



To: Executive Committee
From: Gregory S. Matson
Date: November 11, 2021
Subject: **Report of the Executive Director**

This report is a summary of the Commission's organizational and staff activities for the first quarter of the MTC fiscal year 2022, July 1, 2021 to September 30, 2021.

I. Membership

California has upgraded its MTC membership to sovereignty membership, subject to the consent of the Executive Committee, effective October 1, 2021.

II. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed parts of four (4) income tax audits during the first quarter of fiscal year 2022. Audit staff also completed two (2) sales tax audits and parts of one (1) other sales tax audit. Currently, there are eighteen (18) income tax audits and twenty-seven (27) sales tax audits in progress.

During the first quarter of the fiscal year, the income tax program proposed net assessments of \$5,526,429 for partially completed income tax audits. Income tax program staff also proposed NOL and refund reductions of \$68,324. The sales tax program proposed net assessments of \$2,057,431 for completed and partially completed sales tax audits.

The following chart summarizes hourly data for *completed* audits during the first quarter 2022 fiscal year:

	Income & Franchise	Sales & Use	Total
Total Audits	0	2	2
Total States Audited	0	19	19
Total Hours	0	5002	5002
Average Hours per State	0	263	263

An updated MTC *Audit Manual for Sales Tax and MTC Sales and Use Tax Waiver and Extension of Statute of Limitations* was approved by the Audit Committee at its last meeting on August 10, 2021.

The Joint Audit Program director serves, along with a member of the legal division, as staff to the State Intercompany Transactions Advisory Service Committee.

B. National Nexus Program

Multistate Voluntary Disclosure Program

The Nexus Program results for 1st Quarter, fiscal year 2022 results (July 1, 2021 through September 30, 2021) are provided below.

Nexus states' collections: \$ \$11,887,537 (\$20,269,587 FY 2021)

Nexus states' executed agreements: 88 (411 FY 2021)

Nexus states' average contract value: \$135,086 (FY 2021: \$49,318)

The above amounts include checks received by the Commission or amounts paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the value of a new taxpayer are not included.

Applications continue to increase in the post-*Wayfair* era above what they were before that decision. The Commission received applications from 296 taxpayers in calendar year 2020. So far this calendar year 2021 (as of September 30, 2021), 160 taxpayers have applied. Most of the applications continue to be based on sales/use tax economic nexus.

Membership

Delaware rejoined the National Nexus Program, effective July 1, 2021. There are currently thirty-nine participating states (including the District of Columbia) in the NNP. Commission staff continues to reach out to non-member states.

Staff

The Program presently has four permanent full-time staff members: Richard Cram, Director, Diane Simon-Queen, Voluntary Disclosure Program Manager, Michelle Lewis, Paralegal, and James Lee, Program Specialist. The new Nexus Program software system has been fully implemented by staff and all applications are received online.

Outreach

Staff continues to urge states to put a link to the NNP on their voluntary disclosure web pages and provide other outreach. Nexus Director Richard Cram has

participated in numerous events which are listed below.

Nexus School Planned. A Nexus School for income tax is currently scheduled for May 18-19, 2022, in Salem, Oregon. Registration information will be published on the MTC website in the future. Please let a member of the Commission staff know if your state would like to host a Nexus School.

Amnesties

The NNP posts on its web page a list of upcoming and current state tax amnesties. Please inform NNP staff if you would like the Commission to post your state's amnesty.

C. Legal Division

The six legal division attorneys —

- Staff the Uniformity Committee and its various work groups (including research, drafting, presentations, and reports);
- Staff the Litigation Committee;
- Staff, along with the Joint Audit Program director, the State Intercompany Transaction Advisory Service (SITAS) Committee;
- Provide attorney and other training;
- Offer litigation and amicus support and legal advice to states;
- Provide legal support to the Commission and its programs and projects, including the Joint Audit and National Nexus Programs and general administrative functions;
- File amicus briefs on behalf of the Commission;
- Oversee the MTC Alternative Dispute Resolution Program established and governed by Bylaw 14;
- Publish articles in tax journals;
- Speak at conferences and seminars (as detailed elsewhere in this report); and
- Oversee the annual Paull Mines Award, which the Litigation Committee established to recognize contributions to state tax jurisprudence by public-sector attorneys.

Uniformity Work

The Uniformity Committee submits a separate report to the Executive Committee detailing the status of projects undertaken by that committee. This section of the executive director's report summarizes the support to this committee provided by the MTC's legal staff.

The legal staff, including the uniformity counsel, have been providing research and analysis of issues for the work group on state taxation of partnerships. That work

group is undertaking a comprehensive project to study and identify issues in this area that may need to be addressed by the states. The project is in its early stages and staff has helped the work group prepare a comprehensive outline that is available on the project page on the MTC website, along with other materials.

The MTC legal staff along with the MTC National Nexus Program director have also been conducting discussions with various stakeholders on the proposed project to study and prepare a white paper on sales taxation of digital products.

