



MULTISTATE TAX COMMISSION

To: Executive Committee  
From: Joe Huddleston  
Date: May 6, 2014  
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, 2013, through April 30, 2014 (unless otherwise noted).

**I. Programs & Activities**

**A. Joint Audit Program**

The audit division completed 4 and parts of 6 income tax audits thus far this fiscal year. The audit division also completed 5 sales tax audits and parts of 7 other sales tax audits thus far this fiscal year. There are currently 19 income and 28 sales tax audits in progress. Proposed assessments through April 30 for FY2014 from these audits total \$18,882,333.

The following chart summarizes hourly data for completed audits through April 30 for fiscal year end June 30, 2014:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	4	5	9
<b>Total States Audited</b>	103	63	164
<b>Total Hours</b>	9058	5598	14656
<b>Average Hours per State</b>	88	89	89

Aside from the meeting 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 three sampling class for fiscal year end June 30, 2014.

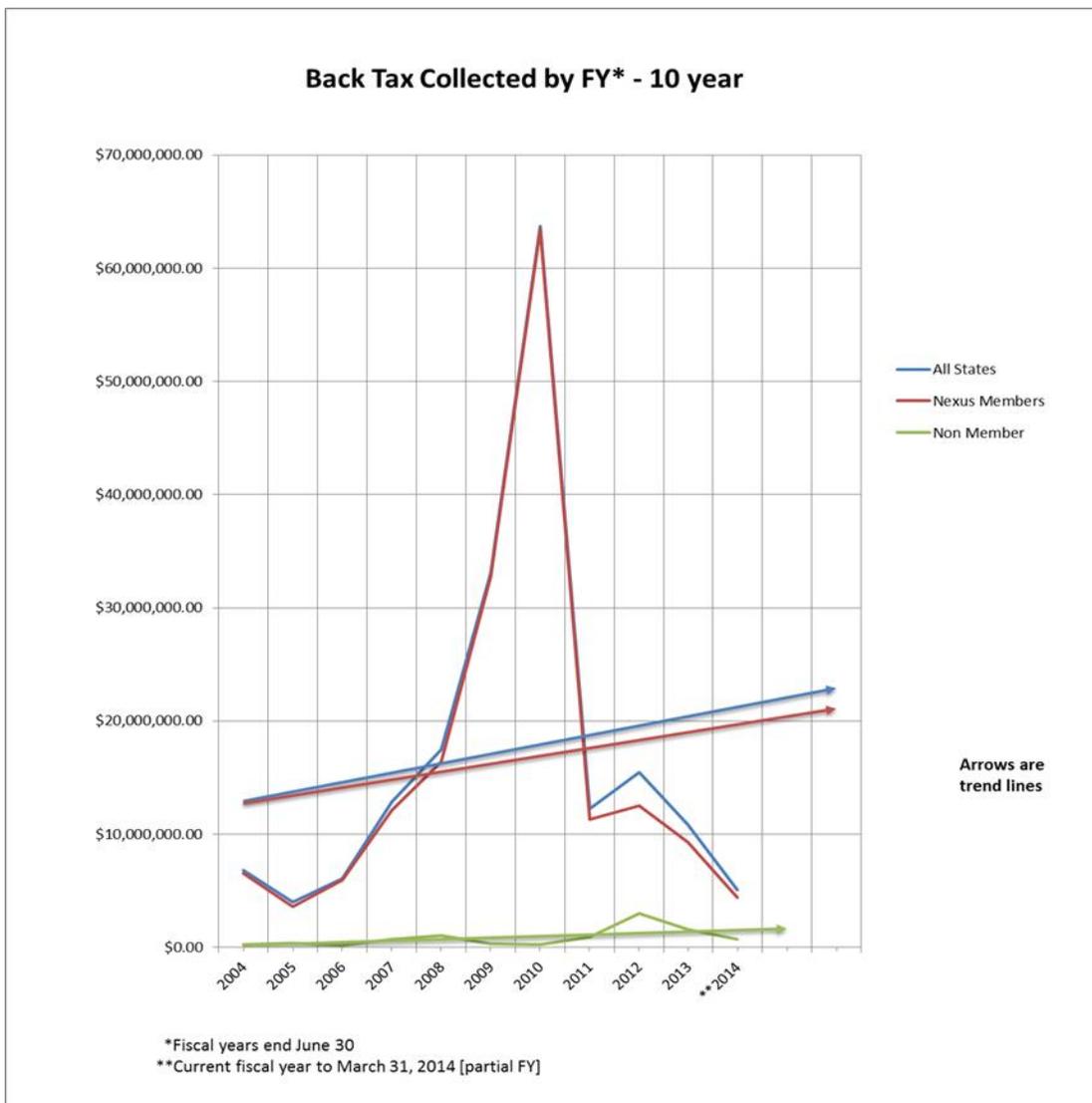
**B. National Nexus Program**

The multistate voluntary disclosure statistics for FY2014 to date (July 1, 2013 – March 31, 2014) are —

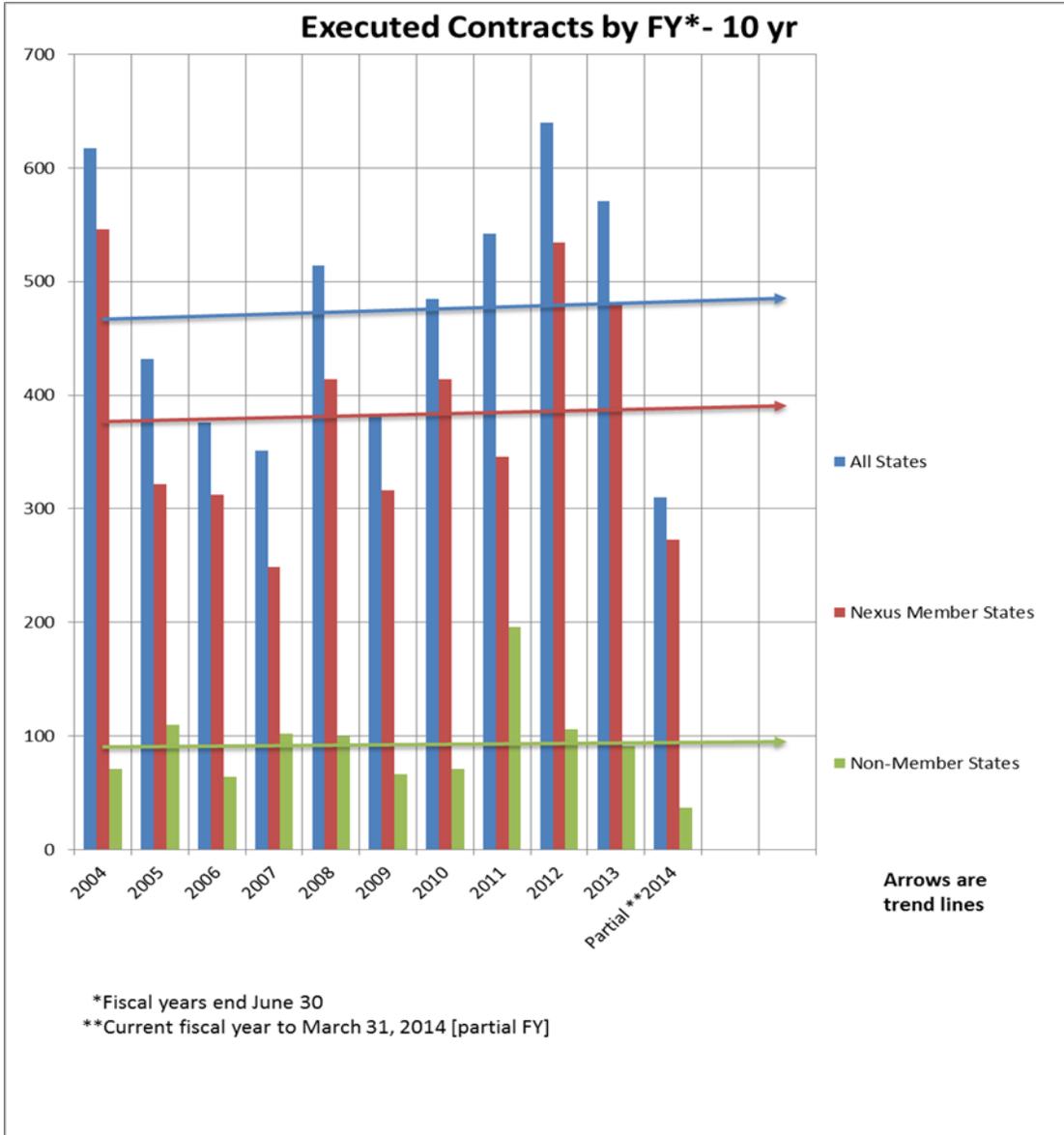
- Nexus states’ collections.....\$4,397,997

