



To: Commission
From: Gregory S. Matson
Date: August 3, 2022
Subject: Annual Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the fiscal year July 1, 2021, through June 30, 2022 (unless otherwise noted).

I. Membership

California upgraded its membership to sovereignty membership effective October 1, 2021, and Vermont upgraded its membership to sovereignty membership effective July 1, 2022.

II. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed 3 income tax audits and parts of 8 income tax audits during fiscal year 2022. Audit staff also completed 4 sales tax audits and parts of 3 other sales tax audit. Currently, there are sixteen 16 income tax audits and twenty-five 25 sales tax audits in progress.

During the last fiscal year, the income tax program proposed net assessments of \$196,365,218 for completed and partially completed income tax audits. Income tax program also proposed net NOL and tax credit reductions of \$1,726,271. The sales tax program proposed net assessments of \$3,417,681 for completed and partially completed sales tax audits.

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

	Income & Franchise	Sales & Use	Total
Total Audits	3	4	7
Total States Audited	67	46	113
Total Hours	16302	9089	25391
Average Hours per State	243	198	225

Joint Audit Program staff currently consists of the Joint Audit Program director, 4 field audit supervisors, 18 auditors, and a part-time administrative assistant.

B. National Nexus Program

Multistate Voluntary Disclosure Program

The Nexus Program FY 2022 results (July 1, 2021 through June 30, 2022) are provided below:

- Nexus states' collections: \$ \$28,337,506 (\$20,269,587 FY 2021)
- Nexus states' executed agreements: 493 (411 FY 2021)
- Nexus states' average contract value: \$57,480 (\$49,318 FY 2021)

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 U.S. Supreme Court decision. The Commission received applications from 192 taxpayers in calendar year 2021. So far this calendar year 2022 (as of June 30, 2022), 94 taxpayers have applied. Most of the applications continue to be 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.

Outreach

Staff continues to urge states to put a link to the National Nexus Program (NNP) on their voluntary disclosure web pages and provide other outreach. Nexus Director Richard Cram has participated in numerous events which are listed under item III. Outside Presentations and Events.

Nexus School

Several states have indicated interest in having their staff host and/or attend a Nexus School. 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.

Staffing

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.

C. Legal Division

The seven legal division attorneys —

- Provide counsel and support to the Uniformity Committee and its various work groups and perform legal research, drafting, presentations, and reports, as directed;
 - Staff the Litigation Committee;
 - Staff the State Intercompany Transaction Advisory Service (SITAS) Committee;
 - Provide attorney and other training, including to 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 legislative newsletter;
 - 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 summarizes the counsel and support that the MTC legal division provides to the Uniformity Committee, Standing Subcommittee, and uniformity work groups.

During the last fiscal year, the Uniformity Committee met twice in person and once remotely. The Uniformity Counsel staffs the committee along with assistance from others in the legal division.

In the prior year, the Uniformity Committee established a work group to address state taxation of partnerships. That work group met bi-weekly and undertook several specific projects in the last year including the development of a detailed issue outline, a white paper on investment partnerships, and a draft model statute for treatment of investment partnership income. The uniformity counsel and other

legal division staff assisted the work group in researching and presenting information for these projects and in helping the work group in drafting reports and facilitating discussion.

Also in the prior year, Washington state asked the Uniformity Committee to take up a project on sales taxation of digital products. After the Standing Subcommittee recommended that the project be undertaken, the committee asked MTC staff to do research and conduct stakeholder interviews with the goal of preparing a detailed outline of a white paper on this subject. The legal division, along with the MTC National Nexus Director, conducted dozens of stakeholder interviews and conducted other research on the subject, preparing a detailed outline.

At its April meeting, the Uniformity Committee tasked the Standing Subcommittee to begin a review of general apportionment model regulations and special industry rules. That work was begun in June and will continue. The legal division will also assist the subcommittee in reviewing the models and drafting any updates or changes as well reviewing other issues that states may raise as to these models.

Litigation Committee Support

During the last fiscal year, the Litigation Committee held two in-person training and informational sessions where state tax attorneys in departments of revenue and attorney general offices around the country could discuss current and recent tax cases and key litigation issues and share ideas with colleagues in other states. The committee offered a virtual option to participate in the attorney training by charging a technology fee to cover the additional AV costs. Additional informational sessions occurred virtually to reach more attorneys across the country.

