



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

To: Executive Committee
From: Joe Huddleston
Date: November 24, 2009
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2009 through November 20, 2009 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The audit division completed 1 income tax audits and parts of 6 other income tax audits as of September 30, 2009. The audit division also completed 2 sales and parts of 4 other sales tax audits as of September 30, 2009. There are currently 21 income and 32 sales tax audits in progress. There were several income tax cases that were delayed by the taxpayers due to staff turnover in their tax departments. The program director anticipates that 14 income and 21 sales tax cases should be concluded by June 30, 2010.

The following chart summarizes hourly data for *completed* audits during the first quarter of this fiscal year:

	Income & Franchise	Sales & Use	Total
Total Audits	1	2	3
Total States Audited	27	26	53
Total Hours	2,080	1,507	3,587
Average Hours per State	77	58	68

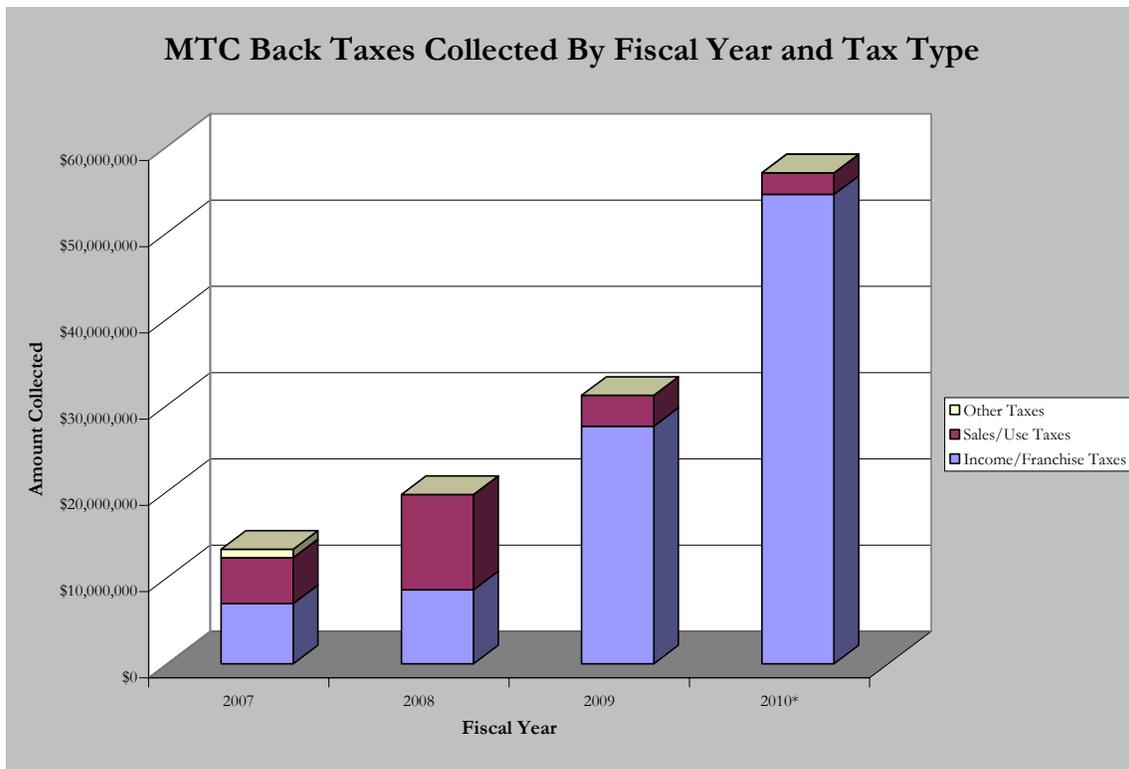
Members of the audit division staff, with the MTC deputy director, continue work on revising the MTC Income and Sales Tax Audit Manuals. The deputy director will report on the progress of this work during the Executive Committee meeting on December 3, 2009.

Audit division staff provided instruction at two statistical training classes during the period covered by this report.