In addition to these two major projects, the legal division regularly consults with states on the adoption of MTC models. Recently, much of that focus has been on the revisions to the statement of position on P.L. 96-272, which the Commission voted unanimously to adopt on August 4, 2021.

Litigation Committee Support

The Litigation Committee has traditionally held in-person training and informational sessions (commonly referred to as roundtables) 2-3 times a year where state tax attorneys in departments of revenue and attorney general offices around the country discuss current and recent tax cases and key litigation issues and share ideas with colleagues in other states. Because of the pandemic, these roundtables were shifted to a virtual format, and due to the positive response, we are continuing that practice in addition to holding roundtable discussions during in-person meetings.

During this period, roundtables were held on September 23 (Income Taxes and Other Business Activity Taxes) and September 30 (Sales Taxes and Other Transactional Taxes).

To ensure that interested state attorneys are aware of Litigation Committee programs and other MTC programs that may be of interest to them (and also to identify attorneys that may be a resource to attorneys in other states), MTC legal staff continues to update and expand the Litigation Committee attorney roster, which now includes more than 300 attorneys. This project is ongoing.

Training

The legal division traditionally provides a combination of in-person and online training programs for both state attorneys and other state personnel. This fiscal year, the legal division has been supporting development of online training on market-based sourcing and an ethics program for state attorneys and auditors to be delivered live and recorded at the end of the calendar year.

Litigation Support and Legal Advice

The legal division regularly consults with state attorneys and other state representatives by request on litigation matters, including strategy, issues,

arguments, and serving as expert witnesses. MTC attorneys also work on legislative and policy issues, including review of draft legislation, assist states to implement MTC model laws and other guidance, and provide testimony on SALT issues.

During this fiscal year, legal staff has worked with the following states on litigation support and legal advice: Alaska, California Franchise Tax Board, Colorado, Kansas, Maryland, Massachusetts, Nebraska, New Hampshire, New Mexico, North Carolina, Oregon, South Carolina, Texas, Utah, and Vermont.

Support for the Commission's Programs and Projects

The legal staff supports the Commission's Joint Audit and National Nexus Programs and other Commission programs and projects as requested. It also provides support for the Commission's general administration by addressing open meetings issues, maintaining confidentiality policies, handling records requests, researching and making recommendations for record retention policies, resolving lease disputes, reviewing and drafting contracts, and filing corporate registrations and reports.

Amicus Briefs Filed on Behalf of the Commission

- *Santa Fe Natural Tobacco Co. v. Department of Revenue, State of Oregon*, Case No. 5372. The MTC filed a brief addressing the application of P.L. 86-272 when an out-of-state business selling into a state contracts with in-state businesses to perform certain activities.
- The legal division is preparing an amicus brief for submission, subject to Executive Committee consent, to the Massachusetts' Supreme Judicial Court in *VAS Holdings & Investments LLC v. Commissioner of Revenue*, No. 13139.

Publications

Uniformity Counsel Helen Hecht is a member of the *State Tax Notes* Advisory Board and submits periodic "board briefs" on various topics.

D. Legislative Activities and Resources

The MTC's legislative advisor engages in these activities —

- Publishes federal and state legislative newsletters.
- Analyzes and reports on current and emerging congressional actions and threats to state-tax sovereignty.
- Analyzes and reports on state legislation that touches on important, multistate issues.

- Maintains a list of high-level legislative and policy professionals in state revenue departments to facilitate their communication with each other on legislative developments.
- Provides technical information and shares information with other state organizations such as the Federation of Tax Administrators, the National Governors Association and the National Council of States Legislatures.

Federal Issues

The MTC staff, in particular the legislative advisor, carefully follows and monitors the activities at the federal level impacting state taxation issues and reports them in the federal legislative newsletter. Congress and the administration have spent much of the period July 1st to September 30th negotiating a major spending package and considering various potential tax changes. Temporary measures funding the government through November have been passed as well as legislation to raise the debt ceiling. Major actions are not expected to be completed until later in the calendar year.

As to remote and mobile workforce legislation, action is not expected to occur in Congress this year. Efforts to pass legislation addressing this issue have shifted to state by state and discussion of this issue is expected to occur when state legislature convene early in 2022.

State Issues

Most state legislatures are not in session during this period July 1st to September 30th although the MTC staff, in particular the legislative advisor, is monitoring state legislative activities and will be reporting them in the weekly state legislative newsletter. Issues that are expected to be considered and have been discussed recently by state legislators include taxation of digital advertising and various aspects of taxation and remote workers.

E. Training

Training continues to be an important focus of the MTC staff. Staff are continuing to utilize and develop the virtual learning platform, the Talent Learning Management System (LMS). The staff developed new skills and new expertise as part of this project to create a course on market-based sourcing. During this quarter, the staff has been developing and filming this course; more virtual courses will be added in the future.

In addition to the LMS and course development, the training and event staff have been setting up virtual event and meeting registrations, performing back-end support, and provide real-time support to various online events and meetings.

