MULTISTATE TAX COMMISSION

Minutes of the Executive Committee Meeting
November 20, 2008
San Antonio, Texas

I. Welcome and Introductions

The Executive Committee commenced its meeting at 8:38 a.m. on November 20, 2008. The following participated either in person or via telephone:

Name	Affiliation	Name	Affiliation
Michael Mason	AL	**Private Sector/Other**	
Tim Russell	AL	Todd Lard	COST
Carl Joseph	CA	Diann Smith	Sutherland
Fred Campbell-Craven	CA	Karen Setze	Tax Notes
Steve Cordi	DC	Len Lucchi	Patuxent
Ted Spangler	ID	**MTC Staff**	
Jennifer Hays	KY	Ken Beier	Greg Matson
Donna Donovan	MI	Roxanne Bland	Thomas Shimkin
Omar Davis, Chair	MO	Joe Huddleston	Shirley Sicilian
Dan Bucks	MT	Les Koenig	Bill Six
Lennie Collins	NC		
Cory Fong	ND		
Donnita Wald	ND		
Eric Smith	OR		
Kevin Koller	TX		
Andrew Glancy	WV		
Craig Griffith	WV		

II. Public Comment

The Chair invited public comment but also said that he would allow specific comment on substantive matters to the time when the Committee reached that point in the agenda. There was no public comment at this time.

III. Approval of Minutes of the July 31, 2008 Executive Committee Meeting

After a motion duly made, the minutes of the July 31, 2008, Executive Committee Meeting were approved.

IV. Report of the Chair

The Chair noted that the current Missouri governor did not run for re-election this year and the Department of Revenue will likely undergo personnel changes after the newly elected governor takes office in January. He said that it is unlikely that he will be continuing as Commissioner, but he plans to participate in the January 2009 Executive Committee meeting in Sand Diego.

V. Report of the Treasurer

Mr. Russell reported that financial statements ending September 30, 2008, represent the final amounts approved by the Committee at its meeting in Santa Fe, New Mexico. There is also an appropriated fund balance (without adjustments). Funds at Wachovia Bank are earning a reasonable rate of interest. Revenues are down very slightly, but there is a $62,000 surplus for the current period, which gives a year-to-date surplus of $159,000. Total assets are $8 million, with a fund balance of $3.51 million.

Mr. Bucks said that he recalled that the Commission has a practice of recognizing all revenues in the beginning of the year and asked whether that practice had changed. Mr. Huddleston, MTC Executive Director, responded that the practice was changed awhile ago.

Following a motion duly made by Mr. Cordi, the Treasurer's report was approved.

VI. Report of the Executive Director

Mr. Huddleston noted that the Commission has been active in a number of areas since the July meeting, and directed the Committee's attention to the written report in the binders. He further noted that he would not cover all of the program and committee activities in his report, but would leave that to the program directors and committee chairs. Mr. Huddleston noted that Elliott Dubin, MTC Director of Policy Research, has been very active this year reviewing federal legislation and its impact on states. Dr. Dubin has also hired a few interns and has published articles explaining state revenue positions in a National Tax Association publication. Mr. Huddleston also noted that the MTC is considering a more formal relationship with the NTA in the policy research area as the MTC's resources in this area remains somewhat limited. Funds may be necessary to establish this relationship. A proposal will be presented in the MTC budget in the spring of 2009. At present, the MTC has the funds to bring in interns to work with the Commission for a short time, but a relationship with the NTA will allow the MTC to work on a broader range of issues.

Mr. Huddleston reported that with the addition of a number of new hires, the MTC Joint Audit Program is now fully staffed. He stressed the importance of having the

Audit Program at full strength, as the auditors are the core of the program and, through their efforts, bring dollars to the states.

Regarding the MTC's employee benefits plan, during the summer of 2008, the Commission began moving away from its long-term benefits provider for reasons of costs and that employees were not receiving the necessary services. In moving to a different provider, the MTC anticipated savings while retaining comparable if not better coverage. Thus far, the results have been encouraging. The MTC is also restructuring its retirement plan; by moving to a different funds manager the Commission expects to save approximately $20,000 per year, and the costs to employees will likewise be reduced.