- All states' collections .....\$5,077,470
- Nexus states' executed contracts .....273
- All states' executed contracts .....310
- Nexus states' average contract value.....\$16,110
- All states' average contract value .....\$16,379

*Please Note: All of the above amounts include only amounts actually received before the Commission closes its File; neither interest, which taxpayers pay directly to states after their Commission files are closed, nor the future value of new taxpayers are included. Hence, the actual value of each case is higher than reflected here.*



The large spike in revenue recovered in FY2009 and FY2010 is due to a single taxpayer. Such large taxpayers come forward occasionally; their appearance cannot be predicted, other than that there will be more eventually.



### Nexus Committee

Staff continues to work with the Nexus Committee on various projects, including ongoing amendments to the text of the template multistate voluntary-disclosure agreement. This is often required by changing state policies.

In response to a request from the committee, staff has shifted its focus at Nexus Committee meetings toward presentations of nexus-related issues, such as recent court cases, and facilitating exchange of information at roundtable discussions.

The committee approved participation in strategic planning and appointed a work group that has met once and will meet three more times before presenting its product to the full committee at its July meeting. The NNP director is a member of the work group. Strategic planning will likely be the committee's primary task for the next year.

### Strategic Planning for Marketplace Fairness Act

The director and the associate director are working in a small group with consultant Elizabeth Harchenko and state representatives on a strategic plan to prepare for a single sales/use tax audit that may be required under the federal MFA, which has passed the Senate and is under active consideration in the House.

National Nexus program staff began to dedicate a significant amount of time to strategic planning this spring, for both the Nexus Committee and the Marketplace Fairness Act.

### Discontinuation of Free Voluntary Disclosure

The Nexus Committee requested that staff discontinue its practice of making multistate voluntary disclosure available to all states without regard to their membership status in the NNP. Staff notified commissioners and voluntary disclosure staff of non-member states that the Commission welcomes their continued participation on a paying basis effective July 1, 2014. Nexus staff is making contact with the commissioners or their representatives, and voluntary disclosure staff, to request that they join before the deadline.

### Membership

There are currently thirty-eight member-states (including the District of Columbia) of the National Nexus Program. New Hampshire rejoined in September after five years absence. The Commission provides voluntary disclosure services to non-members as well — all but six states participate. California Franchise Tax Board (but not the State Board of Equalization), Delaware, Nevada, Ohio, Illinois, New York, and Pennsylvania do not participate in any way. However, service to non-members will be discontinued on July 1, 2014.

### Outreach

Nexus staff continues to urge member states to put a link to the Commission's multistate voluntary disclosure program on their own voluntary disclosure web pages. Minnesota posted a link in FY2014. Twenty-eight states currently make no direct referral to multistate voluntary disclosure on their own disclosure pages.

In May, the director will serve on an internet-based videoconference sponsored by BNA to discuss the results of BNA's annual survey of states regarding nexus policies.

### Nexus School

Staff taught a Nexus School in Honolulu on November 18 and 19, 2013. There were about fifty students, all from Hawaii. The next school is scheduled for January 14<sup>th</sup> and 15<sup>th</sup> of 2014 near Boston.

The next school will likely be in Little Rock in the fall. The Commission encourages states to volunteer to host a school.

### Technology

The Commission has begun work with a software firm to restart maintenance and development of its technology to process multi-state voluntary disclosures.

## **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 the commission's corporate income tax and nexus training courses. The division provides individual state support on request by filing amicus briefs in state and federal courts; consulting in litigation matters; and reviewing draft statutes, regulations, and legal briefs. The division also provides legal support for the commission's audit division, training division, and general administration, including analysis of federal legislation affecting state taxation. Since the December 2013 Executive Committee meeting, the legal division has prepared two uniformity models for consideration by the Executive Committee at its May meeting and has begun work on an amicus brief to be filed in the Supreme Judicial Court of Massachusetts on behalf of the Massachusetts Department of the Massachusetts Department of Revenue.

