



MULTISTATE TAX COMMISSION

## Minutes of the Annual Business Meeting of the Multistate Tax Commission

August 3, 2022

### Presentation of the 2022 Paull Mines Award

Prior to the Roll Call of the States, Nancy Prosser, General Counsel, presented the 2022 Paull Mines Award to Rick Handel, noting that Mr. Handel was nominated by Michael Fatale (Massachusetts) a past recipient of the award. Ms. Prosser highlighted Mr. Handel's very impressive career in state taxation in South Carolina and in academia. She also recalled the life of Paull Mines, distinguished former General Counsel. Mr. Handel, attending virtually, expressed his deep gratitude for this coveted award and thanked all those who have worked with him throughout his career.

### I. Roll Call of the States

The Chair, Vernon Barnett (Alabama), called the Commission's annual business meeting to order at 9:04 a.m. in Anchorage, Alaska. A roll call of states present was taken and Scott Pattison, deputy executive director, announced that a quorum was in attendance. Listed below are the attendees (\*virtual or telephone):

Alabama	Vernon Barnett, Missy Gillis*, Mary Mitchell*
Alaska	Nicole Reynolds, Colleen Glover, L. Gonzales*
Arkansas	Paul Gehring
California	Laurie McElhatton (FTB), Katie Frank (FTB)
Colorado	Brendon Reese, Josh Pens
District of Columbia	Keith Richardson, Robert Kindred*
Hawaii	Kevin Wakayama
Iowa	Ben Clough*
Idaho	Tom Shaner
Kansas	Michael Hale*
Louisiana	Krystal Bolton*, Stacey Greaud*, Keith Richard
Maryland	Renee Nacrelli
Michigan	Angela Matelski
Minnesota	Cassie Diemert*, Geoff Fournier*
Montana	Derek Bell
Missouri	Maria Sanders
New Jersey	John Ficara
New Mexico	Stephanie Schardin Clarke*, Mark Chaiken, Daniel Coleman*
North Carolina	Ashley McGhee*
North Dakota	Dee Wald, Matthew Peyerl
Oregon	Katie Lolley, Joseph Royston
Pennsylvania	Debra Houck*

South Carolina	Tom Godfrey*
Texas	Shannon Brandt, Rusty Johnson, Phillip Ashley*
Utah	Frank Hales, Angie Hillas
Vermont	Andrew Stein*
Washington	Gil Brewer, Bryan Kelly, Karolyn Bishop*
Multistate Tax Commission	Chris Barber, Susan Carlson, Holly Coon, Richard Cram, Lila Disque, Bruce Fort, Brian Hamer, Helen Hecht, Greg Matson, Melody Moncrief, Nancy Prosser, Lawrence Shinder, Jenn Stosberg*, William Six, Jeff Silver, Scott Pattison
AICPA	Robert Amarante*
Amazon	Jessie Eisenmenger*
AT&T	Carlos Anguiano*
Avalara	Scott Peterson*
Bloomberg Tax	Michael Bologna*
Charter Communications	Olga Kourdova
COST	Karl Frieden
E&Y	David Sawyer*, Jess Morgan, Joe Huddleston
Eversheds-Sutherland	Nikki Dobay
Fast Enterprises, LLC	Virgil T. Helton, Will Rice*, Jake Hoffman*
Law360	Paul Williams*
Moss Adams	Phil Horwitz*
SSTGB	Christie Comanita*
TEI	Todd Lard*
Wolters Kluwer	Andrew Soubel*
Others attending	Rick Handel*, Chris Schutz*, Emily Staehr*, Jacob Shin*

## **II. Initial Public Comment Period and Other Communications**

Karl Frieden (COST) made a public comment relating to discussion of the Sales Tax on Digital Products project during the Uniformity Committee meeting on August 2, 2022. Mr. Frieden referred to the recent article he co-authored with Frederick J. Nicely and Priya D. Nair entitled “Down the Rabbit Hole, Sales Taxation of Digital Business Inputs,” published in *Tax Analysts Tax Notes Today State*, on July 18, 2022, and wanted to clarify his statements in the article and during the Committee meeting concerning the project. He emphasized that good sales tax policy should focus on consumer purchases and not create pyramiding of the tax.

No further public comments were made.

