



To: Executive Committee
From: Gregory S. Matson
Date: November 20, 2020
Subject: Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the period July 1, 2020 through September 30, 2020 (unless otherwise noted).

I. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed one (1) income tax audit and parts of five (5) corporate income tax audits during the first quarter of the fiscal year. Audit staff also completed two (2) sales tax audits and parts of four (4) other sales tax audits. Currently, there are nineteen (19) income tax audits and twenty-nine (29) sales tax audits in progress.

The program proposed assessments of \$15,709,698 for completed and partially completed corporate income tax audits and \$1,725,421 for completed and partially completed sales tax audits during the first quarter of fiscal year 2021.

The following chart summarizes hourly data for completed audits during the first quarter of the 2021 fiscal year:

	Income & Franchise	Sales & Use	Total
Total Audits	1	2	3
Total States Audited	16	24	40
Total Hours	8132	3483	11615
Average Hours per State	508	145	290

State Intercompany Transactions Advisory Service Committee

Krystal Bolton with the Louisiana Department of Revenue has agreed to serve as chair of the State Intercompany Transactions Advisory Service Committee (SITAS). Louisiana has been a state on the forefront of using transfer pricing as a tool in its audit program. The SITAS Committee anticipates holding a meeting soon to discuss ways the Committee can support member states and to discuss the possibility of holding a training and information session in 2021.

B. National Nexus Program

Multistate Voluntary Disclosure Program

The Nexus Program 1st Quarter, FY 2021 results (July 1, 2020 through September 30, 2020) are provided below.

- Nexus states' collections: \$5,179,483 (\$21,551,287 FY 2020)
- Non-Nexus states' collections: \$0 (\$0 FY 2020)
- Nexus states' executed agreements: 88 (544 FY 2020)
- Nexus states' average contract value: \$58,858 (\$39,616 FY 2020)

The above amounts include checks received by the Commission or are 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. The Commission received applications from 208 taxpayers in calendar year 2019. For calendar year 2020 to date (as of September 30 2020), 240 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

The Nexus Committee met virtually on July 28, 2020

Membership

There are currently thirty-eight participating states (including the District of Columbia) in the program. Commission staff continues to reach out to non-member states.

Outreach

Outreach Staff continues to urge states to put a link to the program on their voluntary disclosure web pages.

Nexus Schools

Please let a member of the Commission staff know if your state would like to host a Nexus School.

Amnesties

The program posts on its web page a list of upcoming and current state tax amnesties. Please inform program 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:

- staff the Uniformity Committee and its various work groups (including research, drafting, presentations, and reports);
- staff the Litigation Committee;
- provide attorney and other training;
- provide legal support to state tax staff;
- 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;
- monitor and report on state and federal legislation and serve as a resource on legislative matters on behalf of the Commission;
- oversee the MTC Alternative Dispute Resolution Program, established and governed by Bylaw 14 and coordinated with the Council On State Taxation;
- respond to inquiries about the Uniform Sales & Use Tax Exemption Certificate program;
- publish articles in tax journals;
- speak at conferences and seminars and (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

As of September 30, the status of various Uniformity Committee projects was as follows:

- The project to draft a Finnigan approach alternative to the MTC model combined filing statute had been approved by the Executive Committee for a Bylaw 7 Survey of the states and states were still responding so the survey was left open.
- The project to revise the MTC statement on P.L. 86-272 had been to a public hearing, held on August 5, 2020 and the hearing officer was preparing a report for the Executive Committee.
- The project to address potential technical corrections to the partnership provisions of the model statute for reporting federal adjustments, undertaken by the work group which drafted that statute, was wrapping up its work for presentation to the Uniformity Committee at its November 5, 2020 meeting.

- The new project selection work group, established by the Uniformity Committee, had reported to the committee its recommendation to adopt a process for evaluating new projects, including establishing a standing subcommittee. The Standing Subcommittee, which was formed by the Uniformity Committee at its July meeting, had its inaugural meeting in September to discuss the process it will generally use.

Litigation Committee Support

The Litigation Committee has traditionally held in-person roundtables 2-3 times a year where state tax attorneys discuss current and recent tax cases and key litigation issues and share ideas with colleagues in other states. Due to the pandemic, these roundtables have been shifted to the web. On July 27, 2020, MTC attorneys helped the Litigation Committee hold its first online roundtable, which included both a series of in-depth presentations on significant state tax cases around the country and shorter presentations offered by participants.

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 resources to attorneys in other states), MTC attorneys initiated a project to update and expand the Litigation Committee attorney roster. We have noted growing participation by attorneys in MTC events who have not previously participated.

Legal Training

The legal division traditionally provides a combination of in-person and online training programs. Due to the ongoing pandemic, legal division staff presented the following online training and information session for state tax attorneys, department of revenue staff, and the public on August 20: Special Roundtable to Discuss Tax Issues Relating to Teleworkers (for state staff only)

MTC attorneys also participated in the Strategic Planning Training Workgroup meetings and researched learning management systems and other training-related technology platforms that might be helpful to providing high-quality training at a reasonable cost to the Commission and state tax staff.

