



MULTISTATE TAX COMMISSION

**Minutes of the Executive Committee Meeting  
July 30, 2009  
Kansas City, Missouri**

**I. Welcome and Introductions**

The Executive Committee commenced its meeting at 8:35 a.m. Central Time on July 30, 2009. The following participated either in person or *via telephone*:

| <b>Name</b>             | <b>Affiliation</b> | <b>Name</b>                 | <b>Affiliation</b> |
|-------------------------|--------------------|-----------------------------|--------------------|
| Tim Russell             | AL                 | <i>Tremaine Smith</i>       | WA                 |
| Danny Walker            | AR                 | Craig Griffith              | WV                 |
| Ben Miller              | CA FTB             | <b>Private Sector/Other</b> |                    |
| Steve Cordi, Chair      | DC                 | Todd Lard                   | COST               |
| Ed Many                 | GA                 | John Allan                  | Jones Day          |
| Ted Spangler            | ID                 | Nicola White                | Tax Analysts       |
| <i>Joan Wagon</i>       | KS                 | Dan Robillard               | Expedia            |
| Michael Fatale          | MA                 | Jamie Fenwick               | Time Warner Cable  |
| Donna Donovan           | MI                 | Terry Frederick             | Sprint             |
| Larry Wilkie            | MN                 | Rilla Livingston            | IRS                |
| Alana M. Barragan-Scott | MO                 | Daniel Schibley             | CCH                |
| Wood Miller             | MO                 | Karen Boucher               | Deloitte Tax LLP   |
| Dan Bucks               | MT                 | <i>Diann Smith</i>          | Sutherland         |
| Gary Helman             | NE                 |                             |                    |
| <i>Rebecca Abbo</i>     | NM                 | <b>MTC Staff</b>            |                    |
| Lennie Collins          | NC                 | Ken Beier                   | Greg Matson        |
| Cory Fong               | ND                 | Elliott Dubin               | Thomas Shimkin     |
| Mary Loftsgard          | ND                 | <i>Joe Huddleston</i>       | Shirley Sicilian   |
| Ryan Rauschenberger     | ND                 | Les Koenig                  | William Six        |
| Donnita Wald            | ND                 |                             |                    |
| Elizabeth Harchenko     | OR                 | <b>MTC Consultants</b>      |                    |
| Gary Johnson            | TX                 | Jim Rosapepe                | <i>Len Lucchi</i>  |
| Bruce Johnson           | UT                 |                             |                    |

The chair noted that a quorum was present. Joe Huddleston expressed his regrets that he could not be there in person.

## **II. Public Comment**

Mr. Lard of COST expressed his appreciation to MTC for devoting resources to the mobile workforce issue and emphasized the range of groups, in addition to COST, that are involved in this: the American Payroll Association, NCSL, and state and local governments. He anticipates that many groups, including COST and MTC will be receiving a letter from NCSL suggesting a discussion on this, and he hopes that this can lead to a solution.

## **III. Approval of Minutes of Executive Committee Meeting on May 7, 2009**

Upon a motion duly made by Ms. Harchenko, the minutes of the May 7, 2009, Executive Committee meeting were approved.

## **IV. Report of the Chair**

The Chair noted a July 20, 2009 letter from the Organization for International Investment regarding the treatment of income from payments to non U.S. affiliates by businesses operating in the states under the MTC model combined reporting statute's waters edge election. In reference to such payments, Ben Miller noted that the U.S. Internal Revenue Code (IRC) does include these payments as income and requires information reporting on them. California had intended to issue rules to define a measure of net income for these payments; however, after reviewing California's legislative history on this, California has dropped its effort to develop rules for this type of income. Mr. Miller emphasized that, under the IRC, this is U.S. source income and that the states should consider taxing this income. The Executive Committee sent the letter to the Uniformity Committee for its consideration.

## **V. Report of the Treasurer**

Mr. Matson began by explaining that with a vacancy in the Treasurer position, the role filled by the Executive Director, and, for today, by Mr. Matson, since Joe Huddleston is not participating in person. Mr. Matson then provided a financial report for the period July 1, 2008 – June 30, 2009, referring the committee to the written report provided in the materials.

Following comments on fund balances, and variances for revenues and expenses, upon a motion duly made by Mr. Bucks, the Report of the Treasurer was approved.

## **VI. Report of the Executive Director**

The report of the Executive Director was deferred to the Annual Commission meeting immediately following this meeting.

## **VII. Committee and Program Reports**

Regular reports by the committees and programs were deferred to the Annual Commission meeting immediately following this meeting.

## **VIII. Other Reports--Report of the Resolutions Committee**

Mr. Johnson (Utah) reviewed the policy statements, policy resolutions, and honorary resolutions that comprise the report of the Resolutions Committee. Ms. Harchenko suggested the addition of the honorary resolutions for Tim Blevins for his service as chair of the Technology Committee and for Mr. Miller for his support of the project to revise UDITPA at the Uniform Law Commission and the MTC Uniformity Committee that had been approved by the Executive Committee in January. It was agreed that these would be explicitly added to the other honorary resolutions for the Commission consideration later in the day, rather than ratified with other Executive Committee action for the year.

