



To: Executive Committee  
From: Joe Huddleston  
Date: May 9, 2012  
Subject: Report of the Executive Director

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This report is a summary of the Commission's organizational and staff activities for the period July 1, 2011, through April 30, 2012 (unless otherwise noted).

## I. Programs & Activities

### A. Joint Audit Program

The audit division completed 2 and parts of 8 income tax audits for fiscal year 2012. The audit division also completed 4 sales tax audits and parts of 4 other sales tax audits for fiscal year end 2012. There are currently 21 income and 30 sales tax audits in progress. Proposed assessments through April 30 for fiscal year end 6/30/12 from these audits total \$13,142,497.

The following chart summarizes hourly data for completed audits through April 30 for fiscal year end June 30, 2012:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	2	4	6
<b>Total States Audited</b>	54	47	101
<b>Total Hours</b>	5010	4141	9151
<b>Average Hours per State</b>	93	88	91

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

Audit division staff provided instruction at two income tax training classes and two sampling classes for fiscal year end June 30, 2012.

*Federal Data Sharing Initiative*— The one-year Data Sharing Initiative (DSI) is exploring, within the framework of IRS Safeguard policies, the respective MOUs executed between individual states and the MTC, and the policies, procedures, and practices that guide the MTC's Joint Audit Program activities to determine the effective of pooling state FTI for analysis by MTC to enhance the Joint Audit Program and compliance activities on behalf of our member states.

The DSI project manager has researched states' needs, access and use of FTI and federal tax return info, identified types of FTI (in the form of IRS data extracts) to be examined by the DSI, and obtained the agreement of two states, so far, to participate in the test phase. The project manager has drafted a prototype of the required state-to-IRS 45-day notice to initiate access to FTI, is now completing the MTC-to-IRS Safeguard Procedures Report (SPR) required for MTC to receive FTI from the states. He has also begun work developing the framework for analysis that the DSI will use in examining FTI and is implementing internal (MTC) set-up and safeguards.

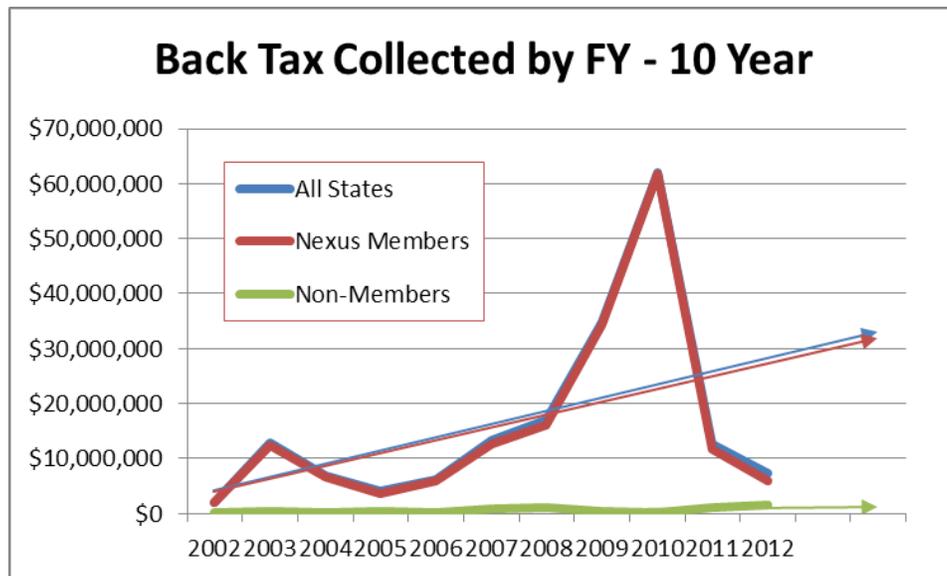
## **B. National Nexus Program**

*Voluntary Disclosure* — The number of voluntary disclosure cases has continued its slow but fairly consistent rise over the years. During the first three quarters of fiscal year 2012, the National Nexus Program collected \$5,952,604 on behalf of Nexus member states and \$7,418,048 on behalf of all states.<sup>1</sup> The Commission provides multi-state voluntary disclosure service to states not members of the National Nexus Program. Doing so increases the one-stop value of the Commission's program to taxpayers and thereby helps member states by attracting participants. Providing these services is also a way to introduce the multi-state program to non-members who may later choose to join.

