



To: Executive Committee
From: Gregory S. Matson
Date: April 27, 2023
Subject: **Report of the Executive Director**

This report is a summary of the Commission's organizational and staff activities for three quarters of FY 2023: July 1, 2022, through March 31, 2023.

I. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed parts of eight (8) income tax audits. Audit staff also completed one (1) sales tax audit and parts of eight (8) other sales tax audits. Currently, there are nineteen (19) income tax audits and twenty-six (26) sales tax audits in progress.

The income tax program proposed net assessments of \$135,400,514 for partially completed income tax audits. Income tax program staff also proposed NOL and tax credit reductions of \$2,820,358. The sales tax program proposed net assessments of \$3,029,491 for completed and partially completed sales tax audits. Sales tax program staff also proposed reductions in tax refunds of \$85,936.

B. National Nexus Program

Multistate Voluntary Disclosure Program

The Nexus Program results are provided below.

- Nexus states' collections: \$10,402,813 (\$28,337,506 FY2022)
- Nexus states' executed agreements: 159 (493 FY2022)
- Nexus states' average contract value: \$65,426 (\$57,480 FY2022)

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 161 taxpayers in calendar year 2022. For calendar year 2023 to date (as of March 31, 2023), 53 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

Outreach

Staff continues to urge states to put a link to the NNP on their voluntary disclosure web pages and provide other outreach.

NNP Director Richard Cram published an article entitled “Marketplace Seller Inventory: Purposeful Availment Aplenty” in the March 20, 2023, issue of *Tax Analysts Tax Notes State*, vol. 107, number 12, p. 1045.

Nexus School

Nexus School for income tax was held on October 6-7, 2022, in Salem, Oregon. A Nexus School for sales and income tax is currently scheduled to be held in Boise, Idaho, on June 29-30, 2023. 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.

C. Legal Division

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 attorneys continue to update and expand the Litigation Committee attorney contact list, which includes more than 300 attorneys across all states, plus the District of Columbia and one U.S. territory. MTC attorneys also

partner with Litigation Committee leadership to organize attorney training programs in conjunction with the MTC's spring, summer, and fall in-person 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 five topical sessions, plus a litigation roundtable where state participants shared ideas and discussed recent developments in their states.

In November 2022, the attorney training program included the four topical sessions in addition to a litigation roundtable. One was a special legal writing seminar by Professor Wayne Schiess, University of Texas Law School. Another featured NYU Law Professor Daniel Hemel speaking on *Congressional Limits on State Taxation in the Shadow of Murphy v. NCAA*.

On December 16, 2022, legal and audit staff presented a free, virtual ethics program, "22 Essential Elements of Ethics," attended by over 300 state tax attorneys and auditors that provided two hours of CLE and CPE training.

On March 23, 2023, Senior Counsel Bruce Fort and Counsel Jonathan White were joined by MTC Field Audit Supervisor Cathy Felix to conduct a virtual presentation for tax agency staff and attorneys on state and federal taxation of REITs and captive REITS. 144 people from 30 states attended the 75-minute presentation.

Litigation Support and Legal Advice

The legal division regularly consults by request with state attorneys and other state representatives on litigation matters, including strategy, issues, arguments, and by serving as expert witnesses. MTC attorneys also work by request on legislative and policy issues, 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: California, Hawaii, Idaho, Kansas, Illinois, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Mexico, Oregon, Pennsylvania, South Carolina, and Washington, D.C.

Bruce Fort, senior counsel, provided expert witness testimony in *Tractor Supply Company v. South Carolina*, No. 19-ALJ-17-0416-CC, Columbia, South Carolina (Fort, witness)

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

MTC attorneys track 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 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 Tax Law360's 2023 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, and “Troubling Tax Behavior Illustrates Need to Change State Tax Codes” in *Tax Notes State*, Jan. 30, 2022.

Senior Counsel Bruce Fort published “A Tale of Two Tax Sourcing Decisions” in *Tax Law360* as a two-part article on March 29 and 30, 2023. The entire article will appear in a compendium of articles from the 2022 New York University State and Local Forum to be published by Mathew Bender (Lexis/Nexis) in June of 2023.

D. Training and Events

Training continues to be an important focus of the MTC staff. Staff are continuing to develop content for and utilize the virtual learning platform. A course on partnerships has been available and a market-based sourcing course has been offered for the first few months of this year.

