



To: Executive Committee
From: Joe Huddleston
Date: November 30, 2012
Subject: Report of the Executive Director

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

I. Programs & Activities

A. Joint Audit Program

The audit division completed 3 and parts of 5 income tax audits through November 15 thus far for fiscal year end June 30, 2013. The audit division also completed 2 sales tax audits and parts of 4 other sales tax audits for this fiscal year. There are currently 21 income and 31 sales tax audits in progress. Proposed assessments through November 15 for this fiscal year from these audits total \$29,613,847.

The following chart summarizes hourly data for completed audits through November 15 for fiscal year 2013:

| | Income & Franchise | Sales & Use | Total |
|--------------------------------|-------------------------------|------------------------|--------------|
| Total Audits | 3 | 2 | 5 |
| Total States Audited | 90 | 24 | 114 |
| Total Hours | 7341 | 2264 | 9605 |
| Average Hours per State | 82 | 94 | 84 |

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 one corporate income tax training class and one sampling class so far for fiscal year.

B. National Nexus Program

During the period July 1 to November 15, the Commission recovered \$1,837,608 on behalf of National Nexus Program member-states from 134 completed contracts (compare to \$12.5 million recovered in FY2012). In addition, the Commission recovered \$145,761 on behalf of non-member states. These amounts do not include interest or the future value of a new taxpayer.

Nexus staff continued its work to keep the multi-state voluntary disclosure documents and process as uniform as possible among states while meeting each state's requirements:

- Worked with the Nexus Committee to amend the template voluntary disclosure contract and the corresponding Procedures of Multi-state Voluntary Disclosure to address specific state concerns within the standard documents.
- Worked with the Nexus Committee to prepare suggestions for the Executive Committee regarding updates to the NNP charter to bring to reflect changes in actual activities.

The Commission offered on its website to assist taxpayers with general nexus questions. The Commission also started offering citations to primary sources to jump-start a taxpayer's state-specific research.

Nexus staff is focusing on reaching out to non-member states that are the most likely candidates to join the program. Staff presently has scheduled one in-person meeting with a top state revenue official and his staff; the Commission will continue its outreach efforts with in-person presentations when it is reasonable to do so.

Nexus staff launched a project to encourage states that do not presently have a link on their voluntary disclosure page to add one that links to the Commission's page. A number of states have agreed to do so, some declined, and we're working on the rest.

Nexus staff taught a Nexus School in St. Paul and is scheduled to teach one in Salt Lake City in December. Nexus staff has substantially revised and updated much of the material in the Nexus School written materials in advance of the Salt Lake City school. In addition, staff presented the nexus portion of the Income Tax School in Helena.

C. Legal Division

The legal division staffs two standing committees: Uniformity and Litigation. The division also holds regular state tax attorney teleconferences; participates as speakers at conferences, symposiums and institutes; and teaches MTC training courses. The legal division provides individual state support on request by filing amicus briefs in state and

federal courts; otherwise consulting in litigation matters; and reviewing draft statutes, regulations, and legal briefs. The division provides legal support for the Commission's Joint Audit Program, training division, and general administration.

Uniformity Work

Through November 30 of this fiscal year, the division staffed one in-person meeting of the Uniformity Committee and Subcommittees, and two teleconference meetings of the Sales & Use Tax Uniformity Subcommittee. The legal division is currently staffing 12 uniformity matters under consideration by the Executive and Uniformity Committees, in addition to developing improvements to the uniformity process:

- *Amendments to UDITPA and Compact Art. IV related provisions* (pending executive committee consideration for public hearing)
 - 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 Sales & Use Tax Notice and Reporting Statute* (pending executive committee consideration after bylaw 7 survey)
- *Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax* (pending executive committee reconsideration after hearing officer's report and recommendations led to request for additional Uniformity Committee input)
- *Model Statutes for Associate Nexus Presumption (NY-style "Amazon" Law)* (under development at Uniformity Subcommittee)
- *Amendments to MTC Model Financial Institutions Apportionment* (under development at Uniformity Subcommittee, regular Work Group input)

- *Protection of Telecommunications Providers from Class Action Lawsuits* (under consideration by Uniformity Committee)
- *Telecommunications Definition and Sourcing* (under consideration by Uniformity Committee)
- *Possible New Project to Develop Regulations for the Exercise of State Section 482 Authority* (Subcommittee is considering whether to initiate project. Part of this consideration has included solicitation of input from taxpayer groups)

Litigation Committee Work

Legal division supported the Litigation Committee by organizing and making presentations for the July 2012 in-person meetings in Grand Rapids, Michigan. In addition, legal division organized three information and training sessions for state tax attorneys, including two state tax attorney teleconferences. All meetings and teleconferences have been very well attended. Attendance for teleconferences generally included well over 50 representatives from more than 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. Through November 30 of this fiscal year, *amicus curiae* briefs were filed in the following cases:

