



MULTISTATE TAX COMMISSION

Meeting of the Executive Committee

December 1, 2011

Charleston, South Carolina

I. Welcome and Introductions

The meeting was opened at 8:30 am by Cory Fong who determined that a quorum was present. The following individuals attended the meeting either in person or *via telephone*.

Name	Affiliation	Name	Affiliation
Julie Magee	AL	Private Sector/Other	
Robynn Wilson	AK	Terry Frederick	Sprint
<i>Ben Miller</i>	CA FTB	<i>Steve Kranz</i>	Sutherland
Steve Cordi	DC	Todd Lard	COST
Doug MacGinnitie	GA	<i>Amy Hamilton</i>	State Tax Notes
Pete Donnelly	GA	Dianne Smith	Sutherland
Jennifer Hays	KY	<i>Tripp Baltz</i>	BNA
Cynthia Bridges	LA	John Allen	Jones Day
Michael Fatale	MA		
Glenn White	MI	MTC Staff	
Jack Mansun	MN	Ken Beier	Greg Matson
Alana Barragán-Scott	MO	<i>Roxanne Bland</i>	<i>Thomas Shimkin</i>
Wood Miller	MO	<i>Elliott Dubin</i>	Shirley Sicilian
Dan Bucks	MT	Joe Huddleston	<i>Bill Six</i>
Rebecca Abbo	NM	<i>Les Koenig</i>	
Lennie Collins	NC		
Cory Fong, Chair	ND		
Myles Vosberg	ND		
Dee Wald	ND	MTC Consultants	
Gary Humphrey	OR	Jim Rosapepe	Elizabeth Harchenko
Jim Etter	SC	<i>Lenn Lucchi</i>	
Nancy Prosser	TX		
Bruce Johnson	UT		
Craig Griffith	WV		

II. Public Comment Period

There was no public comment during this portion of the meeting.

III. Approval of Minutes of the Executive Committee Meeting on July 28, 2011

Alana Barragán-Scott (Missouri) moved acceptance of the minutes from the July 28, 2011 meeting. This was approved unanimously by a voice vote.

IV. Report of the Chair

Mr. Fong explained that the sequence of some items on the agenda would be adjusted for schedule purposes (these minutes appear in agenda order, however). He then introduced the effort regarding commissioner outreach, recruitment and education. Ms. Barragán-Scott reviewed the plan for this effort and noted that contacts with Commissioners were expected twice a year. In reference to this topic, Mr. Fong explained that the members of the Strategic Planning Steering Committee realized that this effort needed to be undertaken regardless of the direction of the strategic planning effort.

Mr. Fong also cited communication from the NCSL Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce and the accompanying letter from the co-chairs of the task force, noting that he had met with the task force in Quebec City and Joe Huddleston had met with the task force in San Antonio; and suggested that this would be discussed during the discussion of uniformity proposals.

V. Report of the Treasurer

Ms. Magee presented financial statements for the four-month period ending October 31, 2011, referring to her memo. Joe Huddleston commented on the favorable picture for actual versus budgeted revenue and expenditures, and noted that the Commission has seen a decrease in its health insurance expenses and a decrease in audit travel expense. He also noted that the Commission is now trying to fill the two open audit positions that had been held open, pending clarification of the budget situation in some of the program member states.

Dan Bucks (Montana) moved acceptance of the report. This was approved unanimously by a voice vote.

Mr. Huddleston commented that the auditor's report presented an unqualified opinion. Jack Mansun (Minnesota) moved acceptance of the audit report. This was approved unanimously by a voice vote.

VI. Report of Executive Director

Mr. Huddleston reviewed highlights from his written report.

VII. Committee and Program Reports

A. Audit Committee

Les Koenig presented the report of the Audit Committee.

B. Litigation Committee

Shirley Sicilian presented the report of the Litigation Committee report.

C. Nexus Committee

Lennie Collins presented the report of the Nexus Committee report. In response to a question from Bruce Johnson, he explained the difference between the total amount of collections and the amount for Nexus Program states, pointing out that as a convenience to taxpayers using the voluntary disclosure program, some non-Nexus Program states are sometimes included in the scope of a voluntary disclosure.

D. Uniformity Committee

Wood Miller presented the Uniformity Committee report and reported on items that were approved by the full Uniformity Committee for submittal to the Executive Committee, including centralized telecommunication tax administration, and tax collection responsibilities of accommodation intermediaries. He added that the committee continues to work on a “New York style” sales and use tax reporting statute.

E. Training Program

Ken Beier commented on the training program report. Following that, Mr. Bucks suggested that the Commission support pass-through entity training and offered his support for development of course materials.

F. Other Committee and Program Business (if any)

There were no other committee or program reports.