### Uniformity Work

Through the first quarter of this fiscal year, the legal division has staffed one in-person meeting of the uniformity committee and subcommittees, and innumerable teleconferences for drafting groups and workgroups associated with various uniformity projects. The division has staffed nine uniformity proposals under consideration by the

executive and uniformity committees, in addition to a uniformity process strategic planning project:

- *Amendments to UDITPA and Compact Art. IV related provisions* (Hearing officer's report issued October 25, 2013; pending executive committee consideration for bylaw 7 or other action)
  - Definition of "sales" - Compact Art.IV(1)(g)
  - Sales factor sourcing - Compact Art.IV.17
  - Factor weighting - Compact Art.IV.9
  - Definition of "business income" - Compact Art. IV.1(a)
  - Distortion relief - Compact Art. IV.18
- *Model Sales & Use Tax Notice and Reporting Statute* (pending executive committee consideration after bylaw 7 survey; awaiting decision by the United States Court of Appeals for the 10th Circuit in *Direct Marketing Association v. Brohl*, D.C. No. 10-cv-01546-REB-CBS)
- *Model Remote Seller Nexus Statute* (under development at uniformity subcommittee)
- *Amendments to MTC Model Financial Institutions Apportionment* (under development at uniformity subcommittee)
- *Model Provisions Concerning Class Actions and False Claims* (under development at uniformity subcommittee)
- *Uniformity Process Strategic Planning Project*

#### Litigation Committee Work

Legal division supported the litigation committee by organizing and making presentations for the July 2013 in-person meetings in San Diego, California. In addition, legal division organized information and training sessions for state tax attorneys, including one in-person session and one teleconference session. All meetings and teleconferences have been well attended, with teleconference meetings generally including approximately 50 state attorneys from more than 35 states. There has also been a consistent trend toward increasing attendance.

#### 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 the first quarter of this fiscal year, we've filed *amicus curiae* briefs in the following cases:

- *Alabama Dep't of Revenue v. CSX Transportation Inc.* (U.S. Supreme Court – Petition for Certiorari) filed November 27, 2013

- *IBM v. Michigan Dep't of Treasury* (Michigan Supreme Court) filed Nov. 5, 2013
- *California FTB v. Gillette* (California Supreme Court) filed October 21, 2013
- *Bridges v. Thomas* (Louisiana Supreme Court) filed September 9, 2013

#### 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, resolving lease disputes, and filing corporate registrations and reports. During the fiscal year, the division 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 Commission's training division by teaching the following classes:

- Combined Reporting Training (October 7-10, 2013 in Washington D.C.)
- Nexus Training (November 18-19 in Honolulu, Hawaii)
- Nexus Training (January 14-15 in Boston, Massachusetts)

#### **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 a better Model Apportionment statute. Policy research staff helped develop methods for situsing loan bundles for the property factor in the apportionment formula. Policy research staff also wrote a memorandum on possible adoption of alternative apportionment formula for financial institutions.

#### *MTC Review* —

- Reviewing submission by Bob Schauer and Harold Jennings regarding superiority of statistical sampling versus representative sampling for sales and use tax audits.
- Reviewing submission by Michael Udell of District Economics Group on Single Sales Factor apportionment
- Writing article on state and local government finance.

#### *Other Activities* —

- Supports MTC efforts in addressing federal legislation with implications for state and local taxation.
- Monitor state adoption of MTC model statutes, regulations, and guidelines.
- Elected to Advisory Board of National Tax Association; collaborated with colleagues on the NTA Budget and Finance Committee to develop new budget

tools, budget procedures, and dues and fee structures to be voted on by NTA Board on May 15th.

- Helped organize NTA/UMICH conference on the 100<sup>th</sup> anniversary of U.S. income tax at the Rayburn House Office Building.
- Organized session on sales taxes for Federation of Tax Administrators Revenue Estimating and Research Conference in Providence, Rhode Island, October 21-24, 2012
- Assisted executive director in preparing for presentation on U.S. fiscal federalism for OECD taxation conference in Marrakech, Morocco; presentation will be basis for future *Review* article.
- Discussant for two papers on interaction between Federal taxes and state taxes at the National Tax Association Annual Meeting.
- Organized Tax Economists Forum breakfast at Hall of States December 4, 2013.
- Organized Tax Economists Forum breakfast at Pew Charitable Trusts January 18, 2014.
- Co-presented on the topic of worldwide combined reporting and formulary apportionment at the Tax Economists Forum breakfast at Hall of States, April 10, 2013.
- Interviewing candidates for a summer internship.