- *Harris Corporation and Consolidated Subsidiaries v. Arizona Dep't of Revenue* (Arizona Court of Appeals) filed August 15, 2012
- *First Data Corporation et al. v. Arizona Dep't of Revenue*, (Arizona Court of Appeals) filed August 15, 2012
- *Barnesandnoble.com v. New Mexico Taxation and Revenue Department* (New Mexico Supreme Court) filed October 15, 2012
- *Home Depot USA, Inc. and Affiliates v. Arizona Dep't of Revenue*. (Arizona Court of Appeals) filed October 16 2012
- *Performance Marketing Association, Inc. v. Hamer* (Illinois Supreme Court) to be filed December 5, 2012.

Commission Support

The legal division provides 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. Through November 30 of this fiscal year, the division has provided legal assistance to the Commission's audit division on a number of challenging audit related issues and has addressed several public participation issues and records requests. Legal division has also provided support for the training division by teaching the following classes:

- Nexus Training (September 19-20, 2012 in St. Paul, Minnesota)
- Combined Reporting Training (October 1-4, 2012 in Helena, Montana)

D. Policy Research

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. Policy Research staff helped develop methods for situsing loan bundles for property factor in apportionment formula.

Multistate Tax Commission Review —

A fall 2012 issue of the Review is in progress. It will no longer be published in a print form, but this next issue will be published digitally. The following articles are being finalized:

- Article by former Research Intern André Barbé on a comparison of sales taxes and gross receipts taxes
- Article by Bob Schauer and Harold Jennings Elliott Dubin on dealing with troublesome IT personnel.
- Article by former Research Interns Yi Feng and Matt Wade: Effect of Imposing Sales Taxes on Remote Commerce.

Other Activities —

- Supports MTC efforts in addressing federal legislation with implications for state and local taxation.
- Elected to Advisory Board of National Tax Association
- Monitor state adoption of MTC model statutes, regulations, and guidelines.
- Organized session on sales taxes for Federation of Tax Administrators Revenue Estimating and Research Conference in Providence, Rhode Island, October 21-24, 2012
- Organizing, with Prof. Gary Wagner, ODU, State and Local Government Session of NTA Spring Symposium.
- Presentation of overview of U.S. Sales & Use taxes to visiting officials of Japanese housing agencies at National Association of Home Builders
- Organizing Tax Economists Forum Breakfast in Washington, D.C., December 12, 2012.

E. Training

The Training staff supported the following training activities since July 1, 2012:

Statistical Sampling for Sales and Use Tax Audits

August 27-30, 2012 in Albuquerque, New Mexico for 30 students from New Mexico.

Nexus School

September 19-20, 2012 in St. Paul, Minnesota for 38 students from Alabama, Alaska, Michigan, Minnesota, Mississippi, Montana, South Carolina, South Dakota, Washington and West Virginia.

Corporate Income Tax

October 1-4, 2012 in Helena, Montana for 32 students from Alabama, Alaska, Colorado, Idaho, Mississippi, Montana and Nebraska.

The director of training was the principal coordinator of the August 1st annual meeting conference in Grand Rapids, Michigan.

II. Administration

On October 15, 2012, after more than 21 years of service to the Commission, Jerry Schleeter retired. Jerry had been the administrative assistant for the Audit Program and was located in the Chicago office.

On November 29, 2012, the New York University School of Continuing and Professional Studies presented the 11th annual award for Outstanding Achievement in State and Local Taxation to Joe Huddleston, Esq., LL.D., in recognition of his unparalleled contributions in all areas of state and local taxation.

On December 3, 2012, Kristin Shuttz will begin work as an Administrative and Audit Assistant for the Audit Program. She will assume the position filled by Jerry as well as take on additional audit related functions. Kristin will be located in the Chicago office.

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)
- Tax Economists Forum, *Fixing The System: An Analysis Of Alternative Proposals For The Reform Of International Tax*; Washington, D.C. (Huddleston)

AUGUST

- NCSL Task Force Meeting; Chicago, Illinois (Huddleston, Sicilian)
- BNA State Tax Advisory Board Roundtable, Washington, D.C. (Matson)
- Georgetown Advanced State and Local Tax Institute; Washington, D.C. (Huddleston, Sicilian)
- National Taxpayers Conference Annual Meeting; Washington, D.C. (Huddleston, Dubin)
- Tax Executives Institute Philadelphia Chapter State and Local Tax Committee Meeting; King of Prussia, Pennsylvania (Huddleston)