Virtual roundtables were held on September 23, 2021 (Income Taxes and Other Business Activity Taxes) and September 30, 2021 (Sales Taxes and Other Transactional Taxes). An in-person roundtable was conducted as part of the Attorney Training held in Alexandria, Virginia, in November 2021 and as part of the Attorney Training held in Albuquerque, New Mexico in, April 2022 (see description in the next subsection). A virtual option was offered to attorneys who were unable to attend the Alexandria roundtable in person.

In addition, the Litigation Committee held a special virtual informational session on March 10, 2022 entitled “Major SALT Developments: State Tax Attorneys Discuss Recent Litigation.” State attorneys from around the country made presentations on five significant cases. Representatives from 47 different jurisdictions registered for this program.

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, the legal staff continues to update and expand the Litigation Committee attorney roster, which includes more than 300 attorneys.

Training

The Legal Division traditionally provides a combination of in-person and online training programs for both state attorneys and other state tax personnel. This fiscal year, we supported development of online training on market-based sourcing that will be delivered through the MTC's learning management system. Division attorneys also organized a virtual informational session entitled "The Recently Revised MTC Statement of Information, Applying P.L. 86-272 to Modern Business Activities." This session, held on December 1, 2021, attracted more than 200 state attorneys, auditors, and policy staff. On December 14, 2021, the legal and audit staffs presented an "End-of-Year Ethics Extravaganza 2021," which was attended by over 150 state employees.

In addition, the legal team, working with the leadership of the Litigation Committee, organized and conducted a full day of Attorney Training on November 8 and on April 19, in conjunction with the MTC's fall and spring meetings, respectively.

The November 8 program included six substantive panels: litigation relating to taxation of the sale of partnership interests; the use and misuse of alternative apportionment in taxing business profits; emerging and re-emerging issues in sales and use tax: a Maryland perspective; the growing presence of the Internet Tax Freedom Act in SALT litigation and state responses; and recent P.L. 86-272 litigation. It also included a presentation by Georgetown Law Professor Brian Galle and the attorney roundtable and informational sharing session referenced above.

The April 19 program included five substantive panels: a settlement and negotiation workshop; a pretrial practice skills workshop; a presentation to improve writing skills which focused on drafting legislation and regulations; a panel addressing research and development credits; and a panel addressing recent SALT cases and emerging issues. This program also included an attorney roundtable and information sharing session.

MTC attorneys were also responsible for organizing a presentation that was open to the public during the November 2021 meetings in Alexandria, Virginia, by staff from the U.S. Senate Finance Committee and the U.S. House of Representatives Ways & Means Committee. They explained current tax issues and legislation before Congress.

In conjunction with the uniformity work group on taxation of partnerships, the legal division developed a 15-part presentation on the basics of Subchapter K for state tax administrators. That training is designed to give those participating in the work group, as well as other state tax administrators, a grounding in federal partnership taxation and, in particular, the issues that have important state tax implications.

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, 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 and territories on litigation support and legal advice: Alaska, American Samoa, California Franchise Tax Board, Colorado, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Mexico, Montana, North Carolina, Oregon, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia.

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 providing guidance on contracts matters, 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 contract with in-state businesses to perform certain activities.
- *VAS Holdings & Investments LLC, v. Commissioner of Revenue*, Commonwealth of Massachusetts Supreme Judicial Court No. SJC-13139. The MTC filed a brief addressing Massachusetts' right to impose income tax on the capital gain realized by an out-of-state S corporation, on the sale of its 50% ownership in a limited liability company that was actively engaged in business in Massachusetts in the years immediately preceding the sale.
- *Quad Graphics, Inc. v. North Carolina Department of Revenue*, No. 407A21-1, Tenth District, Supreme Court of North Carolina. MTC National Nexus Director Richard Cram was lead drafter of this brief in support of North Carolina, arguing that *McLeod v. J.E. Dilworth Co.*, 322 U.S. 327 (1944), has been superseded by current Commerce Clause jurisprudence and cannot thwart use tax assessed on printed material sent into North Carolina by the taxpayer.
- *Glenn Hegar, Comptroller of Public Accounts of the State of Texas v. Texas Entertainment Association, Inc.*, U.S. Supreme Court Dkt. No. 21-1258. The MTC filed a brief in support of Texas' petition for certiorari, encouraging the court to implement a uniform interpretation of the Tax Injunction Act that emphasizes state tax sovereignty and results in a narrow approach to granting jurisdiction to federal courts under the Act.

