



MULTISTATE TAX COMMISSION

**Minutes of the Executive Committee Meeting  
of the Multistate Tax Commission**  
November 17, 2022, at 9 a.m. Central Time  
Doubletree Little Rock, 424 West Markham, Little Rock, AR 72201

**I. Call to Order and Attendance**

Vice Chair Stephanie Schardin Clarke (New Mexico) called the meeting to order at 9:00 a.m. Scott Pattison, deputy executive director, reported that a quorum was in attendance. Listed below are the attendees (\*virtual or telephone):

Alabama	Lee Ann Rouse
Alaska	Michael Williams*
Arkansas	Paul Gehring
California	Laurie McElhatton (FTB), Katie Frank (FTB)*
Colorado	Brendon Reese, Josh Pens, Esther Van Mourik
District of Columbia	Trang Ha, Robert Kindred, Keith Richardson*
Iowa	Kurt Konek
Idaho	Tom Shaner, Phil Skinner, Aaron Yost
Kansas	Michael Hale
Louisiana	Krystal Bolton*, Debra Guillory*, Miranda Scroggins
Michigan	Angela Matelski
Minnesota	Cassie Diemert*
Missouri	Maria Sanders
New Jersey	John Ficara*
New Mexico	Stephanie Schardin Clarke*, Claudette Chavez*
North Dakota	Dee Wald*, Matthew Peyerl
Oregon	Katie Lolley
Pennsylvania	Kevin Milligan*
South Dakota	Kathy Smith*
Tennessee	Joseph Longenecker
Texas	Phillip Ashley
Utah	Frank Hales
Virginia	Stephen Klos*
Washington	Gil Brewer, Bryan Kelly
West Virginia	Rebecca Rodak*
Multistate Tax Commission	Chris Barber, Susan Carlson, Holly Coon, Richard Cram, Lila Disque, Bruce Fort, Brian Hamer, Helen Hecht, Loretta King*, Greg Matson, Nancy Prosser, Jennifer Stosberg, Sherry Tiggett, William Six*, Scott Pattison, Jonathan White
Bloomberg Tax	Angelica Serrano Roman*
Charter Communications	Olga Kourdova*
Eversheds-Sutherland	Nikki Dobay
Fast Enterprises, LLC	Virgil T. Helton, Will Rice

November 17, 2022

FTA	Brian Oliner
Law360	Paul Williams*
SSTGB	Christie Comanita
TEI	Todd Lard*
Wolters Kluwer	Andrew Soubel*
Others attending	Alynn Hamilton*, Jermaine Mendez*

## **II. Initial Public Comment Period**

Nikki Dobay (Eversheds Sutherland) thanked Bruce Fort, Helen Hecht, and state tax department staff engaged in development of a uniform power of attorney form. Her goal is to obtain MTC endorsement of the form. She will continue to work closely with the Commission and its member states to complete the form.

No further public comments were made.

## **III. Approval of Minutes of the Executive Committee Meeting Held on August 4, 2022**

The minutes of the Executive Committee meeting on August 4, 2022, in Anchorage, Alaska, were approved unanimously by voice vote following the motion for approval of Frank Hales (Utah).

## **IV. Report of the Chair**

### Vacancy to be filled

The Vice Chair noted that an Executive Committee vacancy had been recently created by the September 2022 resignation of Lucinda Mahoney (Alaska). Jeff McCray (Idaho) has been appointed to fill that vacancy. The Vice Chair asked if there were any objections, and there were none. Brendon Reese (Colorado) made a motion to approve the appointment, which was approved by unanimous voice vote. The Vice Chair expressed thanks to Jeff McCray for his willingness to fill this vacancy.

The Vice Chair thanked the Commission staff for arranging the Little Rock meetings and also thanked Arkansas Department of Finance and Administration staff, especially Charlie Collins and Paul Gehring, for hosting the meetings.