Mr. Huddleston also reported that though the response to the MTC's website has been good, it needs more work. The Commission hired a full-time website manager last June, who is working with staff to improve the site with frequent updates and meaningful content. Mr. Huddleston also noted that the renovations in the D.C. office have been completed; the additional 500 square feet allows enough space for meetings and training sessions in the conference room, and the enlarged kitchen also serves as an employee lunchroom. Mr. Huddleston further noted that the lease for the Houston office has been terminated, which will save $82,000 per year. He also requested the Commission lease two parking spaces in the Hall of States garage.

Mr. Bucks asked for the annual rental cost for the additional office space. Mr. Six, MTC Director of Administration, responded that the cost for the additional space is $50.00 per square foot. Mr. Davis noted that the changes to the retirement plan and the request for two parking spaces requires a motion and vote. Mr. Huddleston further explained that the added costs related to the change in the retirement plan were necessary to acquire the necessary IRS approvals for the plan.

Upon a motion duly made by Mr. Fong, the requested items in the Executive Director's report were approved.

VII. Committee & Program Reports

A. Reports

1. Audit Committee

In addition to the written report, Mr. Koenig, MTC Joint Audit Program Director, reported that 18 audit program states were represented at the July meeting. He noted that the written report for the closed session will be made available during the closed session. Fourteen program states were represented at the fall meeting, which selected 11 sales tax audits.

2. Litigation Committee

In addition to the written report, Ms. Sicilian, MTC General Counsel, reported that several states attended the committee meeting in July and discussed major U.S. Supreme Court decisions from the Court's 2008 term. The legal division also held two state tax attorneys teleconferences since July, one on the attorney-client privilege raised as a defense against discovery and the second on the ongoing hotel intermediaries issue. She thanked Massachusetts for its role in the first teleconference and several of the private sector participants in the second teleconference. The MTC also held an informal October meeting for Litigation Committee members attending the Hartman State and Local Tax Institute. The Hartman seminar began on a Wednesday afternoon, and our meeting was held that Wednesday morning. Issues relevant to tax sheltering were discussed. Ms. Sicilian also noted that the first Paull Mines award was presented at the annual meeting; Jim Peters, Esq. was the recipient. She advised the Executive Committee that the MTC was open to nominations for the second award, which should be sent to the Executive Director.

Mr. Russell asked for an explanation of the award. Ms. Sicilian responded that Paull Mines served as MTC General Counsel for many years prior to his death in 2002, and the award is meant to recognize state tax attorneys whose contributions to state tax jurisprudence have raised the level of expertise for all state tax attorneys. She also noted that there is no form for nominating a candidate, except for a letter and an explanation of the nominee's contributions to state tax jurisprudence.

3. Nexus Committee

In addition to the written report, Mr. Shimkin, MTC National Nexus Program Director, reported that the Nexus Committee met in July and discussed a number of issues, such as the effect of FIN 48 on voluntary disclosures, and improvements to the Nexus Program. It also continued its work developing guidelines to apprise taxpayers of the Nexus Program rules. The committee also reviewed the progress of the database system designed to track voluntary disclosures, which is nearing completion. The database means that states will receive disclosure information sooner and will also allow for the program to process more disclosures. The last piece of the database system, which is currently under contract to an outside vendor, is designing the web portal for use by applicants. Later, he hopes to explore expanding the web-portal aspects to link states and taxpayers together directly albeit anonymously, thereby allowing states to perform their own disclosures, resulting in greater efficiencies.