During the last decade, collection of back taxes by the program peaked sharply in 2010, mostly due to a single taxpayer representative with taxpayers having significant liability. In 2011, back taxes collected returned to pre-2008 levels, so next we will investigate whether the drop in revenue was due to fewer contracts or lower contract value.

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<sup>1</sup> The annual collection amounts include only back tax actually collected (cash basis). They may also contain a trivial amount of penalty, interest, and miscellaneous fees if they were collected before conclusion of the voluntary disclosure. It does not include any tax, interest, penalty, or other thing of value collected after the voluntary disclosure process ended. States almost always collect substantial interest on back tax amounts after the end of the voluntary disclosure process, but the Commission does not include these amounts in its reports, nor does it include the value of future tax payments from a newly-compliant taxpayer, which is usually also substantial.



*Nexus School* — Nexus and legal staff conducted well-attended Nexus Schools in Little Rock (October 2011) and Jefferson City (April 2012). The trainers from the nexus and legal divisions re-wrote most of the curriculum for the Jefferson City school to update citations and shift the presentation format somewhat away from a Socratic, case-law approach and toward one more rules-based (black letter).

Nexus program staff also contributed to BNA’s annual published survey of state nexus policies (and a few other issues).

### C. Legal

The legal division staffs two standing committees: Uniformity and Litigation. The division also holds regular state tax attorney teleconferences; files amicus briefs in state and federal courts; participates as speakers at conferences, symposiums and institutes; and teaches MTC training courses. The legal division provides individual state support by assisting in state litigation and reviewing states’ draft statutes, regulations, and legal briefs. The division also provides legal support for the Commission’s Joint Audit Program, Training Program, and general administration.

#### Uniformity Work

The legal division staffed 16 uniformity matters, including work on two whitepapers, during this period:

- *Amendments to UDITPA and Compact Art. IV related provisions*
  - Definition of "sales" (Compact Art.IV(1)(g)) (pending executive committee consideration for public hearing)

- Sales factor sourcing (Compact Art.IV.17) (pending executive committee consideration for public hearing)
- Factor weighting (Compact Art.IV.9) (pending executive committee consideration for public hearing)
- Definition of “business income” (Compact Art. IV.1(a)) (pending executive committee consideration for public hearing)
- Distortion relief (Compact Art. IV.18) (pending executive committee consideration for public hearing)
- *Model Statutes for Telecommunications Transaction Tax Centralized Administration* (pending executive committee consideration for public hearing)
- *Model Statute on the Tax Collection Procedures for Accommodations Intermediaries* (pending executive committee consideration for public hearing)
- *Model Sales & Use Tax Notice and Reporting Statute* (pending executive committee consideration after bylaw 7 survey)
- *Model Statutes for Associate Nexus Presumption (NY-style “Amazon” Law)* (under development at Uniformity Committee)
- *Amendments to MTC Model Financial Institutions Apportionment* (under development by a Uniformity Subcommittee Work Group)
- *Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax* (pending executive committee action on hearing officer’s report and recommendations, request for additional uniformity committee input)
- *Possible New Project Regarding Interpretation of Art.IV.3 (Taxable in Another State)* (under consideration by uniformity committee)
- *Protection of Telecommunications Providers from Class Action Lawsuits* (under consideration by uniformity committee)
- *Telecommunications Definition and Sourcing* (under consideration by uniformity committee)
- *Cloud Computing Issues* (whitepaper for uniformity committee)
- *Internet Group Coupons* (whitepaper for uniformity committee)

### Litigation Committee Work

The legal division supported the Litigation Committee by organizing and making presentations for the July 2011 and March 2012 in-person meetings. In addition, the legal division organized six state tax attorney teleconferences. All meetings were well attended. Attendance for teleconference meetings generally included 50 representatives of approximately 35 states.

### Legal Assistance to States

The legal division consulted with individual states regarding significant on-going litigation strategy and briefs, draft legislation, and draft regulations. An *amicus curiae* brief was filed in *The Gillette Company et al. v. California Franchise Tax Board*, (1st App. Dist., Case No. A130803) on November 14, 2011; and staff participated in oral argument in this case before the California Court of Appeals on May 8, 2012.