## **E. Training**

The Training staff supported the following training activities since July 1, 2013:

### Corporate Income Tax

October 7-10, 2013 in Washington, DC for 34 students from the District of Columbia, Idaho, Nebraska, South Carolina, and the MTC.

February 3-6, 2014 in Denver, Colorado for 76 students—75 from Colorado and 1 from Montana.

### Statistical Sampling for Sales and Use Tax Audits

October 15-18, 2013 in Wheat Ridge, Colorado for 28 students from Colorado, South Dakota, Wisconsin, Wyoming and the private sector.

February 10-13, 2014 in Hoover, Alabama for 16 students—10 from Alabama (4 from local governments and 6 from the Department of Revenue), 4 from local governments in Louisiana, 1 from the South Carolina Department of Revenue and 1 private sector participant. This session was sponsored by the Alabama Local Tax Institute of Standards and Training (ALTIST) at Auburn University.

March 31-April 3, 2014 in Madison, Wisconsin for 15 students—6 from Wisconsin, 4 from Nebraska, 2 from New Hampshire, 2 from Arizona and 1 from New Jersey.

Nexus School

November 18-19, 2013 in Honolulu, Hawaii for 53 students from the Hawaii Department of Taxation

January 14-15, 2014 in Boston (Chelsea), Massachusetts for 44 students—40 from Massachusetts, 3 from New Hampshire and 1 from West Virginia.

The training director was the principal coordinator of the July 24<sup>th</sup> annual meeting conference in San Diego, California.

The training director made a presentation on the Streamlined Sales Tax to the Florida Tourist Development Tax Association at its annual meeting in Clearwater, Florida on August 8, 2013.

The training director also made a presentation on Sourcing of Sales of Electricity to the Uniformity Subcommittee on Income and Franchise Tax on March 11, 2014 in Denver.

**F. Arm's-Length Adjustment Service Project**

The Arm's-Length Adjustment Service (ALAS) Project was launched in March with the recruitment of an advisory group for this design effort. Eight states and the District of Columbia are participating in the project: Alabama, D.C., Florida, Georgia, Hawaii, Iowa, Kentucky, New Jersey and North Carolina. Additional states are welcome to join the project as well.

The first meeting of the ALAS Advisory Group will be held in St. Louis, Missouri, on Monday, June 2, 2014. The project facilitator, Dan Bucks, has completed a round of initial interviews with the nine states on their laws and practices in this area and their initial goals and expectations for the project. Other initial research is in progress as well. A second meeting is planned for Monday, July 28th, in conjunction with the Commission's annual meeting in Albuquerque, New Mexico.

The project will evaluate a range of potential services that would support states in the pre-audit, audit, and post-audit phases of addressing transfer pricing issues. The actual services to be proposed will emerge out of the work and discussions with the states over the next year.

The objective of this effort will be to complete a design for an operational Arm's Length Adjustment Service to submit to the executive director by early April 2015. After review of the design with tax administrators of interested states, a final service design will be available for action by the Commission at its annual meeting in 2015.

## II. Administration

On October 22, 2013, two income tax auditors were terminated for failure to meet performance goals.

General Counsel Shirley Sicilian tendered her resignation on November 19, 2013, effective December 31, 2013. Shirley was hired in 2003 as deputy general counsel and became general counsel in July 2006. Shirley joined KPMG LLP in January 2014 as the national director of state and local tax controversy for its Washington National Tax practice.

Helen Hecht has been hired to be the next general counsel; currently tax counsel for the Federation of Tax administrators, she will be starting on July 1, 2014. She will be based in Washington, D.C.

Mike Bontrager, Senior Sales Tax Auditor, resigned January 31, 2014, to take a position with private industry. Mike had been with the Commission since November 2004.

Two income tax audit positions and a sales tax audit position remain vacant. The Commission is currently in the process of interviewing for this sales tax audit position.