4. Technology Committee

In addition to the written report, Mr. Matson, MTC Deputy Director, reported that the committee met in July and has had two teleconferences since then. Over the past 9 months, the committee's main focus has been on the nexus program's application as described by Mr. Shimkin as well as overseeing the MTC's website activity and development. One feature that will be available is online registration for all MTC committee meetings. Currently, staff is running the application through internal checks before deployment; they expect it to go live in time for the March committee meetings and training sessions. Other items the committee is reviewing include automation software for the audit program; field audit and case management support (which had been on hiatus while the committee focuses its resources on the voluntary disclosure program); and expects to send out an RFP on these at the end of January 2009. The committee has also been looking at the MTC's IT systems in the areas of backup and recovery, as well as security. At present, all laptops assigned to staff have been encrypted, allowing messages to be sent through a tumbleweed server. The ultimate goal is to encrypt all computers assigned to MTC staff. The committee has scheduled a conference call during the second week of December to continue work on these issues. Mr. Matson also reported that Tim Blevins of the Kansas Department of Revenue and Chair of the Technology Committee for a number of years is leaving the Kansas Department in mid-December. Steve Wilson of Idaho State Tax Commission is presently the Vice-Chair and will, at least on an interim basis, take on the responsibilities of the Chair after Mr. Blevins' departure.

Mr. Bucks said that he would like the Executive Committee to authorize a resolution thanking Mr. Blevins for all his hard work. Mr. Huddleston noted that the Committee should also approve a resolution for Ben Miller of the California Franchise Tax Board, who recently retired.

Upon a motion duly made by Mr. Bucks to authorize staff to prepare resolutions for Mr. Blevins and Mr. Miller for approval by the Executive Committee at its next meeting, it passed unanimously.

5. Uniformity Committee

In addition to the written report, Mr. Spangler directed the Executive Committee's noted that none of the projects listed are before the Executive Committee at this time. The Income and Franchise Tax Subcommittee is working on revised language for Section 18 relief provisions, the treatment of income earned by non-corporate entities (e.g., affiliated groups having subsidiary or parent insurance companies). The subcommittee continues to work with industry on the Financial Institutions project.

The Sales and Use Tax Subcommittee continues to work on the accommodations intermediaries project; the subcommittee's last action was to contact local governments for their views on the proposal. The questions raised by these organizations resulted in revisions to the proposal; however, it is near completion. The telecommunications transaction tax administrative simplification project is intended to provide three models for simplified tax administration, mostly comprised of local taxes.

At the November meeting, the subcommittee heard the objections and concerns about this project, the major thrust of which was that representatives of local governments had engaged in discussions with industry on the issues the industry has asked the MTC to address, but noted that these issues are part and parcel of the entire reform effort and cannot be addressed in a piecemeal fashion. Mr. Spangler also noted that the local representatives were told that the Uniformity Committee was charged with going forward with this project, and will do so unless it receives different guidance from the Executive Committee, but cautioned that the MTC is not equipped to work on the larger reform issues involved. Mr. Spangler also noted that the local representatives were asked if they were willing to work with the subcommittee on this project, but the responses were mixed. Two said that they could commit to working with us and two said they would get back to us after discussing it at their organizations' January meetings.

Mr. Bucks offered two comments regarding the Uniformity Committee report. First, the matters pending in the Uniformity Committee are quite substantive, and it is important for the Executive Committee to understand what is happening. There has been an education within the normal process but because of turnover on this committee, it would be helpful to renew that knowledge. He asked that MTC staff provide structured explanations of the Uniformity Committee's current projects at the Executive Committee conference in January. For example, he would like to see a more in-depth briefing on the substance of these issues, and the corporate income tax project involving insurance companies. Second, with regard to the telecommunications tax administrative simplification project, Mr. Bucks noted that there is an obvious need for more dialogue with local representatives. The relationships between states and locals are important, and the Executive Committee needs to know what is being said as between the MTC and local officials.

Mr. Huddleston responded that an educational session will be planned for the January conference and there will be an opportunity for the Executive Committee and other Commission members to get a clearer picture of these issues. Mr. Spangler agreed with Mr. Huddleston, and said that what would be most helpful is for tax administrators to think about these issues and then give guidance to their representatives so they will be prepared and authorized to talk about what their states can or cannot support with any project. Mr. Russell agreed, and noted that there has never been meaningful contact between the MTC and local governments. Mr. Spangler noted that these projects are new ground for the Uniformity Committee as these two projects directly impact local governments, and that the committee has never been presented with an opportunity to address issues pertaining so directly to local governments.