SEPTEMBER

- Guest lecturer, Georgetown Law School LL.M. program; Washington, D.C. (Sicilian)
- American Bar Association Section of Taxation Joint Fall CLE Meeting; Boston, Massachusetts (Sicilian)

OCTOBER

- Annual Meeting of North Eastern State Tax Officials Association; Portsmouth, New Hampshire (Huddleston)
- Tax Analysts Conference, *Taxes and the Poor*; Washington, D.C. (Huddleston)
- Western States Association of Tax Administrators Conference; Redondo Beach, California (Huddleston)
- Federation of Tax Administrators Revenue Estimating and Research Conference; Providence, Rhode Island (Dubin)

NOVEMBER

- California Tax Policy Conference; Coronado, California (Huddleston)
- Institute for Professionals in Taxation, Income Tax Symposium; Arlington, Virginia (Sicilian)
- AICPA National Tax Conference; Washington, D.C. (Huddleston)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort, Matson, Sicilian)

- National Tax Association Annual Meeting; Providence, Rhode Island (Dubin)
- New England State and Local Tax Forum; Needham, Massachusetts (Huddleston)
- New Jersey Society of CPAs Multistate Tax Conference, Edison, New Jersey (Matson)
- Career night for students at Kogod School of Business, American University, Washington, D.C. (Shimkin)
- New York University Institute on State and Local Taxation; New York, New York (Huddleston, Fort)

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 data sharing initiative (DSI) project is ongoing, and configuration of DSI related hardware, functionality, and security testing is complete and we are currently waiting to receive federal tax information from states participating in this test phase.

A new secure email system has been put in place. The new system is a Linux hardened appliance that provides additional functionality (i.e. registered users on the system can send secure emails to other registered users, not just MTC Staff).

Preparations are in progress to upgrade the MTC email system. The current system will be migrated to Exchange 2010. Hardware and software purchases have already been made, and the install is scheduled for the second week in January.

All internal switching hardware has been upgraded to Juniper Gigabit switches. This will increase the speed at which internal users will be able to access their files and email in the DC office. The New York office and Chicago Office will have their switching hardware replaced in the near future.

VOIP (AKA “unified communications” or UC) phones have been installed in select offices in D.C. for testing. Two UC phones are being used by select remote users. The success of these phones in the D.C. office and with the remote users has prompted the installation of UC phones in the New York office next month.

MTC continues to work with Quality Assessment Solutions, LLC, regarding a centralized contact and membership management database. The application is in the final stages of testing and MTC staff is currently identifying any trouble areas that may exist before a phased rollout of the application begins. This application will be available to MTC staff and state personnel as well.

The network administrator has also been working with National Nexus Program staff to provide technical support voluntary disclosure application system, as well as working with the vendor in regards to ongoing support.

The website provides a platform for the Commission upcoming news and events. During July 1, to November 29, 2012, the website received a total of 54,291 visitors and 165,960 page views. We received a peak high of 653 visitors on Monday, July 30, 2012, during our annual meeting in Grand Rapids, Michigan. Our goal at the Commission is to maintain and preserve valuable resources for our members and stakeholders. The website is monitored and updated on a daily basis.

From July 1 to present we have received 213 registrations using our new online registration and payment system. The 45th Annual Conference and Committee meeting received 118 online registrants, followed by the Nexus School in St. Paul, Minnesota with 38 registrants, and the Corporate Income Tax course in Helena, Montana with 34 registrants.

Interesting Facts —

- The 45th Annual Conference & Committee Meetings webpage attracted 2,612 page views.
- Internet Explorer is the top browser with 69.70% of visits, followed by Chrome with 11.26%, and Firefox with 10.30%.
- Average Time on website was 1 minutes and 10 seconds.

Traffic Sources—

- We had a total of 53,390 visits to our website from all traffic sources.
- Google is our top referring website with 25,661 visitors. We received 58% of visitors with no referral. A total of 11,311 visits came directly to www.mtc.gov.
- The Alabama Department of Revenue sent a total of 2,212 visitors to our website, along with Washington State Department of Revenue with 1,119 visitors.

Most Popular Pages of the Website

| | Page Title | Total Page Views | Unique Views | Average Time on Page |
|----------|---|-------------------------|---------------------|-----------------------------|
| 1 | Sales & Use Certificate | 30,767 | 22,918 | 0:02:14 |
| 2 | Homepage | 36,356 | 22,335 | 0:01:18 |
| 3 | State Map | 9,179 | 5,602 | 0:01:49 |
| 4 | MTC Compact | 8,069 | 4,564 | 0:00:25 |
| 5 | About Nexus Program | 3,882 | 2,650 | 0:00:33 |
| | Totals/Avg. (July 1 to Nov. 29, 2012) | 88,253 | 58,069 | 0:01:15 |