## **V. Report of the Treasurer**

Phillip Ashley (Texas) presented for approval the Commission Financial Report for the first quarter of FY 2023 (July 1, 2022, through September 30, 2022), as well as the audited financial statements as reported by the Independent Auditor for FY 2021 and 2022. All documents were in line with expectations. September 2022 did show a slight deficit, but nothing significant. Concerning the audited financial statements, the Auditor's governance letter was displayed, and there were no major issues. Mr. Ashley explained

November 17, 2022

the executive director's memorandum regarding the governance letter and noted that the Commission operates on a cash basis, but the audits must be done on an accrual basis, making some adjustments necessary.

Brendon Reese (Colorado) moved for approval and acceptance of the first quarter FY 2023 financial report, and the motion was approved by unanimous voice vote.

Michael Hale (Kansas) moved for approval and acceptance of the audited financial statements for FY 2021 and 2022, and the motion was approved by unanimous voice vote.

## **VI. Committee Reports**

### **A. Audit Committee**

Frank Hales (Utah), reported that the Committee met twice, August 1 in Anchorage, Alaska, and November 16 in Little Rock. The Alaska meeting had great participation with 98 attendees in the open session. Commission legal staff provided an update on SALT cases at both meetings. The Little Rock meeting was also well attended. Holly Coon, director of the Joint Audit Program, reported on program results for the first quarter of FY 2023.

### **B. Litigation Committee**

Brian Hamer, Commission counsel, presented the report, indicating that the Committee has focused on attorney training sessions and information sharing sessions. At the beginning of the week, 100 attorneys from two dozen states (both in-person and remote) participated in a day-long training session, including a 3-hour writing seminar presented by Professor Wayne Schiess, Texas Law School, and Professor Hemel of the NYU Law School giving e a virtual presentation on congressional preemption of state tax authority and Internet Tax Freedom Act issues.

With Dee Wald (North Dakota) having stepped down as chair, Ray Langenberg (Texas) has succeeded her. Mr. Hamer expressed thanks to Dee Wald for her service as chair. Aaishah Hashmi (District of Columbia) is proposed to be the new vice chair. Mr. Hamer sought Executive Committee consensus approving this proposed appointment. The Executive Committee had no objections, and the appointment was approved.

### **C. Nexus Committee**

Bryan Kelly (Washington) presented the Nexus Committee report, stating that the Committee has met twice thus far this fiscal year, first in Anchorage, Alaska on August 1, and most recently in Little Rock on November 16. He summarized the first quarter FY 2023 collections from the multistate voluntary disclosure program. Mr. Kelley reviewed Nexus Committee activity at both meetings, including presentations by the Alaska

November 17, 2022

Remote Sellers Sales Tax Commission, Chainalysis, a representative from the Louisiana Sales and Use Tax Commission for Remote Sellers, and a representative from the Tennessee Department of Revenue. Mr. Kelly thanked Nexus Program staff for their work.

#### **D. State Intercompany Transactions Advisory Service (SITAS) Committee**

Greg Matson and Krystal Bolton (Louisiana) presented the report of the State Intercompany Transactions Advisory Service Committee. Mr. Matson stated that the Committee was created a few years ago to deal with transfer pricing issues of states dealing with interstate taxpayers. There was not sufficient interest among the states to fund such a program, but it did raise the attention level on this issue among states and facilitated cooperation among states for training opportunities, so this Committee was established. Providing a dialogue among states and training on this issue were the focus of the Committee. Krystal Bolton is the current Chair. However, there currently has been little interest in having the Commission facilitate discussions of this topic among states, and therefore little need for this committee to continue. The Litigation and Audit Committees can address the transfer pricing issues going forward, as needed.

Ms. Bolton agreed with Mr. Matson and expressed thanks for the opportunity that this committee brought to her, but due to decreasing participation of states, she also believed it was time to dissolve the committee. The Executive Committee had no objections and the committee was dissolved.