Keith Getschel, currently the assistant commissioner for business taxes with the Minnesota Department of Revenue, has been hired as the next director of the Joint Audit Program. He will start on June 16, 2014. Les Koenig, the current director, will be retiring on July 31 of this year.

## 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

- SEATA 63<sup>rd</sup> Annual Conference; *Alternative Apportionment* (Sicilian); *Multistate Tax Commission Update* (Huddleston); Hilton Head, South Carolina

### AUGUST

- BNA State Tax Advisory Board Roundtable; Participant (Matson); Washington, D.C.
- Georgetown Advanced State and Local Tax Institute; *The Presumptive Correctness of Tax Assessments* (Laskin); *SALT Implications of Federal Tax Reform* (Huddleston); *MTC Compact Litigation and Refund Opportunities* (Sicilian); Washington, D.C. (Shimkin)
- Florida Tourist Development Tax Association 18th Annual Conference; *Sales Tax Enters the 21st Century* (Beier); Clearwater, Florida
- 2013 Annual Meeting of MSATA; Oklahoma City, Oklahoma (Huddleston)

SEPTEMBER

- 2013 Annual Meeting of NESTOA; Philadelphia, Pennsylvania (Huddleston)

OCTOBER

- 2013 FTA Revenue Estimating and Research Conference; Springfield, Illinois (Dubin)
- 2013 WSATA Conference; *Multistate Tax Commission Update* (Fort); Salt Lake City, Utah
- National Association of State Bar Tax Sections Annual Conference; Presenter (Laskin); Washington, D.C.
- Bloomberg BNA Online Seminar: *Revising UDITPA and the Multistate Tax Compact* (Sicilian)
- Hartman State and Local Tax Forum; *Burden of Proof in State Taxation* (Fort); Nashville, Tennessee (Huddleston, Sicilian)
- Pennsylvania Institute of Certified Public Accountants 2013 Multistate Tax Conference; *Multistate Tax Commission Update* (Shimkin); Malvern, Pennsylvania
- Tax Executives Institute 68<sup>th</sup> Annual Conference; *Effect of the Gillette Decision and Current MTC Projects on Taxpayers* (Matson); New Orleans, Louisiana

NOVEMBER

- Tax Analysts Conference: *The Project to Rewrite UDITPA: Does Model Legislation Have an Expiration Date?* (Sicilian); Washington, D.C. (Huddleston, Matson, Dubin, Disque)
- COST 2013 Mid-Atlantic Regional State Tax Seminar; *Everything You Wanted to Know, But Were Afraid to Ask, About the MTC* (Matson); McLean, Virginia
- 2013 California Tax Policy Conference; Moderator: *Shave and a Haircut: (Two) Thoughts on the Future of the Multistate Tax Compact after Gillette* (Huddleston); San Jose, California
- AICPA 2013 National Tax Conference; State & Local Tax Committee; Presenter (Shimkin); Washington, D.C.
- 2013 New England State and Local Tax Forum; *State of the States* (Huddleston); Newton, Massachusetts
- National Tax Association 106<sup>th</sup> Annual Conference on Taxation; Discussant: *Interacting Federal and State Taxes* (Dubin); Tampa, Florida

DECEMBER

- International Tax Dialogue (ITD) Global Conference on Tax and Intergovernmental Relations, *Tax Administration: Striking the Right Balance – A U.S. Multistate Perspective* (Huddleston), Marrakech, Morocco

JANUARY

- 23rd Annual Ohio State Tax Conference; Columbus, Ohio (Huddleston)

FEBRUARY

- NYU State Tax Group lunch meeting, New York, New York (Huddleston)
- Deloitte and Florida Bar Tax Section's National Multistate Tax Symposium; Orlando, Florida (Huddleston)
- Memphis Lunch Group of the Institute for Professionals in Taxation, *The Multistate Tax Commission Programs & Projects: A National Overview of Issues Facing Taxpayers and State Revenue Departments* (Huddleston), Memphis, Tennessee

MARCH

- D.C. Bar State and Local Tax Committee Luncheon, discussion of federal legislation on state and local tax issues (Matson, panelist), Washington, D.C. (Abalos)
- Cornell State & Local Tax Discussion Group, *Current Tax Events* (Huddleston), New York, New York
- Tax Executive Institute's 64th Midyear Conference, Washington, D.C. (Huddleston)
- American Enterprise Institute and International Tax Policy Forum, *Economic Effects of Territorial Taxation*, Washington, D.C. (Dubin)

