on issues in various legal contexts, including review of draft briefs and draft regulations and legislation. They also monitored and reported on the activities of the Streamlined Sales and Use Tax Governing Board, Inc. and its Committees. Legal staff continues to provide assistance to the audit division on several matters, including a challenge to the Commission’s authority to audit on behalf of sovereignty and associate-member states. They provided legal assistance regarding general Commission administration including assistance for the Commission’s alternative dispute resolution process. In addition, they contributed to review and mark-up of bills before Congress.

Legal staff taught at the MTC Nexus School in Omaha, Nebraska and in Boise, Idaho.

D. Policy Research

MTC Project on Revising Model Statute on Apportioning Income of Financial Institutions — The policy research director and two interns, Cameron Snow and Ann Boyd Watts, are developing a database of industries, other than financial services industries, that have substantial income from interest and fees for services similar to services provided by financial services.

Administration of Telecommunications Transaction Taxes — The policy research director is assisting the Sales & Use Tax Subcommittee of the Uniformity Committee with their project of developing models of centralizing administration of local telecommunications transactions taxes.

Multistate Tax Commission Review —

- Wrote one article with former policy research intern, Cameron Snow (“Musings from the BAT Cave”) for summer 2008 issue of the *Review*. This article will also appear in a November issue of State Tax Notes.
- Writing article with former policy research intern, Ann Boyd Watts (“Did FIN 48 Increase Tax Compliance Among Non-Filers?”) for next issue of the *Review*. This article may also appear in State Tax Notes.

Other Activities —

- Organized the session on Taxes and Education for the National Tax Association’s Annual Meeting in Philadelphia, Pennsylvania; also will be a discussant for two other papers in different sessions.
- Presented short paper on federal intervention in state taxation at the FTA Revenue Estimating and Research Directors annual meeting in Portland, Maine, in September 2008.
- Monitoring state adoption of MTC model statutes, regulations, and guidelines.

E. Training

The training staff has ongoing contact with state personnel to ensure state training needs are being monitored and met.

Training staff supported the following training activities:

- Statistical Sampling for Sales and Use Tax Audits, July 14-17, 2008 in Cheyenne, Wyoming for 31 students
- Nexus School, September 15-16, 2008 in Omaha, Nebraska for 28 students
- Nexus School October 21-22, 2008 in Boise, Idaho for 28 students

Training staff also supported the 2008 FTA-MTC Audit and Computer Technology Workshop in Albuquerque for 65 attendees on October 5-8.

Training staff have also been working with testing the website online registration process, projected to be initially used for training and events scheduled in March 2009.

II. Administration

A. Personnel

The following are changes to the Commission's staff during this time:

- Terry Daehn joined the Chicago office of the MTC as an auditor on October 16, 2008.
- Ki Yun joined the Chicago office of the MTC as an auditor on November 3, 2008.
- Ann Boyd Watts, a doctoral student at the University of Tennessee at Knoxville, worked as a policy research intern from September 2 to November 7.

B. Benefits

Health Insurance — Effective September 1, 2008, the Commission changed its group health insurance plan from a partially self-funded plan with Guardian to a fully premium paid group health insurance plan with CareFirst (BlueCross/BlueShield). This change should save the MTC approximately \$30,000 per year.

Retirement Plans — The Commission is in the process of changing its Retirement Plan and Deferred Compensation Plan broker, record-keeper, and custodian from ICMA-RC (all three roles) to Aintree Capital, Daily Access Corporation, and Reliance Trust Company, respectively. The transfer of plan assets from ICMA-RC to Reliance Trust Company is scheduled to occur on or about December 15, 2008. These changes should save the MTC approximately \$20,000 per year based on current fee levels.

Preparing for this transition uncovered a need to bring the Commission's Retirement 401(a) Plan (a defined contribution plan) into compliance with the changes to the tax laws since 2002. This plan was effective July 1, 1986, and had been amended up through January 17, 2002, for GUST (a series of four tax laws that made changes to how retirement plans are operated). Getting the plan into compliance will involve several steps:

- Amend the plan for 401(a)(9) Cash Out and the Economic Growth and Tax Relief Reconciliation Tax Act (EGTRRA) Good Faith Amendment.
- Forms will be completed and submitted to the IRS under the Voluntary Correction Program (VCP) submission program. This program is used to disclose the plan's deficiencies and resolution.
- An IRS determination letter will then be obtained on the qualified tax-exempt status of the plan.
- The plan will be restated for EGTRRA and submitted to the IRS for approval.