Legislative Tracking and Newsletter

In January 2022, the legal team assumed the responsibility for preparing and distributing the MTC's legislative newsletter. The newsletter tracks state and federal bills that address income, franchise, and sales and use taxes and that relate to the Multistate Tax Compact or core MTC programs and uniformity initiatives. Updated versions of the newsletter were distributed every week during the height of the state legislative season and approximately twice a month once most legislatures adjourned. Any public sector tax administrator or attorney may sign up to become a subscriber.

Publications & Advisory Boards

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.

Senior Counsel Bruce Fort wrote a two-part article "Would-Be Privateers Flounder on Shoals of Confusion," published February 17 and 18, 2022 in Bloomberg Tax's *Tax Insight and Commentary* on-line magazine. The article suggested the states are not constrained by the Constitution from taxing a non-resident owner of a pass-through entity on its capital gains recognized on the sale of those ownership interests. The article relates to the *VAS Holdings* amicus brief identified above.

E. Training and Events

Training and Events

Training has been an important focus of the MTC staff throughout the fiscal year. The goal of MTC utilizing technology to provide virtual events and expand the availability of training is being realized. A virtual learning specialist with experience and excellent credentials has been hired, and augment in-person training offerings. MTC staff across sections are working together to provide on demand virtual training courses. Recording of a course on Market Based Sourcing has been completed and will be offered in the summer of 2022. A project on partnerships was also created and the course was uploaded to the MTC Learning Management System. These virtual sessions on partnership issues have been well received and have had significant participation. The staff continues to develop new skills and new expertise as part of this project to create training courses. The staff is in the process of developing additional content and more will be added in the future.

The staff is continuing to implement the recommendations of the MTC Strategic Planning Committee in the report approved in November 2020 <http://www.mtc.gov/The-Commission/Committees/Strategic-Planning>. The

report recommendations lead to continuous improvement in MTC course offerings.

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 and have been well attended and have provided substantive information, discussion and action. The events team works with hotels and are do logistical work of planning and implementing MTC in person activities. Upcoming meetings held and scheduled:

- 2021 Fall Committee Meetings, November 8-11, 2021 – Alexandria, Virginia
- 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
- 2023 Spring Committee Meetings, April 24-27, 2023 – Long Beach, California

In addition to the other events and meetings, a professional development meeting for all staff took place June 6-7 in northern Virginia near Washington. Since most staff work remote and travel has been restricted for the last two years, getting staff together in person was particularly important. Audit and legal team meetings took place June 8-9. The content included substantive staff development on communication and working together. There were informative presentations by all sections of the organization so that all staff were aware of projects, roles and responsibilities of all teams.

III. Administration

Staffing and Administration

Two employees retired during this fiscal year. Tom Shimkin retired in December having joined the MTC in 1998 as Director of the National Nexus Program. Later in his time with the Commission, Tom served as legislative counsel and director, and as a legislative advisor. George Fung, a senior auditor for sales & use tax, retired in February 2022, having been with the MTC since 1990.

Three new employees joined the MTC in FY 2022. Melody Moncrief has joined the MTC staff as a part time Administrative Assistant for the Audit Program. Melody previously worked for the Alabama Department of Revenue. Susan Carlson joined us in May 2022 as our first e-Learning Specialist. She has years of experience in virtual training programs for companies and for universities. Jonathan White joined the Legal Department of the MTC, also in May. Jonathan is an experienced

SALT attorney who previously worked for the Hawaiian Department of Taxation. Jonathan holds an LL.M., Taxation, from the University of Washington School of Law.

The Commission is in the process of completing its migration from Microsoft Dynamics SL (server-based) accounting software to Microsoft Dynamics BC (cloud-based) accounting software. The Commission is also in the process of changing its bank from Truist to Sandy Spring Bank. Sandy Spring Bank is a Maryland based bank which is the 137th largest bank in the United States with over \$12 billion in assets.

MTC's financial staff changed the payroll processing company used to handle payroll. The transition went smoothly.

The D.C. office is open on hybrid work schedule and the office operations have been running smoothly with employees coming into the office at least one day a week and some more than that amount. Loretta King, executive assistant, is in the office daily.

Technology Addendum

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.

Maintenance of the off-site backup server in the Covington, KY location has been completed.

The network administrator continues to prepare for multi-factor authentication. There are issues that need to be navigated prior to implementation of a two-factor authentication solution. The network administrator continues to work on those.

The CLEO file sharing system has been taken offline. We are currently using BOX for external file sharing. The MTC staff have been broken up into small groups and briefed in operation and functionality of BOX. The latest software update provided by CLEO would have rendered the portion of the application that we use useless. Because CLEO does not support Pub. 1075 compliance in their online datacenters, we could not move to the cloud with CLEO.