B. National Nexus Program

As of October 31, 2009, the Voluntary Disclosure Program executed contracts with 50 taxpayers, which resulted in 175 separate contracts with states and collected \$56,952,924 of revenue on behalf of member states. The program has opened 30 new files (representing 367 potential disclosure contracts).

The chart below shows the back taxes collected in recent fiscal years, including the current one:



Notably, income & franchises taxes overtook sales & use taxes as the primary generator of revenue in 2009 and 2010 (to date). This is because most of the tax revenue during these years derives from a single taxpayer group, which disclosed only that type of tax. As in most years, the great majority of tax collected comes from the top 1% of participating taxpayers, which may lead to extreme variations in revenue results from year to year.

Nexus division staff provided instruction at one nexus school during this period.

C. Legal

The Legal Division staffs two standing committees: Uniformity and Litigation. The Division also holds bi-monthly government tax attorney teleconferences; files amicus briefs in state and federal courts; participates as speakers at conferences, symposiums and institutes; and teaches MTC training courses. Upon request, the legal division provides individual state support by reviewing and commenting on states' draft statutes, regulations and legal briefs. The division also provides legal support for the Commission's audit division, training division, and general administration.

Legal Division responsibilities for the Uniformity Committee this quarter involved staffing eleven projects:

- *Amendments to Compact Art. IV and UDITPA* (under development at Uniformity Committee and, until recently, at the Uniform Law Commission)
- *Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries* (hearing officer's report pending before the Executive Committee)
- *Amendments to MTC Model Financial Institutions Apportionment Rule* (under development by a Uniformity Committee Work Group)
- *Model Withholding Statute for Employees Engaged in Multistate Activity* (under development at Uniformity Committee)
- *Amendments to MTC Model Regulation Regarding Section 18* (under consideration for public hearing at Executive Committee)
- *Model Statutes for Telecommunications Transaction Tax Centralized Administration* (under development at Uniformity Committee)
- *Non-Corporate Income Taxpayers* (under development at Uniformity Committee)
- *Principles Governing State Transactional Taxation of Telecommunications, Vendor-Vendee* (under consideration for repeal at Executive Committee)
- *Applicability of Sales and/or Use Tax to Computer Software* (under review at Uniformity Committee)
- *Model Add-back Statute to Address Captive REITs* (under development at Uniformity Committee)
- *Review of Certain MTC Model Combined Reporting Statute Water's-Edge Provisions* (under consideration at Uniformity Committee)

Legal Division supported the Litigation Committee during this quarter by organizing and making presentations for the July 2009 meetings. The focus of the July meeting was to improve efficiency and revenue enhancement for processes involving revenue department legal divisions. Attendees were asked to share ideas for implementing best practices in all aspects of state tax litigation, including identification of audit prospects, improved settlement techniques and improved discovery techniques. Staff also made several presentations at this meeting. In addition, legal staff hosted a bi-monthly teleconference for government tax attorneys to discuss litigation involving federal statutory limitations on state and local taxation of satellite television broadcasting.

The Legal Division worked on the following *amicus curiae* briefs this quarter:

- *Franchise Tax Board of the State of California v. Gilbert P. Hyatt*, Nevada Supreme Court (brief submitted; awaiting reply brief)
- *Blue Bell Creameries, L.P. v. Chumley*, Petition for Review to Tennessee Supreme Court (brief due November 30)
- *DirectTV, et al., v. Levin*, Ohio Supreme Court (brief due December 14)
- *Levin v. Commerce Energy*, U.S. Supreme Court (brief due December 24)

This quarter, the Legal Division consulted with individual states regarding on-going litigation and draft legislation. The Division monitored and reported on the activities of the Streamlined Sales and Use Tax Governing Board and its Committees. In addition, the Division contributed to state consideration of bills before Congress, including the VoIP bill.

During this quarter, the Legal Division provided support for the Commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, and filing corporate registrations and reports. The Division provided legal assistance to the Commission's audit division on a number of challenging audit related procedural and substantive issues. Legal Division taught MTC nexus training in Topeka, Kansas.