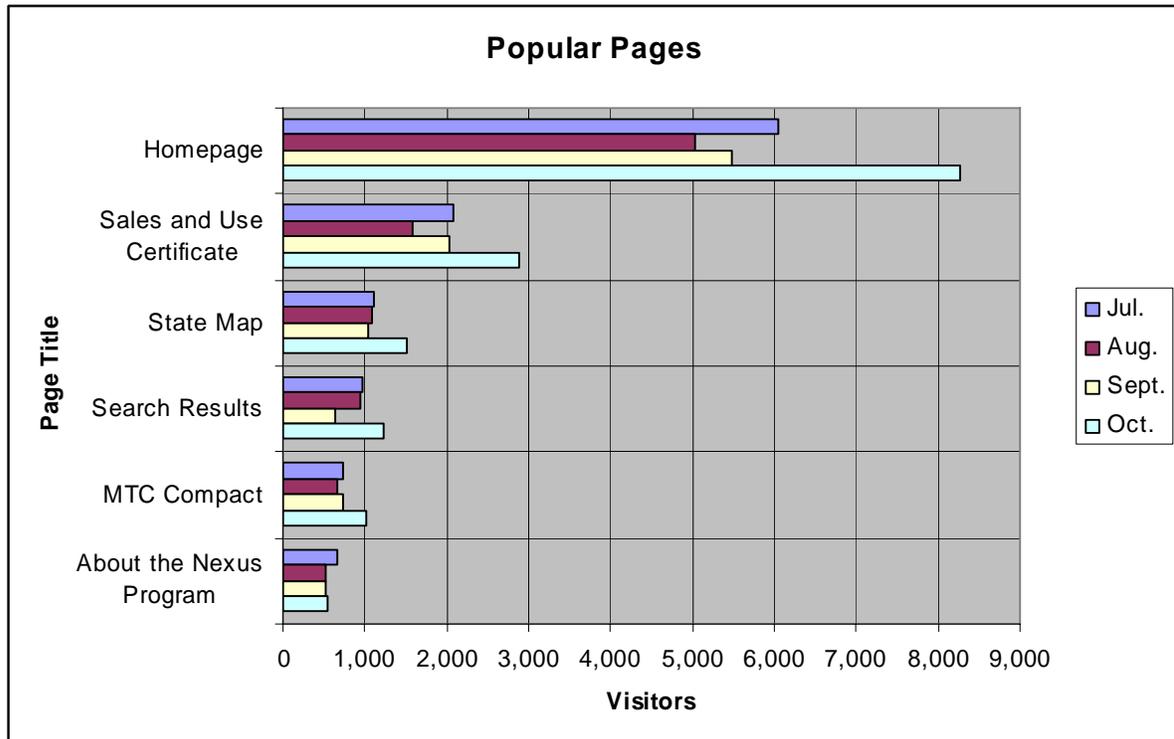
The total estimated fees for all of the above are estimated to be \$10,000. The Deferred Compensation (457) Plan will be restated and there will be no fees to restate this plan.

C. Website

The website continues to function as a major component of the Commission’s public presence. The information below is based on site traffic reporting through October 31, 2008:

	Total Hits	Total Page Views	Avg Page Views/Day	Total Visitors	Avg Visitors/Day
July	390,544	50,914	1,642	12,455	401
August	278,906	35,185	1,135	10,813	348
September	305,694	39,147	1,304	10,475	349
October	377,449	47,111	1,519	13,391	431

The popularity of these pages on the website has been consistent since launch in November 2006:



The following chart shows the top five referrers for July through October (Yahoo edged out the state of Idaho for the fifth spot in September):

	Jul.	Aug.	Sept.	Oct.	Total
No Referrer	8,015	6,907	6,375	7,721	29,018
Google	1,419	1,339	1,373	1,862	5,993
Alabama	467	427	444	416	1,754
Iowa	308	204	175	188	875
Yahoo	88	76	116	270	550

During the month of July, the 41st Annual Conference & Committee Meeting Agenda page received 752 visitors and peaked to fifth most popular page.

- Income and Franchise Tax Uniformity Subcommittee received 194 visitors.
- Full Uniformity Committee received 112 visitors
- Annual Business Meeting Agenda received 107 visitors
- Executive Committee Agenda received 98 visitors

D. Facilities

The physical build out and renovation of the Commission's D.C. office related to acquiring an additional 565 sq ft. of contiguous space is complete.

The Commission would like to acquire up to two building parking permits at its D.C. office location beginning January 1, 2009. Estimated annual cost for these two permits would be \$2,500.

The lease for the office in Houston expired September 30, 2008, and was not renewed. Termination of this lease will save approximately \$8,200 per year at current budgeted rental amounts.

III. Presentations

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

- SEATA Annual Conference, Williamsburg, Virginia (Huddleston)
- NYU Advanced State & Local Taxation Conference, New York, New York (Huddleston)

AUGUST

- MSATA Annual Conference, Madison, Wisconsin (Huddleston)

SEPTEMBER

- WSATA Annual Conference, Whitefish, Montana (Huddleston)
- TEI, California Regional Chapters Meeting, Redwood City, California (Sicilian)
- Taxpayers' Federation of Illinois State & Local Tax Conference, Springfield, Illinois (Huddleston)
- BNA-Sutherland Multistate Tax Roundtable, Washington, D.C. (Sicilian)
- NESTOA Annual Conference, Newport, Rhode Island (Huddleston)
- FTA Revenue Estimating Conference, Portland, Maine (Dubin)

OCTOBER

- IPT, Advanced State Income Tax School, Atlanta, Georgia (Sicilian)
- COST Annual Meeting, Orlando, Florida (Fort)
- National Association of State Tax Bar Associations, San Francisco, California (Huddleston)
- Pennsylvania Institute of CPAs Multistate Tax Conference, Malvern, Pennsylvania (Dubin)
- Paul J. Hartman State & Local Tax Forum, Nashville, Tennessee (Huddleston, Matson, Fort)

NOVEMBER

- Michigan Association of CPAs Michigan Tax Conference, Detroit, Michigan (Huddleston)
- IPT Income Tax Symposium, Denver, Colorado (Huddleston)
- California Tax Policy Conference, San Francisco, California (Huddleston)