



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

To: Executive Committee
From: Joe Huddleston
Date: May 4, 2009
Subject: Report of Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2008 through April 30, 2009 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The audit division completed 2 income tax audits and parts of 4 other income tax audits as of April 1, 2009. The audit division also completed 9 sales and parts of 2 other sales tax audits as of April 1, 2009. There are currently 23 income and 32 sales tax audits in progress. The following chart summarizes hourly data for *completed* audits during the first three quarters of this fiscal year:

| | Income & Franchise | Sales & Use | Total |
|--------------------------------|-------------------------------|------------------------|--------------|
| Total Audits | 2 | 9 | 11 |
| Total States Audited | 54 | 108 | 162 |
| Total Hours | 3,946 | 6,949 | 10,895 |
| Average Hours per State | 73 | 64 | 67 |

The states in several audits, along with Commission audit and legal staff, met via numerous teleconferences to discuss particular audits in progress.

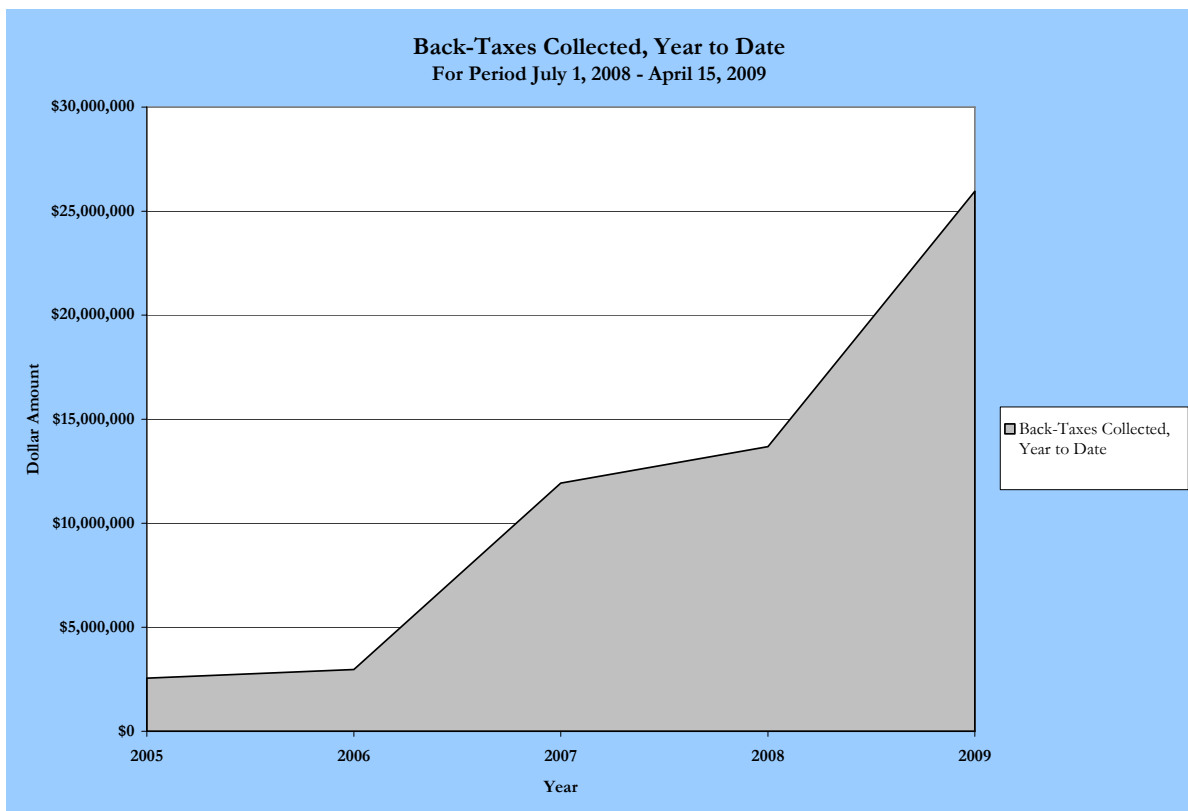
Members of the audit division staff, with the MTC deputy director, continue work on revising the MTC Income and Sales Tax Audit Manuals.