APRIL

- Crowell & Moring's D.C. Tax Executives Luncheon, *Multistate Tax Commission Update and National Issues in State Taxation* (Huddleston), Tysons Corner, Virginia
- Tax Economists Forum, *It's Time to Adopt World Wide Formulary Apportionment & Combined Reporting* (Dubin, co-presenting), Washington, D.C. (Huddleston, Matson)
- The Office of Tax Policy Research at the University of Michigan, the Center for Business and Economic Research at the University of Tennessee and the Department of Economics at the University of Georgia, Conference on Subnational Government Competition, Knoxville, Tennessee (Huddleston)
- 11th Annual New Mexico Tax Research Institute Tax Policy Conference, *UDIPTA – Past Present and Future* (Fort, panelist), Albuquerque, New Mexico

### **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 new Exchange 2010 email server continues to coexist with the Exchange 2003 server. Configuration issues with the backup server have been resolved, and the migration of mailboxes has begun.

The Commission has completed its transition a new VoIP telephone system. This process also included the installation of business high speed Internet at all teleworkers' home offices.

The Commission continues to work with Quality Assessment Solutions, LLC, on the state contact portal. The application has been tested and QAS, LLC is in the final stages of remediation of all issues that the deputy executive director and network administrator identified during their testing. Active Directory access testing has been conducted by QAS on several occasions to ensure that updating Active Directory records via the state contact portal functions properly.

The network administrator has also been working with National Nexus Program staff to provide technical support for the voluntary disclosure application system. The six-month support agreement has been extended and a few of the immediate concerns have been resolved as a joint effort between the network administrator and the vendor. The network administrator continues to pursue various other avenues of support moving forward. A software development company has been contacted and has successfully completed one small batch of work on the Voluntary Disclosure Application. The corrections made by them were integrated with no issues and we are developing another list of items for them to correct or enhance in the application. Working hand in hand with the software development company, the network administrator has been able to update the taxpayer and state agreements so that they can print correctly directly from the application. This will be a huge time saver for the nexus staff. Additionally, the initial planning has begun for an overhaul of the Online Voluntary Disclosure Application. This online application needs to be updated not only to streamline the application process, but to remain compatible with new browser technologies.

The need for a way to securely transfer large (over 10 MB) files has continues to be an issue for commission staff. The network administrator has set up a "proof of concept" agreement with a vendor to provide a demonstration of a possible solution. Due to a personal issue with the vendor, the proof of concept has been postponed. Scheduling conflicts due to travel (vendor and network administrator) have prevented this from occurring as of yet.

The normal maintenance of server hardware in the various offices occurs on a regular basis.

The network administrator has begun the process of gathering specs and price quotes for new laptops for the audit staff. The current laptops have stood up well but are a year past their three-year service point. The purchase order for the new audit staff laptops has been completed.

The commission continues to maintain its current website while building a new infrastructure. The current website is the host of upcoming events and day-to-day content improvements. The commission staff has made steady improvement in the transition of content management system (CMS). Some updates include, a newly design web site template and a clear and consistent navigation to promote ease of use.

During the period of December 1, 2013, to April 30, 2014, the website received 155,661 page views and 54,926 overall sessions to our website. A session is a period of time a user is actively engaged with the website. The average session duration was 2 minutes and 18. The web site was the central location for meeting itineraries during the fall and winter committee meetings. The site peaked at 2,164 pageviews on Wednesday, March 12, 2014, during the committee, subcommittee, and workgroup meetings in Denver, Colorado.

During April 21-22, the website manager and deputy executive director completed Content Administrator Essential Training online for the Kentico content management system (CMS). The training provided an in-depth view of the web content system. The website manager also completed Developer Essential Training online during April 28-30, 2014.

#### Most Popular Pages of the Website

	Page Title	Total Page Views	Unique Page Views	Average Time on Page in minutes
1	Sales and Use Certificate	39,693	27,218	0:02:22
2	Homepage	23,654	18,023	0:01:07
3	State Map	7,374	4,468	0:01:50
4	MTC Compact	5,824	3,314	0:00:25
5	FAQ's Sales and Use Certificate	4,888	3,991	0:02:43

### Website Pageviews