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 providing real-time support to various online events and meetings.

Upcoming meetings and training have been scheduled:

- 2023 Spring Committee Meetings, April 24-27, 2022 – Long Beach, California
- Partnership Training Summit, May 16-18, 2023 – Minneapolis, Minnesota
- Nexus School, July 28-30, 2023 – Boise, Idaho
- 56th Annual Conference and Meetings, July 13-16, 2023 – Austin, Texas
- 2022 Fall Committee Meetings, November 13-16, 2023 – Montclair, New Jersey

II. Administration

A. Staffing

No staff turnover occurred during this period.

D.C.-based staff come into the office one or more days per week and also work remotely. The D.C. office is open every workday and Loretta King, executive assistant, comes in daily.

B. Technology

Website

There were issues that occurred with our MTC website after our November committee meetings in Little Rock, Arkansas. Our regular website was among a group of websites using the same content management system (CMS) called Kentico. Kentico unfortunately had a vulnerability that was exploited to crash the host server (our public-facing website is hosted by the company in the Kansas City area). While the MTC site was not directly attacked, this vulnerability made it unwise to keep deploying the website until it could be rebuilt using a more secure CMS and hosting platform. *Please note that we were not hacked.* The MTC did not lose any of the information and content from the website.

We therefore made the decision to migrate to another CMS system. The MTC website has been completely migrated to this new content management system called WordPress. The web content manager worked diligently with our hosting provider to ensure that all legacy website content was migrated successfully. Because of the 'historical data' that the MTC has, the migration and linking of all that data was a time-consuming process. MTC technology staff completed CMS training and testing on the content and files of the new site.

Technology Updates

The current remote access solution (Pulse Secure) has been purchased by Ivanti, another highly respected security company. This will require a replacement of the current Pulse Secure hardware appliance. The network administrator has been making necessary back-end preparations for this hardware swap out.

The Barracuda mail archiver currently in place is in the process of being upgraded. A new Barracuda mail archiver, with larger storage capacity and redundancy has been purchased. The network administrator is working with Barracuda to migrate place the new archiver in production and migrate all data from the old archiver.

Normal server/laptop maintenance continues. This has included Active Directory server replacement, SSL Certificate renewals, maintenance of user internet service accounts, coordinating laptop repair services, replacing lost IT equipment and continuous help desk calls to help MTC staff to remain productive.

III. Outside Presentations & Events

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission.

JULY 2022

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

AUGUST 2022

- New Mexico Legislature Revenue Stabilization and Tax Policy Interim Committee, “*Perspective of Tax Administrators*,” Santa Fe, New Mexico (Hecht testified)
- Bloomberg Tax, “Learning from the 2022 Survey of State Tax Departments – Pass-Through Entity Topics,” virtual presentation (Hecht, panelist).
- *Top Income Tax Developments*, Midwestern States’ Association of Tax Administrators, Omaha, Nebraska (Fort, panelist).

- *Issues to Watch for in State Finance, Taxation and Revenue Decision Making*, National Association State Auditors, Comptrollers and Treasurers, Charleston, South Carolina (Pattison)
- *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Revenue Decision Making*, Midwestern States Association of Tax Administrators, virtual presentation (Pattison)

SEPTEMBER 2022

- *Taxing Digital Goods and Services: Where Are We Going?*, Northeast State Tax Officials Association, Niagara Falls, NY (Prosser, panelist)
- *Pass Through Entity Taxation*, Northeast State Tax Officials Association, Niagara Falls, NY (Barber, panelist)
- *Future Economic Trends: What Impacts to Watch for on State Policy, Taxation and Revenue Decision Making*, Northeastern States Tax Officials Association, Niagara Falls, New York (Pattison)
- *State Policy, Taxation and Revenue Trends*, Association for Budgeting and Financial Management, Miami, Florida (Pattison)
- *A Discussion with MTC and State Auditors*, TEI Audits & Appeals Seminar, Tysons, Virginia (Coon, panelist)