6. Training Program

In addition to the written report, Mr. Beier, MTC Director of Training, reported that states have exhibited a high level of interest in the Commission's training programs. Another Nexus School has been added to the training calendar to accommodate requests from the states. He also reported the computer assisted audit training course and the course for conducting audits by random sampling has now been combined into one course. Since the two courses are closely related, the course will be rotated among different course presentations.

Mr. Spangler noted that the recent Nexus School held in Boise, Idaho, was well received by state attendees.

VIII. Other Reports

A. Report on Revamping the Commission's Internal Audit Process

Mr. Matson reported that he and Mr. Koenig are the principal persons involved with select members of the MTC's audit staff on this project. He referred the committee to the project completion timeline and progress report in the binder. He noted that following the May 2008 Executive Committee meeting, they began to concentrate on one set of procedures and manual at a time (income and franchise tax or sales and use tax).

B. Report from Working Group on COST Survey Responses and Audit Program Improvements

Mr. Matson reminded the Committee that at its meeting in May 2008, it set up a working group consisting of Audit Committee members and Executive Committee members to develop the MTC's response to the 7 suggestions for improving the Joint Audit Program resulting from COST's survey of its members who had undergone a Commission joint audit. The working group determined that five of the issues were fairly straightforward and it was not difficult for the MTC to respond. The response generated from these discussions was approved by the committee at its last meeting in Santa Fe. Two of the issues identified by COST were reserved at that time to allow for further discussion. Mr. Matson explained that the letter provided in the materials for this meeting is the MTC's response to the latter two issues raised by COST: namely, the number of states participating in a joint audit, and the practice of beginning an audit near the expiration of a statute of limitations. The working group discussed these issues with the Audit Committee in July, and held a conference call since then to discuss the matter further and develop the letter before this committee for approval.

In addition, Mr. Matson noted that though responding to COST's white paper is the main purpose of the working group, it was not the sole purpose. At present, the working group needs guidance from this Committee on what the group should tackle next—e.g., other improvements in the audit program that should be addressed.

Mr. Bucks said that it is important to send a letter to COST to close out these issues. Not all of the MTC's responses will result in agreement, but it should be emphasized that every matter raised in the white paper was given serious consideration.

Upon a motion duly made by Mr. Bucks, the letter was approved.

Mr. Huddleston said that the MTC continues to push to finish the audit manual so to give better guidance to auditors. He also expressed the hope that the working group would stay together, and perhaps even expand its membership. Mr. Huddleston's suggestion that Mr. Mason be added to the working group was agreed to by Mr. Russell, and was also the consensus of the committee.

IX. Uniformity Projects

A. Update on UDITPA Revision Project and Related Matters

Ms. Sicilian reminded the Committee that in July it was reported that the ULC (formerly NCCUSL) turned the drafting committee to rewrite UDITPA into a study committee to consider the question of going forward, though the ULC retained the two drafters. The ULC intended to schedule a meeting this fall, but had to change the meeting to sometime in 2009. At that time, the ULC will consider whether to proceed with the project. It is expected that the ULC will hear from NCSL. NCSL is meeting November 21 and 22, 2008, to address the question of whether it will participate in the ULC effort. Ms. Sicilian also reminded the Committee that Mr. Huddleston sent emails to all asking that tax administrators contact the ULC to express support for the project and to speak with their respective legislatures. Those contacts are critical. Mr. Huddleston added that the ULC is very interested in the outcome of the NCSL meeting; past MTC Chair and Executive Committee member Bruce Johnson UT is in attendance as well as Len Lucchi, the MTC's legislative consultant, and he expects an update after the meeting on November 22nd. He further noted that Mr. Trost, the chair of the ULC's prior drafting committee is in attendance to observe and participate, along with observers from ALEC and CSG. Ms. Sicilian also noted that in July the MTC Executive Committee directed the MTC's small drafting group to begin preparing draft recommendations for ULC on the five UDITPA provisions we have identified as most in need of revision. To that end, the drafting group has been meeting every week to develop draft language for the Committee to consider as our proposals to ULC. Mr. Huddleston reminded the Committee that UDITPA has played a major role in shaping state taxation, and after 50 years, it is important not just to tax administrators but also to taxpayers to revisit the model law, and further noted that the MTC has support the effort to revise UDITPA from the beginning.