#### **E. Strategic Planning Committee**

John Ficara (New Jersey) delivered the report. The Committee met in person in August in Anchorage, and again on November 17 in Little Rock. Results of a survey seeking feedback on the Commission mission, values, challenges, strengths, etc., were reviewed and a group of four has been formed to further analyze and report on the results. The committee also reviewed Commission training.

#### **F. Uniformity Committee**

Maria Sanders (Missouri) referred to the committee's written report. At its meeting on November 15 in Little Rock, the Committee focused on discussion of the projects on partnerships, digital products, and review of the model receipts and sourcing regulations. They heard a panel discussion on the history of the Internet Tax Freedom Act. The Committee is facilitating the discussion and development of a uniform Power of Attorney (POA) form with Nikki Dobay (Eversheds Sutherland). Jeff Friedman and Michele Borens (Eversheds Sutherland) expressed stakeholder concerns on implementation issues concerning marketplace facilitator tax collection laws. The Chair expressed appreciation to Nancy Prosser (General Counsel), Helen Hecht (Uniformity Counsel) and staff for their

November 17, 2022

excellent support on these large ongoing projects and for keeping the Committee so well informed.

## **VII. Report of the Executive Director**

Greg Matson highlighted Commission staff and program accomplishments contained in his written report. He expressed appreciation for Commission staff, both those out front and in the background. He thanked Sherry Tiggett and Wanda Dorsey-Jenkins for their efforts for a successful set of meetings in Arkansas. Mr. Matson would be glad to know of potential speakers from state tax agencies who he can suggest to participate as panel members at various state and local tax conferences.

### Amendment of Equipment Reserve Fund Purpose

Mr. Matson proposed an amendment to the equipment reserve fund purpose to make clear that it can be used for all Commission staff computer equipment and is not limited to replacing audit program and IT staff equipment only. Bryan Kelly (Washington) asked if the funds needed to be increased and Mr. Matson advised that it did not, as it was currently sufficient. Frank Hales (Utah) moved to approve of amendment, which was approved by unanimous voice vote.

## **VIII. Uniformity**

### **A. Uniformity Projects for Action**

There were no Uniformity projects for action.

### **B. Update on Uniformity Projects that will likely require Action in the Future**

Helen Hecht highlighted two ongoing uniformity projects: the digital products taxation project and the partnership taxation project. Gil Brewer (Washington), who is chairing the digital products taxation workgroup, described the project. Laurie McElhatton (California), who is chairing the partnership taxation project, described the project.

Mr. Brewer noted that the digital products taxation project has been ongoing for about year and a half. The work group is considering developing a white paper, as opposed to attempting to develop a model statute. There have been two work group meetings. Commission staff did a lot of background work and received a large volume of public comments. The last meeting focused on what direction the project should take. The work group will first consider how to describe digital products, which staff is currently researching. At the next meeting on December 8, the work group will get into more depth on that topic. It may take a couple of years to complete this project.

November 17, 2022

Ms. McElhatton stated that regular meetings of the partnership taxation project work group usually have about 100 participants. Work group meetings began with training on federal taxation of partnerships, considering several broad categories and subcategories. A white paper on taxation of investment partnerships has been developed, as well as a draft model for treatment of investment partnership income. The work group is now taking comments on that model. Since August, staff has been researching the sourcing of noninvestment partnership income. The work group will soon start monthly meetings to discuss those sourcing issues.

**C. Other Uniformity Matters**

There were no other Uniformity matters.

**IX. Upcoming Meetings and Events**

Mr. Matson stated that the upcoming Spring Committee Meetings will be held April 24 through 27, 2023, in Long Beach, California, and the 56<sup>th</sup> Annual Conference and Meetings of the Commission will take place in Austin, Texas, on July 24 through 27, 2023.

**X. Adjournment**

Upon motion of Frank Hales (Utah), and with no objections being raised, the Commission adjourned at 10:22 a.m. by unanimous consent.