In person events have returned in November with the committee meetings, and the events and training staff have been preparing for those meetings for months. They continue to work with hotels and are preparing for the logistical work of planning and implementing in person activities. Upcoming meetings have been scheduled:

- 2022 Spring Committee Meetings, April 19-22, 2022 – Albuquerque, New Mexico
- 55th Annual Conference and Meetings, July 31 to August 5, 2022 – Anchorage, Alaska
- 2022 Fall Committee Meetings, November 13-18, 2022 – Little Rock, Arkansas

III. Administration

Staffing and Administration

No employees were hired during the period of July 1st through September 30, 2021. One retirement occurred with Robert “Bob” Schauer, auditor and data specialist leaving the MTC in August. Bob has been a valuable member of the MTC Audit Program and was instrumental in the development of a virtual training program on use of statistical sampling.

All D.C.-based staff work remotely and also come into the office one or more days per week. The D.C. office has been open throughout the pandemic with very strict health protocols being followed. Loretta King, our staff assistant, comes in daily. Members of the D.C. office staff have ensured smooth and uninterrupted regular operations at the MTC.

Technology Addendum

To ensure continued security, firewall replacement has been an important activity of the network administrator during this period. Also, the new Nexus Voluntary Disclosure program system is fully implemented and in full production being used by the Nexus staff.

The normal maintenance of server hardware in the D.C. office occurred on a regular basis through on-site visits by the network administrator during this time. The network administrator has continued preparing for multi-factor authentication. Various software and hardware solutions are being tested. A roll out of multi-factor authentication will occur as soon as possible. Also, plans for the Ring Central phone system to be replaced by the Microsoft Teams phone system continue. Because Teams is already integrated into MTC staff daily life, the migration from the current telephony provider to Teams calling should be smooth.

IV. Outside Presentations & Events

The executive director serves on the advisory boards for the Hartman State and Local Tax Forum, the New England State and Local Tax Forum, and New York University's State and Local Tax Institute.

The executive director served as a member of the Virginia General Assembly's Work Group to Assess the Feasibility of Transitioning to a Unitary Combined Reporting System for Corporate Income Tax Purposes. He attended two work group meetings in person in Richmond, Virginia, in August and September.

The following are the programs, conferences, and other events of outside organizations at which MTC staff represented the Commission:

JULY 2021

- SALTovation Podcast, *Multistate Tax Commission with Helen Hecht*, available here: <https://saltovation.podbean.com/page/2/> (Hecht, presenter), virtual
- Update on sales/use tax economic nexus and marketplace facilitator laws, current Uniformity Committee projects, and Multistate Voluntary Disclosure Program, New Mexico Legislative Finance Committee (Cram, presenter), virtual

AUGUST 2021

- *Multistate Update – What is Happening Around the Nation*; 2021 Texas Comptroller's Annual Briefing, virtual (Prosser, presenter)
- MSATA 2021 Annual Conference; *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Decision Making* (Pattison, presenter); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, co-presenter); *Applying P.L. 86-272 to the Modern World: The MTC's Project to Update its Statement of Information on P.L. 86-272*, (Hamer, presenter), Grand Rapids, Michigan (Matson, Prosser)
- *Seller issues with sales/use tax economic nexus and marketplace facilitator laws, and explanation Multistate Voluntary Disclosure Program*, MyCPE.com platform and on CPAcademy.com platform (Cram, presenter)
- National Association of State Auditors, Comptrollers and Treasurers (NASACT), *Impacts to Watch for on State Taxation Policy and Decision Making*, (Pattison, presenter), San Diego, California
- *The Salt Shaker Podcast*, Eversheds, provided online and available here: <https://www.stateandlocaltax.com/podcast/digging-deep-a-discussion-and-update-on-two-mtc-uniformity-projects/> (Hecht, guest), virtual

- *Learning from the 2021 Survey of State Tax Departments, Taxation of Pass-Through Entities Results*, Bloomberg Tax & Accounting, (Hecht, panelist), virtual

SEPTEMBER 2021

- NESTOA 2021 Annual Conference; *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Decision Making* (Pattison, presenter); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, co-presenter); *Voluntary Disclosure Issues* (Pattison, co-presenter); *Court Case Roundup* (Prosser, co-presenter); *Applying P.L. 86-272 to the Modern World: The MTC's Project to Update its Statement of Information on P.L. 86-272* (Hamer, presenter), Pittsburgh, Pennsylvania (Matson)
- *Seller issues with sales/use tax economic nexus and marketplace facilitator laws, and explanation Multistate Voluntary Disclosure Program*, MyCPE.com platform and on CPAcademy.com platform (Cram, presenter), virtual
- *BakerBotts Quarterly SALT Update Webinar* (Prosser, presenter), virtual
- *Update on Multistate Tax Commission Uniformity Projects*, NCSL Fiscal Leaders Seminar and SALT Conference (Hecht, presenter), Santa Fe, New Mexico
- EY Quarterly Webcast – *State Taxation of Partnerships – MTC Work Group* (Hecht, panelist), virtual