Mr. Bucks suggested that a way be found to keep Ben Miller involved in this effort. He also asked the nature of observer status and whether that has been extended to the MTC. Mr. Huddleston responded that it is a technical term; traditionally, the American Bar Association has two observers present, one from the business section and one from state and local section and it was recently extended to other government organizations. Mr. Bucks then asked whether the ULC is aware that the MTC has been the trustee for UDITPA. Mr. Huddleston responded in the affirmative.

B. Proposals and Recommendations before the Executive Committee

Ms. Sicilian stated that no uniformity proposals were before Executive Committee for action.

X. Federal Issues with State Tax Implications

Mr. Lucchi of Patuxent Consulting reported that Congress is in its lame duck session, during which it will attempt to craft a second stimulus bill that will possibly provide funds to the states for transportation and Medicaid spending. He said that states must remain vigilant on BAT legislation because it will be reintroduced, though it is not expected to move right away. Regarding the Mobile Workforce bill, he advised that there may be an attempt to restart those negotiations. Overall, congressional focus for the immediate future is on resolving the current economic crisis.

XI. Future Meeting and Event Plans

Mr. Huddleston said that because most of the MTC member states are experiencing severe economic difficulties, it is appropriate to discuss future scheduled meetings. The MTC has already contracted with some hotels and therefore may not be able to negotiate a cancellation. He asked the committee members to review the calendar of events for 2009, and estimate the number of representatives that will attend from that member's state. One of the suggestions he has received is to perhaps hold a scheduled meeting and let state representatives stay wherever they can, instead of reserving room blocks.

Mr. Bucks noted that most room block contracts provide an early date for adjusting the block downwards. Getting through tough times means the MTC needs to advise commissioners of the room block and when it is available and ask tax commissioners regarding how many people they think will be able to attend. This could be accomplished through emails. Mr. Huddleston responded that the MTC does try to communicate early on regarding the room block cut off dates, but it doesn't want to overload the tax commissioners. Mr. Bucks responded that he would not want MTC money going to empty rooms in the interest of the MTC budget. Mr. Cordi noted that most hotels are willing to make more flexible deals in exchange for certainty of a future event. Mr. Davis said that states have budgeted for MTC activities and by law, states are supposed to participate in MTC activities and receive a return. As far as getting numbers of people to MTC meetings, that is a communication issue.

Ms. Donovan inquired about registration, and suggested there should be some sort of process in place. Mr. Matson responded that the MTC will be relying on online registration in the future, rather than on the hotel registration list. This registration process will be implemented with the March 2009 Committee meetings.

Mr. Fong asked whether all these meetings are necessary. He noted that the fall, January, and March meetings are very close together, and suggested they be combined, or even combined with other organizational meetings. Mr. Huddleston responded that these meetings have specific purposes. The January and May Executive Committee meetings are held so that the Executive Committee may discuss broad policy issues; in particular, the May meeting is tied to Legislative Day. The March meeting, on the other hand, does not involve tax administrators, and the Annual Meeting is dictated by the Compact.

Ms. Donovan suggested that this Committee might think about who to send to these meetings—one person per state or more. Those who do attend only to take notes do so because they are not familiar with the issues; perhaps the committees need to choose only those issues that are most important to all states. Mr. Spangler noted that the Uniformity Committee has been moving to do substantive work via teleconference, but the downside is that reducing the number of face meetings might limit the work the committee can do. He also noted that the audio doesn't work very well for in-person meetings; perhaps if that can be improved, the committees can do more work with fewer people physically present. Mr. Bucks noted that outside audio vendors are available at a cost but weighed against the costs of airfare and such, it might be worth it. Mr. Davis said the Executive Committee should exercise caution in thinking about changing the structure of these meetings, especially since no one has expressed an opinion that these meetings are unproductive.

Mr. Davis announced that the 2009 Annual Meeting will be held in Kansas City, Missouri.

[The Executive Committee Public Session recessed and went into Closed Session.]

XII. Resumption of Public Session and Reports from Closed Session

There was nothing to report from the closed session.

XIII. Adjournment

The Executive Committee adjourned at 12:15 p.m.