Audit division staff provided instruction at two statistical training classes and one combined reporting school during this period.

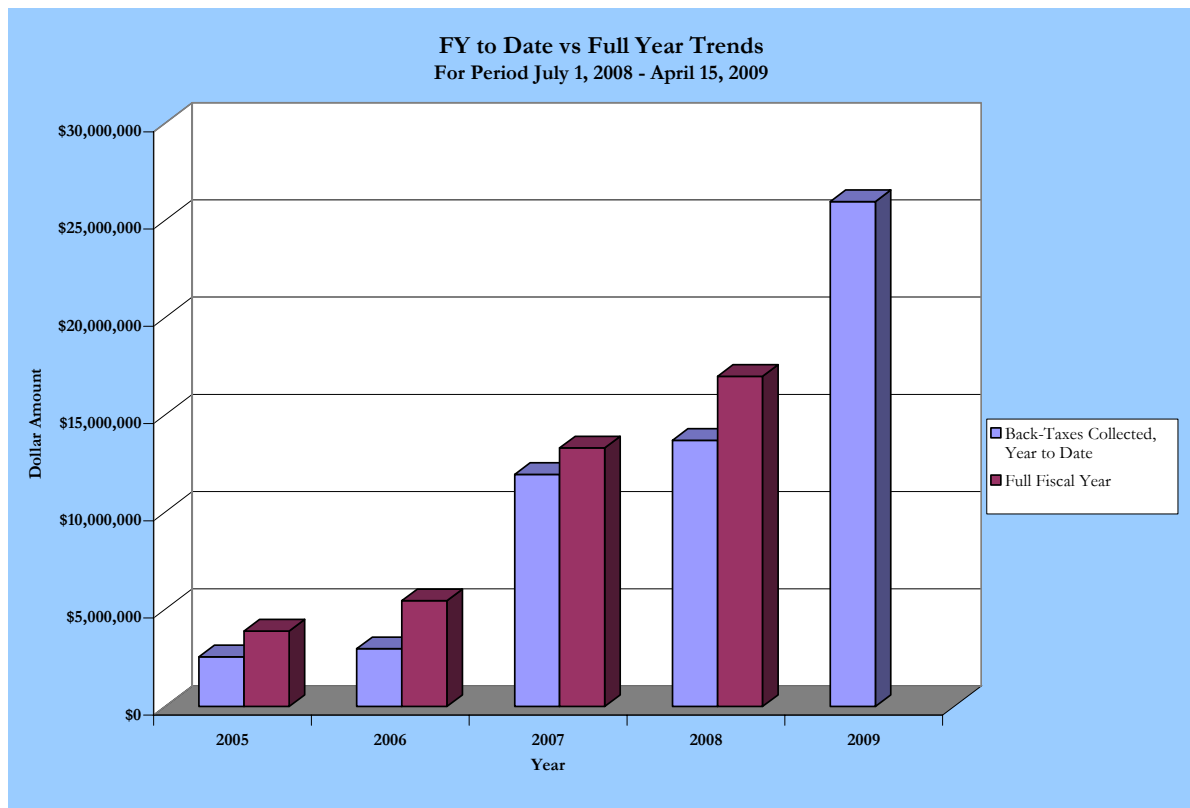
B. National Nexus Program

As of April 15, 2009, the Voluntary Disclosure Program executed contracts with 61 taxpayers, which resulted in 288 separate contracts with states and collected \$25,962,887 of revenue on behalf of member states. The program has opened 63 new files (representing 567 potential disclosure contracts).

The chart below shows revenue trends for the time period July 1 – April 15 with respect to fiscal years 2005 through 2009. Only data with respect to the first 41 week period (approximately) of each year is presented (each year is a partial year):



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



While the revenue totals for 2009 to date are significantly higher than they were for 2007 and 2008, this large revenue amount is substantially due to a single taxpayer and the benefits are concentrated in a small number of states. This reliance on a few large taxpayers for the great majority of revenue has been the norm in recent years. Nevertheless, the 2009 numbers to date are indicative of a general upward trend in voluntary disclosure revenue and should be welcomed as a positive development in their own right.