OCTOBER 2022

- *About the MTC and PL 86-272*, virtual presentation to Courtney Kay-Decker's SALT class, University of Iowa College of Law (Hamer and Prosser, presenters)
- *Taxing Digital Goods and Services: Where Are We Going?*, Western States Association of Tax Administrators, Spokane, Washington (Prosser and White, panelists)
- *The Top State Income Tax Issues in 2022*, Western States Association of Tax Administrators, Spokane, Washington (Barber, panelist)
- *Sales Taxation of Digital Goods, Advertising, and Services*, 29th Annual Paul J. Hartman State and Local Forum, Nashville, Tennessee (Prosser, panelist)
- *Corporate Taxation Conciliation Conference Exercise*, Prof. Hayes Holderness' SALT class, University of Richmond School of Law (Prosser, virtual guest presenter)
- *Current Developments in State Income Taxation of Partnerships and LLCs*, American Bar Association 2022 Fall Tax Meeting, Dallas, Texas (Barber, panelist);
- *New Ethical Challenges Emerge as the COVID-19 Pandemic Fades*, Hartman State and Local Tax Forum, Nashville, Tennessee (Disque, panelist)
- *Market Sourcing and Factor Presence Nexus Trends*, Hartman State and Local Tax Forum, Nashville, Tennessee (Cram, panelist)
- *Top Ten Income Tax Cases to Watch*, Hartman State and Local Tax Forum, Nashville, Tennessee (Fort, panelist);
- *MTC Developments*, Boston Bar Association (via webinar) (Fort, presenter)

NOVEMBER 2022

- AICPA State and Local Tax Technical Resource Panel, Virtual Fall 2022 Meeting (Prosser, presenter)
- *Corporate Income Tax Developments in California*, California Tax Policy Forum & California Tax Bar Mtg., San Diego, California (Fort, panelist)
- *National Developments*, MACPA Advanced Tax Institute, Baltimore, Maryland (Prosser, panelist)
- *Public Law 86-272 Revised Guidance: Where are we now?* New York & Tri-state Tax Conference, New York City (Hamer, panelist)
- *The Everchanging Tax World of Pass-Through Entities*, National Association of State Bar Tax Sections (Hecht, Panelist)
- *Revenue and Economic Update*, FTA Compliance Conference, Norfolk, Virginia (Pattison, presenter)

DECEMBER 2022

- *Taxing Digital Goods and Services: Where Are We Going?*, Chicago Bar Association SALT Section, virtual (Prosser and White, presenters)
- *Notable Developments Affecting the Multistate Taxation of PTEs*, NYU School of Professional Studies 41st Institute on State and Local Taxation (Barber, Panelist)
- *State Implications of the Inflation Reduction Act*, NYU School of Professional Studies 41st Institute on State and Local Taxation (Fort, Panelist)
- *SALT Workaround: Considerations for Electing PTE Taxation*, 2022 New Mexico Tax Conference – State Bar and CPA Association (Hecht, Panelist)
- *Pass-Through Entity Taxes, Advanced Topics on Flow-Through Taxation*, Illinois CPA Society (virtual) conference (Cram, panelist)
- *Super-marketplace sales tax issues*, NYU School of Professional Studies 41st Institute on State and Local Taxation (Cram, Panelist)
- *Handling an MTC Audit and Some of the Hot Issues the MTC is Generating*, NYU School of Professional Studies 41st Institute on State and Local Taxation (Coon, panelist)

JANUARY 2023

- *A Conversation with MTC Executive Director Greg Matson*, Independent SALT Alliance Meeting, Salt Lake City, Utah (Matson, speaker)

FEBRUARY 2023

- *The MTC and its Uniformity Efforts*, American Taxation Association luncheon, Washington, D.C. (Prosser)
- *Public Law 86-272 and the Internet: Do Online Sellers Lose Their State Tax Immunity?*, American Bar Association 2023 Midyear Tax Meeting, San Diego, Ca. (Hamer, panelist)

MARCH 2023

- *MTC Update*, New York University State Tax Study Group, virtual presentation (Matson, speaker)
- *Current Developments in State Income Taxation of Partnerships and LLCs*, ABA/IPT Advanced State Income Tax Seminar, New Orleans, Louisiana (Barber, panelist)
- *The Annual Big Easy Brawl*, ABA/IPT Advanced State Income Tax Seminar, New Orleans, Louisiana (Barber, panelist)
- *Depreciate the Hustle: Careers in Tax and Business Law in Hawaii*, University of Hawaii Law School, Honolulu, Hawaii (White, panelist)
- *National Finance, Taxation and Revenue Trends*, Executive Institute of Virginia, Charlottesville, Virginia (Pattison, presenter)