### Commission Support

During this fiscal year, 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. The legal division (along with the National Nexus Program) taught MTC nexus training in Little Rock, Arkansas and Jefferson City, Missouri. Division staff also taught Corporate Income Tax and Combined Reporting Training in Madison, Wisconsin and Charleston, West Virginia. The division monitored and reported on the activities of the Streamlined Sales and Use Tax Governing Board and its Committees. In addition, the division assisted in communicating the Commission's position on matters before Congress, including BATSA, Digital Goods, VoIP, Mobile Workforce, Tax Reform, and others.

#### **D. Policy Research**

*BATSA* — The policy research director worked with state revenue estimators to develop estimates of revenue impact of H.R. 1439, "The Business Activity Tax Simplification Act of 2011."

*Uniformity Project on Revising Model Statute on Apportioning Income of Financial Institutions* — The policy research director continues to work with other MTC staff, state revenue agency personnel, and industry representatives to develop model apportionment statute, and otherwise provide support for this project. Policy Research staff helped develop methods for situsing loan bundles for property factor in apportionment formula.

*Uniformity Project on Recommended Amendments to Compact Art. IV [UDITPA]*  
— *Section 9, Factor weighting* — The policy research director worked with other MTC staff and the Uniformity Committee on this project.

*Multistate Tax Commission Review* —

- Article by Elliott Dubin and former Research Intern André Barbé on a comparison of sales taxes and gross receipts taxes
- Article by Elliott Dubin and former Research Intern Yi Feng, with input from Professor Richard Harvey, Villanova University, on Uncertain Tax Positions and State Corporate Income Tax
- Article by Bob Schauer, Harold Jennings, and Elliott Dubin on dealing with troublesome IT personnel.
- Spring 2012 Issue in progress.

*Other Activities* —

- An article by the policy research director entitled, “State and Local Governments: Cash-Strapped but not Broke,” published by Tax Analysts, *State Tax Notes*, August 8, 2011, pp. 363-371
- Monitor state adoption of MTC model statutes, regulations, and guidelines.
- Elected to advisory board of National Tax Association
- Assisted with organizing National Tax Association’s Spring Symposium with Prof. John Anderson, University of Nebraska at Lincoln, State-Local Tax Program — Competitiveness: What Does it Mean for State and Local Governments?

**E. Training**

The Training staff supported the following training activities thus far in FY2012:

Computer Assisted Audit Training Using Excel and Basic Random Sampling (combined course) — August 22-25, 2011, in Albuquerque, New Mexico for 26 students—25 students from New Mexico and 1 from South Carolina

Corporate Income Tax — September 19-22, 2011, in Madison, Wisconsin for 33 students—30 from Wisconsin and 3 from South Carolina

Nexus School —

October 26-27, 2011, in Little Rock, Arkansas for 37 students— 22 from Arkansas and 15 additional students from Alabama, Idaho, Minnesota, Missouri, South Carolina, Virginia, West Virginia, and the MTC.

April 25-26, 2012, in Jefferson City, Missouri for 41 students from Missouri, Kansas, New Mexico, Iowa, West Virginia and the MTC.

Statistical Sampling for Sales and Use Tax Audits — March 26-29, 2012, in Chicago, Illinois for 17 students from Idaho, Utah, Alaska, Mississippi, Kentucky, Wisconsin, the MTC, and the private sector.

Corporate Income Tax—April 10-12, 2012, in Charleston, West Virginia for 34 students from West Virginia and the MTC.

*CVENT Registration System* — The Commission has contracted with CVENT to provide online event management services. This will support online registration, event communication and online payment for training and other Commission events.

The director of training was the principal coordinator of the July 27th annual meeting conference. He is also coordinating the August 1, 2012, annual meeting conference being held in Grand Rapids, Michigan.

## **II. Administration**

Beginning with the new fiscal year the MTC has changed the bank it uses for its operations from Wachovia (Wells Fargo) to BB&T. This was done in order to reduce the level of bank fees, to provide a better fit in regards to the size of the bank compared to the MTC, and to establish better relationships with banking personnel.

