



MULTISTATE TAX COMMISSION

To: Executive Committee  
From: Joe Huddleston  
Date: December 5, 2013  
Subject: Report of the Executive Director

---

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2013, through November 30, 2013 (unless otherwise noted).

**I. Programs & Activities**

**A. Joint Audit Program**

The audit division completed 1 and parts of 6 income tax audits thus far for fiscal year 2014. The audit division also completed 1 sales tax audits and parts of 4 other sales tax audits for fiscal year 2014. There are currently 22 income and 30 sales tax audits in progress. Proposed assessments through November 15 for fiscal year 2014 from these audits total \$9,999,764.

The following chart summarizes hourly data for completed audits through October 31 for fiscal year end June 30, 2014:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	1	1	2
<b>Total States Audited</b>	16	10	26
<b>Total Hours</b>	626	580	1,206
<b>Average Hours per State</b>	39	58	46

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.

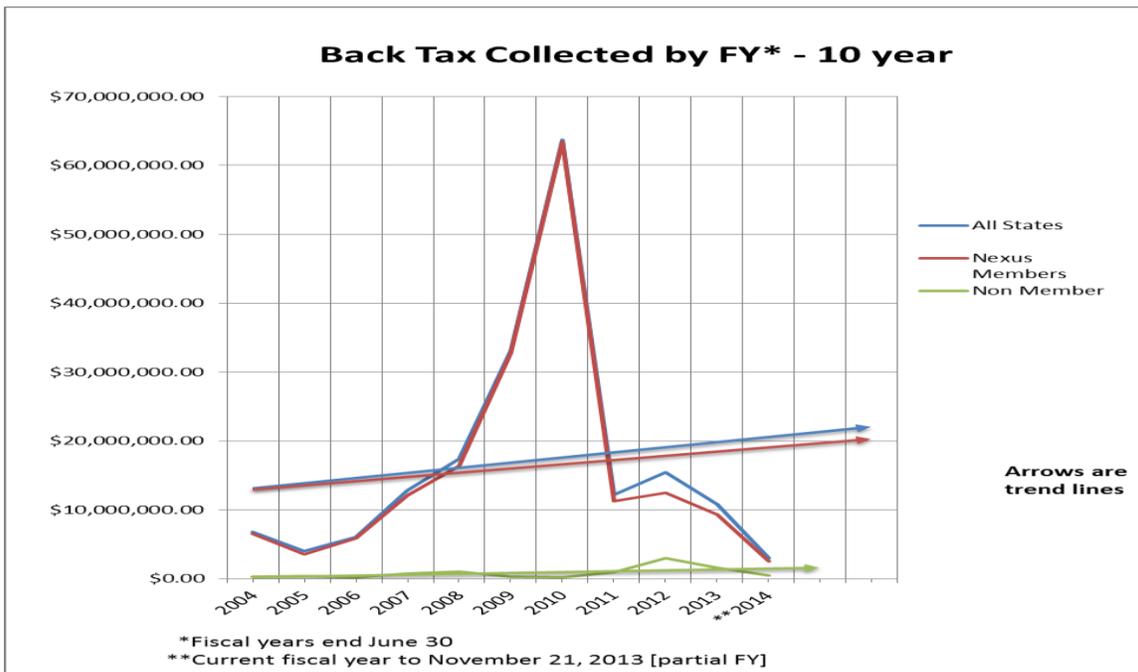
Audit division staff provided instruction at one income tax training class and one sampling class for fiscal year end June 30, 2014.