VIII. Report of the Strategic Planning Committee & Strategic Planning Session

Mr. Fong reviewed the Commission’s strategic planning effort, noting that discussion of this initiative started at the 2010 annual meeting in Hood River, Oregon. The effort is being guided by a Steering Committee and supported by Elizabeth Harchenko. The information gathering portion of the effort started with an environmental scan (assessment of strengths, weaknesses, opportunities and threats) in May 2011 and continued through this fall. After considering a range of options for the extent of the

planning process, the Steering Committee decided to proceed with “strategic planning light” which assesses the mission, values, and vision of the organization, identifies strategic goal areas, and selects an initial goal area or areas that have potential for improving how the Commission supports its vision and mission. A handout “Report for 12-1 MTC Executive Committee” which contains a summary of each of components of the strategic plan, was distributed to attendees. (These minutes do not repeat the items presented by members of the Strategic Planning Committee that are in that handout.)

Mr. Fong explained the draft mission statement and the concepts that went into developing the statements. Nancy Prosser reviewed the values, or cultural norms that were identified by the Strategic Planning Committee. Steve Cordi explained the draft vision statement which sets the direction for the Commission for the next 5-7 years. Mr. Huddleston referred to the recurring challenges to the Commission’s processes, and he and Ms. Barragán-Scott reviewed eight strategic goals areas:

- Commission Processes
- State Engagement
- MTC Profile
- Technology
- Communication
- Compliance Programs
- Education and Training
- Uniformity.

Following lunch, the chair turned the session over to Elizabeth Harchenko and asked for comments on the strategic planning presentation. Robynn Wilson suggested that the comments on the uniformity process—to pursue greater adoption of uniform laws and rules by the states-- were “spot on.” She added that it would be good to pay attention to the liaison role (for Executive Committee members) with the uniformity subcommittees.

Mr. Mansun suggested that MTC programs, including enforcements, should be included in the mission statement.

Mr. W. Miller commented that the Uniformity Committee is still using the same approach and technology—paper and pencil—to develop proposals that we in place when he attended his first meeting in 1992; and at the same time many participants are using smart phones on their breaks to keep up with their work. He suggested that perhaps we can make better use of technology to support the work of the Commission.

Ms. Harchenko interpreted Robynn Wilson’s statement to indicate a need for greater engagement of the Executive Committee in work of the committees.

Ms. Wilson suggested that the mission statement needs some editing.

Gary Humphrey noted that “federalism” references in mission statement could be interpreted in a variety of ways and asked if this referred to state sovereignty or to autonomy of state tax systems. He made a similar comment on “honoring” our public

mission—that there are many aspects to this. Mr. Fong suggested that we could put some definitions of some words, such as “federalism” and “public mission”.

Mr. Johnson suggested that we need to distinguish that we are a “.gov”; that this is an organization of states, rather than one that just supports the states, such as the FTA. He also suggested that the Federalism at Risk report could be revised and recirculated.

Mr. Bucks explained that uniformity has at least two dimensions—consistency and fairness; adding that this term also needs to be defined. Referring to the recent communication from the NCSL committee, he emphasized that uniformity supports economic development, in contrast to the false dichotomy expressed in the NCSL communication.

Ms. Sicilian suggested that we could step back and look at what is limiting adoption of uniformity proposals, adding that we could consider the likelihood of adoption before projects are selected.

Mr. Humphrey suggested that when we talk about our vision or “gold standard” that it should include ways for MTC and FTA to work together. He also noted that a recent FTA communication on mobile workforce legislation did not cite the work of the MTC.

Mr. Johnson suggested that “achieving tax fairness,” a part of the draft mission statement, should add a reference to the fair treatment of taxpayers.

Jim Rosapepe noted that the Commission’s “value added” has been in three areas: (1) as a visionary, that is, holding up the flag for uniformity, (2) intellectual development, and (3) adoption of proposals. He expressed the third item as “2 ½” since the extent of adoption is one of the shortcomings of our efforts. He posed a question to participants—do you want to beef up (3) to match the first two accomplishments?

Mr. Bucks suggested that state engagement—one of the strategic goal areas—is a complement to Ms. Wilson’s suggestion for linking the Uniformity Committee with tax commissioners on the Executive Committee. In addition, he noted that there is often a policy development effort going on at the state level that is addressing the same topics as that being addressed by the Uniformity Committee.

In closing the discussion of strategic planning, Ms. Harchenko encouraged the participants to provide additional input as they think about this effort.

IX. Uniformity

A. Uniformity Proposals before the Committee for Action

1. Proposed Model Sales & Use Tax Notice and Reporting

Ms. Sicilian noted that legislation relating to use tax notice and reporting has been introduced in ten states, enacted in five states, and that one state is in litigation over its legislation. She characterized these as variations on the effort to improve use tax compliance that live within the limits of the Quill decision.