Staff laptops are being replaced in accordance with replacement guidelines. The laptops have been received and the network administrator has begun the process of configuring them and rolling them out to the end users. A plan has been developed, and has begun to be executed, to get the laptops to the end users with the least amount of travel possible.

IV. Outside Presentations & Events

The executive director serves as a member of 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 members of the Legal Division 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

- 2021 Texas Comptroller's Annual Briefing; *Multistate Update – What is Happening Around the Nation* (Prosser, presenter); virtual
- 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, panelist); *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 CPAacademy.com platform (Cram, presenter); virtual
- 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, panelist); *Voluntary Disclosure Issues* (Pattison, panelist); *Court Case Roundup* (Prosser, panelist); *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 CPAAcademy.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

OCTOBER 2021

- WSATA 2021 Annual Conference; *Voluntary Disclosure Programs* (Pattison, panelist); *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, panelist); *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); Anchorage, Alaska (Matson)
- 28th Annual Paul J. Hartman State and Local Tax Forum; *Top Ten Income Tax Cases* (Fort, panelist); *You Sneezed! What Isn't Nexus Anymore?* (Cram, panelist); Nashville, Tennessee (Matson)

NOVEMBER 2021

- *New Federal Partnership Audit Regime & What it Means for the States*, Connecticut CPA Society, November 4, 2021 (Hecht, presenter)
- Bloomberg Tax Leadership Forum; *Maryland and the Expanding Map for Digital Advertising Taxes* (Prosser, panelist); virtual

- The New England State and Local Tax Forum; *Pass-Through Entity Taxation: 2021 and Beyond* (Hecht, panelist); *The Impact of International and Federal Tax Reform on State Income Taxation* (Fort, panelist); virtual

DECEMBER 2021

- FTA Year-End Legislative Update (Shimkin, panelist); virtual
- *State Tax Issues Update*, AICPA State and Local Tax Technical Resource Panel, December 14, 2021 (Barber & Prosser, presenters)
- NYU State and Local Tax Institute; *State Income Tax Consequences of Wayfair* (Hamer, panelist); *Notable Developments Affecting State Taxation of Partnerships, LLCs and their Owners* (Hecht, panelist); virtual

JANUARY 2022

- ABA Virtual 2022 Midyear Tax Meeting (Prosser)

FEBRUARY 2022

- Virtual Testimony to Vermont Legislature's Senate Finance Committee on Corporate Tax Reform (Fort, witness)
- The National Multistate Tax Symposium sponsored by Deloitte Tax LLP and The Tax Section of The Florida Bar; *State Officials Panel: Perspectives on Reemergence and Preparing for What's Next* (Prosser, panelist); Orlando, Florida
- Talking Tax podcast produced by Bloomberg Tax; *State Auditors Also Bear Heavy Loads This Tax Season* (Matson & Prosser panelists)
- Presentation on State Taxation of Partnerships to the Louisiana Bar Tax Section (Hecht, presenter); New Orleans, Louisiana

MARCH 2022

- ABA/IPT Advanced Tax Seminars; *State Transfer Pricing: Challenges, Issues and Opportunities for Multistate Taxpayers* (Fort, panelist); *Public Law 86-272 Today and Tomorrow* (Hamer, panelist); virtual
- NYU State and Local Tax Study Group; *MTC Update* (Matson, presenter); virtual
- Tax Executives Institute 72nd Midyear Conference; *Been There, Done That – Lessons from State Corporate Tax Reform that the OECD Should Know* (Prosser, panelist); Washington, D.C.

APRIL 2022

- State and Local Tax Seminar, University of Iowa College of Law; *Introduction to the MTC and Discussion on PL 86-272* (Hamer and Prosser, presenters); virtual
- National Association of State Chief Administrative Officers Annual Leadership Conference; *State Workforce Discussion* (Pattison, panelist); Washington, D.C.

MAY 2022

- ABA Tax Section of Taxation Spring Meeting; *Update on Two Major Partnership Tax Projects of the Multistate Tax Commission* (Barber, panelist); Washington, D.C.
- NCSL State and Local Taxation Working Group; *Pursuing Uniformity in Digital Taxation* (Prosser, panelist); Seattle, Washington (Hecht)

JUNE 2022

- FTA Annual Conference; *Legal Case Review* (Prosser, panelist); *Taxing Digital Advertising* (Prosser, panelist); Scottsdale, Arizona (Matson, Pattison)