**B. National Nexus Program**

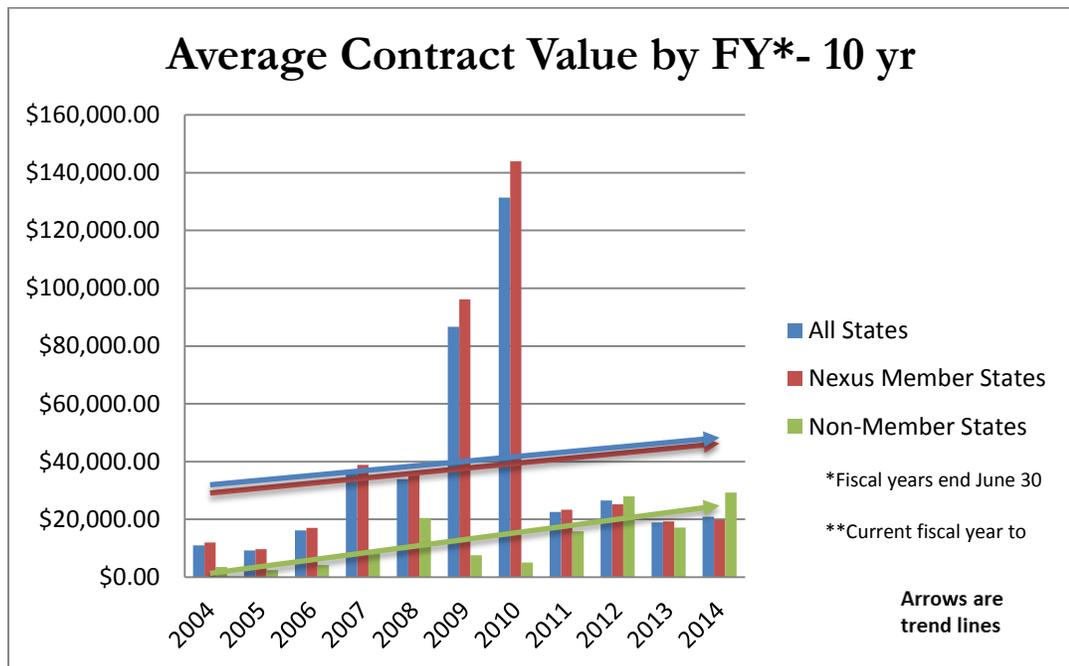
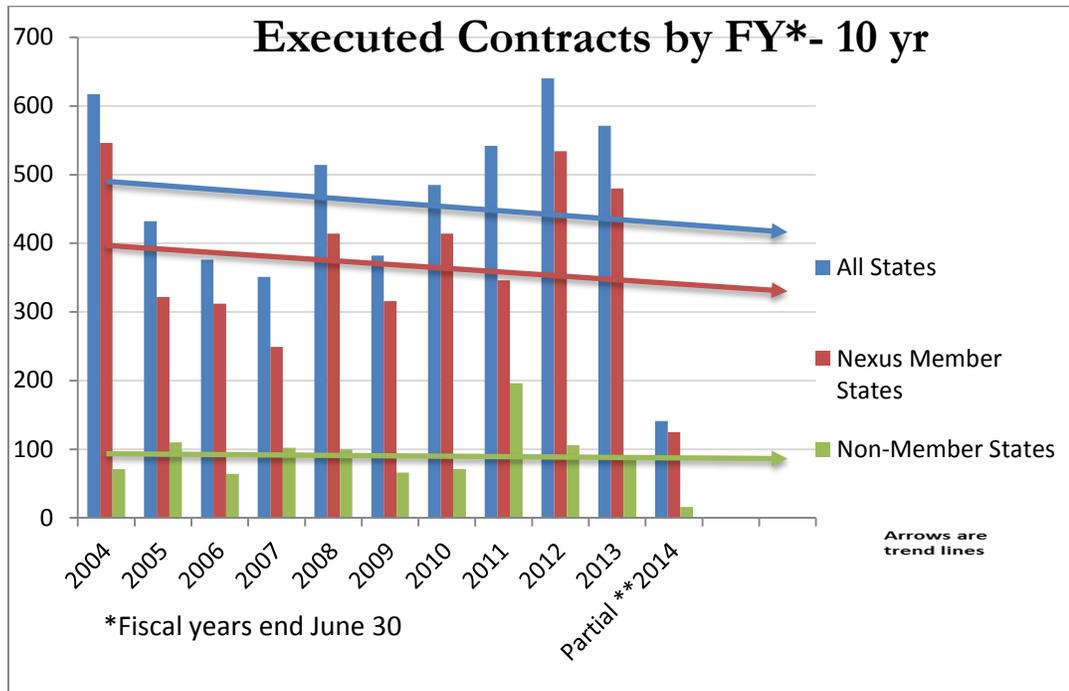
The multistate voluntary disclosure statistics for FY2014 to date (July 1 – November 21, 2013) are —

- Nexus states' collections.....\$ 2,481,930
- All states' collections .....\$ 2,951,231
  
- Nexus states' executed contracts .....125
- All states' executed contracts .....141
  
- Nexus states' average contract value.....\$19,855
- All states' average contract value .....\$20,931

*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.

### 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 five states participate. California Franchise Tax Board (but not the State Board of Equalization), Delaware, Nevada, Ohio, Illinois, and New York 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.

### 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.

### 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.

## **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.

### 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)

#### **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 the property factor in the apportionment formula. Policy research staff also wrote a memorandum on possible adoption of alternative apportionment formula for financial institutions.

#### *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.
- Serves on advisory board of National Tax Association; “volunteered” for Budget and Finance Committee.
- 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.
- Organizing Tax Economists Forum breakfast at Pew Charitable Trusts January 18, 2014.

## **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.

### 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.

### Nexus School

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

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

The training director also 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.

## 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 will join KPMG LLP in early 2014 as the national director of state and local tax controversy for its Washington National Tax practice. Sheldon Laskin has been named acting general counsel, and a position announcement has been posted to the website and in FTA's TaxExpress. The deadline for applications is January 31, 2014.

## 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

### **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. The completion of mailbox migration is on hold due to configuration issues with the backup server.

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.

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.

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.

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 past their 3 year service point.

The Commission staff is in the process of implementing a new content management system (CMS) for the website. The new system will allow greater flexibility and, as a side benefit, be better suited to mobile platforms. The second phase of this project is underway: migrating old content to the new site. Some of the new features include a redesigned format, revamped navigation, robust search feature, and an emphasis on content usability. We have been working with our developer team to ensure a smooth transition.

The website received 151, 876 page views and 55,440 overall visitors to our site. During the 46<sup>th</sup> Annual Conference and Committee Meetings, the website provided up-to-date information on meeting agendas and conference itinerary. There were 1,952 unique visitors during the annual meeting in San Diego, California. We also received 108 registrants through our online event registration.

### 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	39,754	28,722	0:02:18
2	Homepage	22,036	17,057	0:01:07
3	State Map	7,827	4,739	0:01:50
4	MTC Compact	6,542	3,812	0:00:28
5	FAQ's Sales and Use Certificate	4,687	3,887	0:02:48

#### Interesting Facts —

- On July 23, 2013, we received a peak of 710 visitors to the website.
- Internet Explorer is the top browser with 62% of visits, followed by Chrome with 21%, and Firefox with 10%.
- Average time on website was 2 minutes and 12 seconds.
- We had a total of 55,440 visits to our website from all traffic sources.

### Website Visitors, Same Time Period, 2013 to 2012 Comparison