Ms. Sicilian reviewed the options before the committee for the proposed model: (1) send it back for another Bylaw 7 survey, (2) amend the proposal, (3) hold the proposal and see what happens with litigation, and (4) send it back to the Uniformity Committee for additional work. She also noted the results of the Bylaw 7 Survey—that seven of the eight required affirmative votes had been received, and that two additional votes came in after the deadline. Following questions on interpreting the bylaw 7 vote, she confirmed that a new survey was needed. In response to a question about the Colorado litigation, which is scheduled to go before the 10th Circuit Federal Court, she explained that the proposal could affect consideration of the dormant commerce clause issue, and added that action on the proposal by the Executive Committee in July would allow the court to take this into consideration.

Mr. Bucks noted that the “blank” for de minimus amount in the proposal makes it impossible for him to estimate how Montana vendors would be affected by this proposal. Ms. Sicilian explained that this was left blank because of the difference in size of markets across states.

Mr. Johnson then moved that the proposal be resubmitted to a bylaw 7 survey. In response to a question, Ms. Sicilian confirmed that “affected state” (those eligible to vote in a bylaw 7 proposal) includes states, beyond those with a sales tax, that identify themselves as being affected.

Mr. Bucks then offered a substitute motion to send the proposal back to the Uniformity Committee with the suggestion for a lower-limit de minimus amount. There was no objection to the substitute motion. Mr. Johnson explained that this directs the committee to look at the amounts in (d)(1) and (d)(2) of the proposal. The substitute motion passed on a voice vote with a “no” vote from Alabama and abstentions from California and Oregon.

2. Recommended Amendments to Compact Article IV [UDITPA] Section 17 and 1(g)

Mr. Fong noted the recent communications from the NCSL committee and asked Shirley Sicilian to explain the current proposal before the Executive Committee. Shirley reviewed the background of this effort, including consideration of changes to UDITPA by the Uniform Law Commission, and subsequent referral of revisions from the MTC Executive Committee to the Uniformity Committee, as described in her November 23, 2011, memo to the Executive Committee.

Ms. Sicilian then explained the proposal for Article IV.17, Sales Factor Sourcing for Services and Intangibles, and the proposal for Article IV.1(g) for the definition of “sales.” Mr. Johnson commented on the challenging language in Section 17(a)(4) and his concerns about how this would work for sales of computer software. Mr. Bucks also expressed concerns about the language in 17(a)(4).

Mr. Fong then commented on the NCSL committee’s interest in changes to Article IV, and Dianne Smith stated that, if the Executive Committee moves forward with the proposal, she would like to make detailed comments. Following comments from Mr. Johnson and Mr. Bucks on the communication from the NCSL committee, Ben Miller suggested that the proposal go back to the Uniformity Committee—not because of external pressure, but out of a concern that we put forward the best possible proposal.

Mr. Fong then moved that both proposals be sent back to the Uniformity Committee for further work. This was passed on a unanimous voice vote. Mr. Fong thanked the committee for its work on these proposals. In response to a question from Steve Kranz, Mr. Fong clarified that the motion calls for work on the proposals to continue at the Uniformity Committee level.

X. Federal Issues with State Tax Implications

Mr. Rosapepe noted the inability of congress to deal with fiscal issues and the potential for adjustment to the sequestration agreement, now that the work of the “Super Committee” has stalled. He commented on the numerous federal bills that would affect state and local taxes and the potential for their being attached to sequestration or other federal legislation.

Regarding streamlined sales tax legislation, he noted the shift in support favoring some form of federal legislation. Opposition to the proposed legislation by the National Federation of Independent Business was noted by Mr. Huddleston and Lenn Lucchi. Mr. Rosapepe commented that we need to take streamlined legislation seriously, now that it has as least a 50 percent chance of passing.

Mr. Bucks commented on the potential for the Business Activity Tax Simplification Act (BATSA) to undo combined reporting and suggested that it would be very helpful to have a digest of the streamlined sales tax and other bills. Mr. Fong also stated that having a digest of federal legislation would be very helpful. Mr. Bucks suggested that the MTC take all possible actions in explaining the problems presented by the BATSA legislation.

Mr. Lucchi reviewed features of the various streamlined sales tax bills. Mr. Johnson noted that there is a range of perspectives among the states on the various streamlined sales tax bills; and encouraged each of the states to get in touch with their delegations and urge them to pass something.

XI. Upcoming Meetings & Events

Mr. Huddleston reviewed the upcoming meeting schedule and Mr. Fong noted the new commissioner seminar jointly hosted with the FTA on January 11-13 in southern California. Mr. Fong also urged the consideration of consolidation of scheduled meetings, where feasible, and desirability of holding meetings in airport hub cities.

[Closed sessions were then held on items relating to the Nexus Committee, National Nexus Program, Audit Committee, Joint Audit Program, pending litigation and Commission personnel matters.]

XII. Resumption of Public Session and Reports from Closed Session

There were no reports from the closed session.

XIII. Adjournment

The meeting was adjourned at 3:30 pm.