André Barbé, Ph.D. candidate in Economics, Rice University; and, Yi Feng Accounting Major, University of Iowa, successfully completed their internships and are currently back at their respective universities.

Ted Jutras, paralegal in the National Nexus Program, resigned effective September 30, 2011, to take a position with the District of Columbia.

Amber Kirby began employment with the Multistate Tax Commission on October 3, 2011 as an assistant to the Director of the National Nexus Program. Amber will be involved all aspects of the National Nexus Program including the voluntary disclosure program tasks previously performed by Ted Jutras. Amber is a graduate of the Wake Forest School of Law. She is currently enrolled in a dual degree program (Master in Public Policy & Master of Laws) at American University.

Ben Abalos was hired on November 1, 2011 as Project Manager, Data Sharing Initiative, a one-year appointment to initiate then evaluate Commission use of federal tax information on behalf of audit program states signing an MOU with the MTC. Ben is both an attorney and a CPA. Benjamin's previous professional experience includes the Department of the Navy (both active duty and reserve status) and the District of Columbia.

Nicholas Polimeros joined the Commission as an auditor in the New York office on February 6, 2012. Nicholas has worked in the field of taxation for many years including working for the Multistate Tax Commission in the mid-1990s.

William LoCascio began work with Commission as an auditor in the Commission's Chicago office on February 21, 2012. William previously worked for the Florida Department of Revenue for many years.

Lila Disque was hired as a legal intern on April 9, 2012, working with the Commission's legal department.

### **III. Outside Presentations & Events**

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

- NYU Summer Institute in Taxation, State Taxation II; New York, New York (Huddleston)

#### AUGUST

- NCSL Task Force Meeting; San Antonio, Texas (Huddleston)

#### SEPTEMBER

- 2011 Annual Meeting of North Eastern State Tax Officials Association; Wilmington, Delaware (Huddleston, Matson)
- Institute for Professionals in Taxation, Sales Tax Symposium; Orlando, Florida (Matson)

#### OCTOBER

- Georgetown University Law Center SALT Certificate Program Meeting; Washington, D.C. (Huddleston)
- COST 42nd Annual Meeting and Fall Audit Session; New Orleans, Louisiana (Huddleston)
- ABA Section of Taxation 2011 Joint Fall CLE Meeting; Denver, Colorado (Sicilian)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort, Matson, Sicilian)
- Pennsylvania Institute of CPAs' Multistate Tax Conference; Malvern, Pennsylvania (Dubin)
- 32nd Annual Conference of the National Association of State Bar Tax Sections; Washington, D.C. (Sicilian)

NOVEMBER

- AICPA Tax Division State & Local Taxation Technical Resource Panel; Washington, D.C. (Sicilian, *via teleconf.*)
- Hartman SALT Tax Forum; Nashville, Tennessee (Fort, Sicilian)
- Georgetown Law School, LL.M. Program Guest Lecture; Washington, D.C. (Sicilian)

DECEMBER

- Strafford Seminars (online presentation), “Sales Tax Affiliate Nexus: Latest Developments” (Sicilian)
- New York University Tax Conference; New York, New York (Huddleston, Fort)

JANUARY

- FTA-MTC Midwinter Commissioners Meeting; Newport Beach, California (Huddleston, Sicilian)
- Tax Analysts and the Kogod Tax Center at American University Roundtable Discussion, Taxes and Small Business; Washington, D.C. (Huddleston)
- 21st Annual Ohio State Tax Conference; Columbus, Ohio (Huddleston)

FEBRUARY

- Deloitte and Florida Bar Tax Section’s National Multistate Tax Symposium; Orlando, Florida (Huddleston)
- New York University State & Local Tax Group Luncheon; New York, New York (Huddleston)
- American Enterprise Institute, Global Currency War, Endless Financial Crises: What's Wrong with the International Monetary System?; Washington, D.C. (Huddleston)
- FTA Compliance & Education Workshop; Tampa Bay, Florida (Matson, Abalos)

MARCH

- American Bar Association & Institute for Professionals in Taxation Advanced Income Tax Seminar, *Update on Economic Nexus—It’s the Next Best Thing to Being There*; New Orleans, Louisiana (Shimkin)

APRIL

- California State Board of Equalization, Executive Director Candidates Interview Process; Newport Beach, California (Huddleston)

## **Technology Addendum**

The Technology Committee was inactivated by the Executive Committee in June of 2011; during the time this committee is inactive, the Executive Director is responsible for providing this technology update with this report.

