



To: Executive Committee  
From: Gregory S. Matson  
Date: November 17, 2022  
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 first quarter of the MTC fiscal year 2023, July 1, 2022 to September 30, 2022.

## **I. Programs & Activities**

### **A. Joint Audit Program**

The Joint Audit Program completed parts of seven (7) income tax audits and parts of five (5) sales tax audits during the first quarter of fiscal year 2023. Currently, there are fifteen (15) income tax audits and twenty-six (26) sales tax audits in progress.

During the last fiscal year, the income tax program proposed net assessments of \$1,678,735 for partially completed income tax audits. Income tax program staff also proposed net NOL and tax credit reductions of \$2,714,052. The sales tax program proposed net assessments of \$310,001 for partially completed sales tax audits.

The Audit Committee has met once during the fiscal year on August 1, 2022 in Anchorage, Alaska. During the meeting, the committee received an update on the progress of open audits and a SALT case update from MTC legal staff.

### **B. National Nexus Program**

#### Multistate Voluntary Disclosure Program

The Nexus Program results for 1<sup>st</sup> Quarter, FY 2023 are provided below:

- Nexus states' collections: \$4,847,117 (\$28,337,506 FY 2022)
- Nexus states' executed agreements: 88 (493 FY 2022)
- Nexus states' average contract value: \$55,081 (\$57,480 FY 2022)

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. The Commission received applications from 192 taxpayers in calendar year 2021. For calendar year 2022 to date (as of October 31, 2022), 136 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

### Membership

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.

### Nexus School

Nexus School for income tax was held on October 6-7, 2022 in Salem, Oregon. Please let a member of the Commission staff know if your state would like to host a Nexus School.

### 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.

### Outreach

During 1<sup>st</sup> Quarter, FY 2023 to date, Richard participated in the following outreach event: co-panelist at Paul J. Hartman SALT Forum in Nashville, TN on October 21, 2022 with Joe Garrett and Zachary Atkins in a session entitled: “Market Sourcing and Factor Presence Nexus Trends.”

### 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 eight legal division attorneys —

- Staff the three Commission standing committees: Uniformity, Litigation, and the State Intercompany Transaction Advisory Service (SITAS) Committee;
- Provide attorney and other training to state tax agency and MTC staff;

- Provide litigation and amicus support and legal advice to states as requested;
- 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;
- Monitor state and federal legislation and issue the MTC legislative newsletter;
- Speak at conferences and seminars; 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. The MTC Uniformity Counsel and other members of the legal division support the committee, standing subcommittee, and uniformity work groups in a variety of ways, to include providing counsel, performing research, drafting reports and other documents related to the uniformity process, and making and organizing presentations and training, as directed.

### Litigation Committee Support

To ensure that interested state attorneys are aware of Litigation Committee programs and other MTC programs that may be of interest to them, and 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 includes more than 300 attorneys. Legal division attorneys also partner with Litigation Committee leadership to organize Attorney Training programs in conjunction with the MTC's spring, summer, and fall meetings, and organize virtual trainings and information sharing opportunities throughout the year.

### Training

The legal division provides a combination of in-person and online training programs for both state attorneys and other state tax personnel.

The attorney training held in conjunction with the MTC's August 2022 meetings in Anchorage included the following sessions, plus a litigation roundtable where state participants shared ideas and discussed recent developments in their states:

- Trial Practice Session I: Pomp & Circumstances – Dealing with Expert Witnesses
- Trial Practice Session II: Trial Day Strategy
- Special Alaska Tax Panel – Addressing a Changing Economy (with senior Alaska officials). Insights into how tax state systems may need to adapt to address changing economies.
- The Tax Injunction Act and Recent Efforts by Taxpayers to Circumvent State Courts
- Taxing Gains upon the Sale of Partnership Interests: Key issues and Recent Developments

### 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 by serving as expert witnesses. MTC attorneys also work on legislative and policy issues on request, including review of draft legislation, assistance to implement MTC model laws and other guidance, and providing testimony on SALT issues.

During this fiscal year, legal staff provided litigation support and legal advice to the following states and territories:

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|---------------|------------------|
| • California  | • New Hampshire  |
| • Kansas      | • New Mexico     |
| • Illinois    | • Oregon         |
| • Maryland    | • Pennsylvania   |
| • Minnesota   | • South Carolina |
| • Mississippi | • Washington, DC |

### Support for the Commission’s Programs and Projects

The legal division 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; reviewing and drafting contracts; and filing corporate registrations and reports.

### Amicus Briefs Filed on Behalf of the Commission

In September 2022, National Nexus Director Richard Cram drafted an amicus brief at the request of Mississippi in the matter of *Priceline.com LLC, et al v. Fitch*, Case No. 2021-CA-00868, in the Supreme Court of Mississippi. The case concerns whether online travel companies (OTCs) owe additional tax on their sales of hotel rooms. The OTCs argue in part that Mississippi’s enactment of marketplace

facilitator tax collection requirements in 2020 supported their argument that OTCs had no tax liability on the net amounts they retained from customer payments as service fees. Richard Cram—knowledgeable on the states’ consideration and enactment of marketplace facilitator tax collection laws—previously signed a factual affidavit explaining that those laws were not primarily focused on OTCs but were more broadly focused on large marketplace facilitators and should not affect any tax collection obligations of OTCs.