Litigation Support and Legal Advice

The legal division regularly consults with state attorneys on litigation matters, including strategy, issues, arguments, and moot courts, and on legislative and policy issues. MTC attorneys provided support to the following states during this period, in addition to assisting several states with questions related to the MTC RAR/partnership model:

- Idaho
- Iowa
- Kansas
- South Carolina
- Massachusetts

- Mississippi
- New Mexico, including the Governor’s Tax Policy Advisory and Tax Practitioner Advisory Committees
- Oregon
- Pennsylvania

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. The legal division 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 contracts, and filing corporate registrations and reports.

Of note during this period, MTC attorneys assisted the MTC auditors with an update of the Income Tax Audit Manual, including an updated waiver form and waiver policy. They also started a project to review the website information and other information relating to the Commission’s Alternative Dispute Resolution program. In addition, they spoke to approximately 110 taxpayers about the *Uniform Sales and Use Tax Exemption/Retail Certificate—Multistate*. Every caller has been a small, remote seller looking for competent advice about how to use the form and for what purpose, plus numerous related questions about sales tax compliance generally.

Publications

Uniformity Counsel Helen Hecht continues as a member of the State Tax Notes Advisory Board and submits periodic “board briefs” on various topics.

During this period Helen and Brian Hamer were interviewed for an article that appeared in State Tax Notes on July 20, 2020, entitled “*A Conversation on False Claim Act Expansion--Does It Make Sense?*”

Legislative Activities and Resources

The legal division was active on various legislative proposals arising out of the pandemic, including remote worker legislation. States needed to be prepared for a quick response and the pandemic continued to affect state general funds. We engaged in these activities:

- Published federal and state legislative newsletters
- Analyzed and reported current and emerging congressional benefits and threats to state-tax sovereignty
- Analyzed and reported state legislation that touches on important, multistate issues
- Maintained a list of high-level legislative and policy professionals in state revenue departments to facilitate their communication with each other

- Provided technical information to the National Governors Association and liaised with other state organizations

D. Training

Training has been an important focus of the MTC and the Strategic Planning Committee met virtually on November 6th at 1:00 p.m. eastern time to focus on training. The Committee approved a report from the committee's working group on training. The work group gave detailed recommendations for adjustments to the training program, including use of multiple training formats, improved virtual opportunities, perpetually available trainings, regular evaluations and flexibility. The full report is available on the MTC website: <http://www.mtc.gov/The-Commission/Committees/Strategic-Planning>.

In addition to the report, the work group training survey findings were reported to the committee. The survey found that 97% of respondents indicated that they would want to send staff members to MTC trainings, and a reasonable number would be willing to pay a fee for training. The survey findings can be found here: <http://www.mtc.gov/getattachment/The-Commission/Committees/Strategic-Planning/MTCTrainingSurveyresults.pdf.aspx>

The training and event staff have been setting up virtual event and meeting registrations, performing back-end support, and also are providing real-time support to various online events and meetings. They continue to work with hotel and conference contacts at locations we currently have contracts with to seek ways to utilize those contracts when in-person meetings are again possible.

II. Administration

No staff changes have occurred during the first quarter of the MTC fiscal year. Operations have continued with no interruptions even during this pandemic period in which staff primarily works remotely. Administrative staff Bill Six and Wendy Margolis have come into the Washington, D.C. office approximately once a week to ensure checks are issued to pay vendors and other administrative matters are handled for a smooth running of MTC financial and administrative activities.

Technology Addendum

The network administrator continues to support a remote staff during the pandemic. Routine phone and email support is still occurring on a daily basis.

The new Voluntary Disclosure App is close to being ready for phase I testing. The network administrator is installing and configuring the necessary servers for the test environment.

Normal server maintenance, troubleshooting and repair continues to occur.

III. Outside Presentations & Events

The executive director serves as a member of the following annual conference advisory boards: Georgetown University Law Center's State and Local Tax Institute, 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 members of the legal staff represented the Commission during the reporting period:

AUGUST 2020

- 2020 SEATA Virtual Conference, *2020 Sales Tax Case Update: The Past, Present, and Future* (Prosser, panelist)
- 2020 SEATA Virtual Conference, *Federal Partnership Regime and Effect on State Taxation* (Hecht, panelist)
- 2020 Georgetown Law Advanced State & Local Tax Institute, *A State-Taxpayer Discussion: The Project to Update the MTC P.L. 86-272 Statement of Information* (Hamer, panelist)

SEPTEMBER 2020

- FTA Celebrity Speakers Series, *Legal Landscape 2020* (Hecht, panelist)
- FTA Celebrity Speakers Series, *Decision Making Processes* (Pattison, speaker)