D. Policy Research

MTC Project on Revising Model Statute on Apportioning Income of Financial Institutions — The policy research director and interns, Cameron Snow and Ann Boyd Watts, developed 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. The policy research director continues to provide support for this project.

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 —

- Completed production of summer 2009 issue of the *Review*.
- Wrote one article with former intern, Ann Boyd Watts (“Did FIN 48 Increase Tax Compliance Among Non-Filers?”) for the summer 2009 issue.
- For next issue of the *Review*, writing article with Policy Research summer intern, Benjamin Devlen, on the transition from General Accounting Principles (GAAP) to International Financial Reporting Standards (IFRS).
- For next issue of the *Review*, writing article on the corporate income tax capacity of the states.

Other Activities —

- Worked with Census Bureau personnel (Governments Division) on improving quarterly estimates of state & local taxes, revising definitions of state & local taxes initially imposed on businesses, and contents of 2012 Census of Governments.
- Organized meeting of Tax Economists Forum on State Fiscal Conditions.
- Monitoring of state adoption of MTC model statutes, regulations, and guidelines.

E. Training

Training staff supported the following training activities:

- *Computer Assisted Audit Techniques Using Excel and Basic Random Sampling*
September 14-18 in Mitchell, South Dakota, for 19 students from the South Dakota Department of Revenue and Regulation. This was a combined session for two separate courses
- *Nexus School*
October 19-20 in Topeka, Kansas, for 14 students (10 from Kansas and one each from Alaska, Missouri, Nebraska, and Utah)
- *Statistical Sampling for Sales and Use Tax Audits*
October 19-22, in Chicago, Illinois, for 10 participants from Illinois, Maryland, Office of the Revenue Commissioners of Ireland, and the private sector.

The following courses are currently scheduled:

- *Nexus School*
December 7-8 in Lansdowne, Virginia

- *Statistical Sampling for Sales and Use Tax Audits*
March 22-25, 2010 in the Dallas, Texas area
June 14-17, 2010 in the Atlanta, Georgia area.

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

The director of training also prepared a summary of federal estate tax proposals being considered in Congress on behalf of the Policy Research division and prepared a background paper on investment banks for the November 23rd meeting of the Financial Institutions Apportionment Work Group in support of that uniformity project.

II. Administration

On October 29, 2009, final amounts held by ICMA-RC (prior custodian of the MTC Retirement Plan and MTC Deferred Compensation Plan assets) for the benefit of the participants in the MTC Retirement Plan and MTC Deferred Compensation Plan were liquidated. All these participant accounts were in a stable value fund (the ICMC-RC Plus fund) which, due to fund restrictions, were not able to be liquidated until this October. Following liquidation, all funds were wired to Daily Access (the current custodian of the MTC Retirement Plan and MTC Deferred Compensation Plan assets). The funds have been credited to the appropriate participant accounts at Daily Access based on participant information provided by ICMA-RC.

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

- IPT Annual Conference, San Francisco, California (Huddleston)
- NYU Advanced State & Local Taxation Conference, New York, New York (Huddleston)

AUGUST

- TEI Corporate Income Tax Training, Indianapolis, Indiana (Fort)

SEPTEMBER

- American Bar Association Tax Section Meeting, Chicago, Illinois (Sicilian)
- Paul J. Hartman State & Local Tax Forum, Nashville, Tennessee (Fort)

- Eastern States Legislative Fiscal Officers Association Annual Meeting, Annapolis, Maryland (Huddleston)
- FTA Revenue Estimating Conference, Des Moines, Iowa (Dubin)

OCTOBER

- Regional SALT Forum, New Hampshire Society of CPAs, Manchester, New Hampshire (Sicilian)
- COST Annual Meeting, Las Vegas, Nevada (Huddleston)
- National Association of State Tax Bar Associations, Washington, D.C. (Huddleston)

NOVEMBER

- Michigan Association of CPAs Michigan Tax Conference, Novi, Michigan (Huddleston)
- California Tax Policy Institute, San Diego, California (Sicilian)
- University of New Mexico Law School Tax Law Club, Albuquerque, New Mexico (Fort)
- NTA Annual Conference on Taxation, Denver, Colorado (Dubin)