Nexus division staff provided instruction at four nexus schools during this period.

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 teaches 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 Commission's programs and operations.

Legal division has staffed the following Uniformity Committee projects this fiscal year:

- *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)
- *Amendments to Compact Art. IV and UDITPA* (under development at Executive Committee and at the Uniform Law Commission)
- *Model Statute Clarifying the Tax Collection Responsibilities of Accommodations Intermediaries* (before the Executive Committee for consideration for public hearing)
- *Amendments to MTC Model Financial Institutions Apportionment Rule* (under development by a Uniformity Committee Special Work Group)
- *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)
- *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)
- *New Project to Consider Amendments to MTC Model Add-back statute to Address REITs* (under development at Uniformity Committee)

Legal staff supported the Litigation Committee during this period by organizing presentations and case summaries for the July and March meetings. They also organized a “satellite” Litigation Committee meeting, held in October 2008 in Nashville, Tennessee, concurrently with the Hartman Conference. Legal staff made several presentations on current legal issues at these meetings. In addition, legal staff hosted three bi-monthly teleconferences for state tax attorneys, in September, November, and January. They are currently organizing the May teleconference. 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 following amicus curiae briefs have been filed this fiscal year:

- *Commissioner of Revenue v. Comcast*, Massachusetts Supreme Judicial Court (decided in favor of taxpayer)
- *Ohio Grocers Association, et al. v. Wilkins*, Ohio Supreme Court (decision pending)
- *Polar Tankers, Inc. v. City of Valdez, Alaska*, United States Supreme Court (oral argument held April 1, 2009; decision pending)

Legal Division is also working an amicus brief to be filed on behalf of the California Franchise Tax Board in *Franchise Tax Board v. Hyatt*, currently before the Nevada Supreme Court. And, they are drafting a memorandum to be offered to the California Board of Equalization in a case involving Article III of the Compact.

Legal Division provided input to several states on issues in various legal contexts, including review of draft briefs, regulations, and legislation. They monitor and report 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 open records requests, required registrations and reporting, and assistance for the Commission's alternative dispute resolution process. In addition, they contributed to review and mark-up of bills before Congress.

Legal division staff provided instruction at three nexus schools and two combined reporting schools during this period.

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 Summer 2008 issue of MTC Review.
- Wrote one article with intern Cameron Snow (“Musings from the BAT Cave.” for the Summer 2008 issue of MTC Review. This article appeared in the November 12, 2008 issue of State Tax Notes.
- Writing article with former intern, Ann Boyd Watts (“Did FIN 48 Increase Tax Compliance Among Non-Filers?”) for next issue of MTC Review.
- Writing article on the corporate income tax capacity of the states.

Other Activities —

- Working with FTA, Rockefeller Institute, Bureau of Economic Analysis, D.C. Department of Revenue, and Census Bureau to make Census Bureau’s Quarterly Tax Report more timely and useful.
- Working with Census Bureau to revise definitions of state business taxes.
- Organized meeting of Tax Economists Forum on State Fiscal Conditions.
- Working with staff of state revenue agencies (Washington, Utah, Minnesota, and Tennessee) to devise methodology to estimate tax gap from remote, non-electronic business to business commerce and from remote, non-electronic business to consumer commerce.
- Recruiting for a summer policy research intern.
- Working with the director of training on the Annual Meeting Conference program in Kansas City in July.

E. Training

Training staff supported the following training activities:

- Statistical Sampling for Sales and Use Tax Audits, July 14-17, 2008, in Cheyenne, Wyoming, for 31 participants
- Nexus School, September 15-16, 2008, in Omaha, Nebraska, for 28 participants
- Nexus School, October 21-22, 2008, in Boise, Idaho, for 28 participants
- Corporate Income Tax (Part 1 only), December 8-9, 2008, in Boston, Massachusetts, for 50 participants
- Nexus School, December 16-17, 2008, in Olympia, Washington, for 44 participants
- Nexus School, February 9-10, 2009, in Baton Rouge, Louisiana, for 18 participants
- Statistical Sampling for Sales and Use Tax Audits, March 2-5, 2009, in Topeka, Kansas, for 10 participants
- Corporate Income Tax, April 20-23, 2009, in Charleston, West Virginia, for 43 participants in Part 1 and 16 participants in Part 2