## **IX. Uniformity Projects**

### **A. Update on UDITPA Revision Project & Related Matters**

Ms. Sicilian noted that the MTC still has this project, but that it has been discharged by the Uniform Law Commission (ULC). Following discussion on the process for referral to the Uniformity Committee and the letter from the MTC to the ULC, Mr. Bucks moved that revisions to Article IV of the Compact (specifically, the five areas suggested as focal points for ULC's revision project) be referred to the Uniformity Committee and that it come back to the Executive Committee if the Uniformity Committee recommends the scope of issues be changed. Mr. Lard commented on the need for public involvement in the process. Mr. Johnson (Utah) suggested that the letter describing the five areas being referred to the Uniformity Committee be circulated to the Executive Committee, in case members want to make comments. Mr. Bucks's motion passed with two dissenting votes.

### **B. Uniformity Recommendations for Review**

Ms. Sicilian noted that a telecommunication item and amendments to Section 18 would be on the agenda for the next meeting of the Executive Committee.

## **X. Federal Issues with State Tax Implications**

Mr. Rosapepe, along with Mr. Lucchi, who participated via telephone, reported on federal issues. Mr. Rosapepe commented that health care reform is the paramount issue this summer and that it's very important politically for the administration to succeed. In response to Mr. Russell's comment on the state tax implications of health care reform, Mr. Johnson (Texas) reported that Texas had looked at the worst care scenario and estimated a maximum revenue loss of \$350 to \$400 million—primarily due to loss of taxes on health insurance.

Mr. Rosapepe also stated that while the argument for preemption of state tax authority is weakened by the current state fiscal situation, the backers of legislation preempting state tax authority have not let up. Thus, it is important for the states to remain vigilant.

### **A. Mobile Workforce State Income Tax Fairness and Simplification Act**

Mr. Rosapepe reported that NCSL, at its meeting the previous week, decided not to be become involved in this issue at this time.

### **B. Business Activity Tax Simplification Act**

Mr. Rosapepe noted that there is still the potential for this legislation to be tied to a streamlined sales tax bill. Mr. Bucks, referring to recent denials of cert by the U.S. Supreme Court (*Capital One* and *Geoffrey*), commented that the preponderance of case law is now on the side of the states; thus, it makes sense for the other side to focus on Congress.

### **C. State Tax Administration Assistance Act**

The willingness of the House Ways and Means Committee staff to take on this legislation, which provides for refund offsets for non-resident tax debts, shows a high-level of understanding of the issue. In response to a question about opposition to the legislation, Mr. Rosapepe stated that there is concern from staff members from other committees that this could be expanded to other refund offset provisions. Ms. Harchenko noted that state courts have a refund offset proposal and that the National Judicial Conference is trying to get something like this passed. Noting the potential for the tax and non-tax offsets to end up in separate committees, Ms. Harchenko indicated that she will find out and let Mr. Rosapepe know the committee of jurisdiction for the courts bill. Mr. Russell noted that he has talked with members of Congress from Alabama about the tax offsets, but that he is concerned that child support offsets will be viewed as more important, since they are larger than tax offset amounts.

Mr. Bucks added a general legislative comment—that Senator Baucus has received his required report on the tax gap, and is concerned about how these issues spill

over to the states. Dan thinks that this could enhance opportunities for the states to work with the IRS on tax enforcement efforts.

#### D. Voice over Internet Protocol Sourcing Act

Mr. Bucks explained that with the wireless sourcing legislation, sourcing comported with authority to tax. However, with Voice over Internet Protocol (VOIP), the results are not always the same, and there can be a disconnect between sourcing and jurisdiction to tax. His concern is that this could end up being a preemption bill.

#### E. Cell Tax Fairness Act & Mobile Wireless Tax Fairness Act

Mr. Lucchi noted that hearings were held on this legislation, which now has about 100 co-sponsors, in June 2009.

#### F. State Video Tax Fairness Act

Mr. Rosapepe stated that hearings on this legislation are likely by the fall.

#### G. Sales Tax Simplification

Mr. Rosapepe noted that this legislation may be losing some momentum, and has not been introduced. Mr. Lucchi added that at the NCSL meeting the previous week there was discussion of a suggestion that federal legislation only apply to SST member states; however this proposal was not adopted.

#### H. Hotel Intermediaries

Legislation on this has not been introduced; however, Mr. Lucchi noted that litigation (approximately forty lawsuits) against intermediaries helps to maintain interest in possible legislation.

#### I. Other Federal Legislative Activity

In reference to the U.S. Treasury proposal on tax sheltering, Mr. Rosapepe noted that the Obama administration approach is to let Congress come up with the details, and that there may be legislation on this later in the year. He added that Patuxent Consulting has been in touch with Obama administration staff members who are very interested in the effect of tax shelter activity on the states.

**XI. Future Meetings & Event Plans**

A. Review of Upcoming Meetings & Events Schedule

Mr. Matson noted that the reduced number of in-person meetings for some committees, resulting from direction provided by the Executive Committee in May, does not preclude teleconferences if necessary to accomplish the committee's business, including the Executive Committee. He added that the May 2010 meeting will be in the Washington, D.C., area.

B. Site for 2012 Annual Commission Meeting

Mr. Matson noted that it might be good to head east following the 2010 meeting in Hood River, Oregon, and the 2011 meeting in Montana; however, he added that any offers to host the meeting will be most appreciated.

**[The committee recessed and went into closed session at 11:00 a.m.]**

**XII. Resumption of Public Session and Reports from Closed Session**

The public session resumed at 11:40 a.m. The Chair indicated that there was no action to report from the closed session.

**XIII. Adjournment**

Upon a motion duly made by Ms. Harchenko, the Executive Committee adjourned at 11:42 a.m.