### Legislative Tracking and Newsletter

Legal division staff tracks state and federal bills that address primarily income, franchise, and sales and use taxes and that relate to the Multistate Tax Compact or core MTC programs and uniformity initiatives and issues periodic newsletters. Any public sector tax administrator or attorney may sign up to become a subscriber.

### Advisory Boards & Publications

Uniformity Counsel Helen Hecht is a member of the *State Tax Notes* Advisory Board and submits periodic “board briefs” on various topics. She also serves on the Bloomberg Tax’s State Tax Advisory Board, which helps that platform expand and improve its state tax content and analysis. Deputy General Counsel Lila Disque serves on the Law360’s 2022 State & Local Tax Editorial Advisory Board.

Counsel Brian Hamer published “In the Wake of the MTC’s P.L. 86-272 Project” in *Tax Notes State*, Aug. 8, 2022.

## **D. Training Program**

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). During this quarter, the staff has been developing and filming a virtual training on ethics and completing the market based sourcing course to be offered virtually very soon. Additional 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.

The following upcoming meetings have been scheduled:

- 2023 Spring Committee Meetings, April 24-27, 2023 – Long Beach, California
- 56th Annual Conference and Meetings, July 24-27, 2023 – Austin, Texas

## **II. Administration**

### **Staffing and Administration**

Jennifer (“Jenn”) Stosberg joined the Commission staff as legal counsel on July 6, 2022. Jenn represented the Kentucky Department of Revenue starting in 2012 both as a staff attorney and, most recently, as a staff attorney manager/assistant general counsel. Prior to her work for the Kentucky Department of Revenue, she worked as a felony prosecutor in Louisville, Kentucky. Jenn graduated from the University of Kentucky College of Law and obtained her LL.M. in taxation at the University of Florida Graduate Tax Program.

The actual conversion of MTC’s accounting system from the server-based Microsoft Dynamics SL to the cloud-based Microsoft Dynamics Business Central (BC) occurred on July 1, 2022, the first day of the current fiscal year. BC is now used for check writing and all other accounting related functions.

### **Technology**

The old secure file transfer system (CLEO) has been replaced with Box for Government. The network administrator has worked closely with Box to set up our file share environment and has worked with MTC staff to conduct small group training on the use of Box. The network administrator has also worked with some states to elaborate on the Box configurations to allow the states to determine if their current security policies will allow for the use of our file sharing system.

The network administrator has successfully rolled out new laptop to all remote staff. Due to supply chain issues this became more challenging than originally anticipated. It required more travel and coordination with remote users. The old laptops, which had been in use for 4+ years, will have all data removed using Wipe Drive pro which provides for DoD 5200.28-STD (7 passes) removal.

## **III. 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 following are the programs, conferences, and other events of outside organizations at which MTC staff represented the Commission:

## JULY 2022

- Southeastern Association of Tax Administrators Conference; *Taxing Digital Goods and Services: Where Are We Going?* (Prosser, panelist); *Pass Through Entity Taxation* (Barber, panelist); *The Top State Income Tax Issues in 2022* (Disque, panelist); *Nexus and PL 86-272 Post-Wayfair* (Coon, panelist); and *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Revenue Decision Making* (Pattison, speaker); Norfolk, Virginia (Matson attending)

## AUGUST 2022

- New Mexico Legislature Revenue Stabilization and Tax Policy Interim Committee, “*Perspective of Tax Administrators*,” Santa Fe, New Mexico (Hecht testified)
- Bloomberg Tax online seminar, “Learning from the 2022 Survey of State Tax Departments – Pass-Through Entity Topics” (Hecht, panelist).
- Midwestern States’ Association of Tax Administrators Conference, *Top Income Tax Developments* (Fort, panelist); *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Revenue Decision Making* (Pattison, speaker, virtual); Omaha, Nebraska (Prosser attending)
- National Association State Auditors, Comptrollers and Treasurers Conference, *Issues to Watch for in State Finance, Taxation and Revenue Decision Making* (Pattison, panelist), Charleston, South Carolina
- Association for Budgeting and Financial Management Conference, *State Policy, Taxation and Revenue Trends* (Pattison, speaker), Miami, Florida

## SEPTEMBER 2022

- Northeast State Tax Officials Association Conference, *Taxing Digital Goods and Services: Where Are We Going?* (Prosser, panelist); *Pass Through Entity Taxation* (Barber, panelist); *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Revenue Decision Making* (Pattison, speaker); Niagara Falls, New York (Matson attending)
- TEI Audits & Appeals Seminar, *State Auditors Roundtable—A Discussion with MTC and State Auditors* (Coon, panelist), McLean, Virginia