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

The following courses and events are currently scheduled:

Nexus Schools

May 18-19, 2009, in Little Rock, Arkansas

October 19-20, 2009, in Topeka, Kansas

December 8-9, 2009, in the Washington, D.C., metropolitan area (National Conference Center in Lansdowne, Virginia)

Computer Assisted Audit Techniques Using Excel & Basic Random Sampling

September 14-18, 2009 in Mitchell, South Dakota

Statistical Sampling for Sales and Use Tax Audits

October 19-22, 2009 in Chicago, Illinois

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

Training staff have also been working with the website manager on implementation of an online registration process.

F. Other Activities

On March 24, 2009, staff met with representatives of the States of Jersey regarding the tax haven provision in the Commission's model combined reporting statute (this matter is covered in a separate memorandum).

On April 8, 2009, the deputy director and network administrator met with representatives from IRS Governmental Liaison & Disclosure and Office of Safeguards to discuss further implementation of the MOU between the Commission and 23 Joint Audit Program member states in respect of access to federal taxpayer information. The following is a summary of that discussion:

- An organizational overview of MTC was provided with more specific discussion about operation of the Joint Audit Program.
- The Commission anticipates only dealing with electronic records; initial transfer will occur though secure, physical media, but ultimately the plan is to use secure data transfer (SDT).

- Office of Safeguards will provide the staff with an SPR template for producing a safeguard procedure report (SPR).
- Additionally, Office of Safeguards suggested that the MTC collect the initial authorizations (“45-day letters”) from the MOU states and submit them at the same time as we submit our SPR, as this will ease IRS processing, which takes approximately 60 days.
- Office of Safeguards currently expects that MTC Safeguard Annual Reports (SARs) would be due January 31st each year; and that the Commission would likely be in the 2011 or 2012 Safeguards review cycle.
- The Commission will coordinate with Governmental Liaison representatives to determine what information to ask for initially and from which states (the terms of the MOU indicate that in almost all cases, the Commission’s FTI will come directly from the states). In addition, coordination with respect to data format will need to occur.

The IRS representatives were very helpful and will continue to work with staff in working through these issues.

II. Administration

A. Personnel & Benefits

There were no personnel changes to the Commission’s staff during the period November 10, 2008, through April 30, 2009.

The change to the Commission’s retirement and deferred compensation plans from ICMA-RC as broker, record-keeper, and custodian to Aintree Capital, Daily Access Corporation, and Reliance Trust Company, respectively, has been completed.

B. Facilities

Minor construction to prepare the server room in the headquarters office to meet the physical security requirements for handling FTI in accordance with IRS Publication 1075 has begun. This should be completed by the end of May.

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)
- TEI State and Local Tax School, Indianapolis, Indiana (Fort)

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)
- NTA 101st Annual Conference on Taxation, Philadelphia, Pennsylvania (Dubin)

DECEMBER

- NYU 27th Institute on State & Local Taxation, New York, New York (Huddleston)

- Taxation Section of Maryland State Bar Assoc. and the Graduate Tax Program at University of Baltimore's Second Symposium on State and Local Tax Policy: Expanding the Tax Base -- Policy, Legality and Practicality, Baltimore, Maryland (Laskin)

JANUARY

- NYU Tax Lunch Group Meeting, New York , New York (Huddleston)
- 18th Annual Ohio Tax Conference, Columbus, Ohio (Huddleston)

FEBRUARY

- Tax Council Policy Institute 10th Annual Tax Symposium, Washington, D.C. (Huddleston)

MARCH

- ABA/IPT Advanced Income Sales & Use Tax Seminar, Washington, D.C. (Huddleston)
- AFT Tax Auditors Meeting, Madison, Wisconsin (Huddleston)
- Uniform Law Commission UDITPA Study Committee, Chicago, Illinois (Huddleston, Sicilian)