The Commission's computing assets and information security structures are appropriately maintained and operational. During the period covered by this report, new endpoint software was updated on all auditor laptops. (Endpoint is the hard disk encryption system used for MTC laptops and desktops.) Preparations for data sharing initiative (DSI) project continue, including the preparation of the Safeguards Procedure Report. Configuration of DSI related hardware, functionality and security testing are currently underway. A supplemental backup system (Barracuda) has been purchased and will be installed in May. This system will facilitate replication of critical backup data to our Chicago office for disaster recovery. Upgrades to the Exchange e-mail server are planned for this summer and preliminary inquiries into a Unified Communications System (VOIP) are being pursued.

The network administrator has also been working with National Nexus Program staff to provide technical guidance in creating requirements for a phase upgrade to the voluntary disclosure application system. Also, he has been working with the publication coordinator and training director regarding state contact data in preparation of importing data into our Cvent database.

MTC is now working with Quality Assessment Solutions, LLC, regarding a centralized contact and membership management database that will greatly improve our ability to keep member and individual data up to date for communication and publication purposes.

The website provides a platform for MTC information, news, and events. During the period of November 1, 2011, to April 30, 2012, the website received 58,136 visitors and 178,274 page views. MTC website underwent a security update on the server in November 2011 performed by our hosting provider. The homepage received 14% of page views, followed by Sales and Use Certificate webpage at 12% of page views. We received a peak of 2,095 page views on Wednesday, March 7, 2012, during the Winter Committee Meetings.

MTC continues to improve the functionality of the website. During the past quarter the focus has been on reworking our online registration capabilities. In February 2012, we signed an contract with Cvent, a web-based event management provider to allow MTC to accept payments via the website. Cvent offers features such as an event website, post event feedback, email tracking, secure payment processing, attendee record keeping, and data security. The staff has access to online training, unlimited phone or email support, reporting tools and other features.

**Website Activity at a Glance**

	<b>Page Title</b>	<b>Total Page Views</b>	<b>Unique Views</b>	<b>Average Time on Page in Minutes</b>
<b>1</b>	Homepage	25,679	20,118	0:01:13
<b>2</b>	Sales & Use Certificate	22,064	15,989	0:02:18
<b>3</b>	State Map	8,471	5,158	0:01:58
<b>4</b>	MTC Compact	7,097	4,118	0:00:24
<b>5</b>	About Nexus Program	4,607	3,311	0:00:43
<b>6</b>	Overview Multistate Voluntary Disclosure Program	4,146	3,302	0:02:00
<b>7</b>	About Multistate Tax Commission	3,304	2,333	0:02:10
<b>8</b>	FAQ Sales and Use Certificate	2,999	2,616	0:03:06
<b>9</b>	Employment Opportunity	2,309	1,355	0:00:57
<b>10</b>	Events Calendar	2,134	1,486	0:00:58
	<b>Totals/Avg.</b> (November 1 to April 30)	178,274	127,219	0:01:11

*Interesting Facts —*

- The first event using Cvent will be the May online seminar, *Pass-Through Entities: Income Tax Implications for the States* — this will also be the first MTC online training. The event has a total of 90 registrants as of May 8, 2012.
- A total of 13,378 visits came directly to [www.mtc.gov](http://www.mtc.gov).
- 38,822 unique people visited our website.
- Traffic sources: 56% from search engines, 21% from referral sites such as Alabama, Washington State, and Iowa Departments of Revenue, and 23% direct traffic with no referral.
- The average visit duration was 2 minutes and 26 seconds.
- Google continues to be the most popular search referring site with 75% of visitors followed by Bing with 16%, and Yahoo at 7%.
- Internet Explorer continues to be the top web browser in use (for viewers of our site) with 76% of visits, followed by Firefox with 11%, and Google Chrome at 7%.