## **III. Approval of Minutes of the Annual Business Meeting Held on Aug 4, 2021**

The minutes of the Commission’s annual business meeting on Aug 4, 2021, held virtually, were approved unanimously following the motion of Brendon Reese (Colorado).

#### **IV. Report of the Treasurer**

Phillip Ashley (Texas) presented virtually the proposed budget for FY 2023. He stated that the Executive Committee sets the program levels, which were approved at its April meeting in Alexandria. Mr. Ashley noted that with California having recently joined as a sovereignty member state, that will reduce fees for other states. Program fees for Audit and Nexus have increased by 1.7 and 6.5% respectively. The requested expenditure levels seek continuation of current activities. The proposed budget includes a salary increase for staff of 4%, and new positions have been added for a legal counsel, a part-time legal intern, a part-time administrative assistant for the Audit Program, and an e-learning specialist.

Keith Richards (District of Columbia) moved for acceptance of the proposed FY 2023 budget, and the motion was approved by unanimous voice vote.

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

Greg Matson, executive director, highlighted MTC staff and program accomplishments contained in his written annual report. He welcomed California and Vermont as sovereignty member states, noting that both states have already been very active in the Commission. He indicated that both the Audit and Nexus Programs have had very productive years. The work of the legal division is reflected in the activities of various committees, such as Uniformity and Litigation, as well general operations. His view of the effectiveness of Commission is how robustly it is part of the dialogue among state tax professionals. He expressed how wonderful it was to be together here in Anchorage for this meeting. He welcomed new staff joining the Commission this year: Susan Carlson, e-learning specialist; Melody Moncrief, audit program admin; and two new counsel, Jonathan White replacing Tom Shimkin who retired, and Jennifer Stosberg. He advised that given the high demand for staff to participate in programs now that in-person conferences are back, states with staff who could be involved as presenters at tax conferences should please let him know. He noted that the Commission had adjusted rapidly and effectively to the pandemic challenges and the remote work environment, with a few staff members continuing to come into the headquarters office as needed, and more doing so now. He also highlighted the staff's emphasis on developing and providing online training, including the implementation of a new learning management system.

#### **VI. Reports of the Executive Committee and Other Committees**

##### **A. Committee Reports**

##### **1. Executive Committee**

Mr. Matson reported that the Executive Committee met twice in person and once virtually. These meetings are documented in his written report and the minutes of the meetings. He referred those interested to his written report for additional details.

## **2. Audit Committee**

Frank Hales (Utah), chair, reported that the Committee met three times, once virtual. The Committee had great attendance at in-person Alexandria and Albuquerque meetings. Virtual access has also significantly expanded attendance at the meetings. Mr. Hales reported great success for the Audit Program for the past year, with \$200 million in proposed income tax assessments, and \$3 million proposed sales tax assessments.

## **3. Litigation Committee**

Dee Wald (North Dakota), chair, reported that the Committee held three virtual roundtables good to get together in Alexandria. Successful year-training participation. Over three dozen jurisdictions participating. These virtual roundtable discussions present an opportunity to reach out to public sector attorneys unaware of what the Commission offers, as well as information sharing. Wald thanked the Commission legal staff for providing such good guidance and training, in particular, Brian Hamer and Nancy Prosser. Ms. Wald encouraged all state attorneys to come on board.

## **4. Nexus Committee**

Bryan Kelly (Washington), chair, reported that applications continue to rise post *Wayfair*, with record collections of \$28 million for the most recent fiscal year. The Committee has undergone a total leadership change with Jayne Kulberg's (Wisconsin) retirement as vice chair, and Christy Vandevender (Alabama) having recently stepped down. Bryan Kelly is the new chair, and Robert Kindred (District of Columbia) is the new vice chair.

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

Krystal Bolton (Louisiana), chair, reported that the committee met twice virtually. At the July meeting, the committee reviewed the charter and information exchange agreement. Commission legal staff prepared for the committee's consideration a draft response to a letter received from Eversheds Sutherland raising concerns regarding information sharing. The committee suggested no changes to the draft response. Ms. Bolton expressed thanks to Holly Koon, Joint Audit Program director, for her support.

## **6. Report of the Strategic Planning Committee**

John Ficara (New Jersey), chair, delivered the report. The committee met in person last November in Alexandria and last spring in Albuquerque to discuss updating the strategic plan. The committee met this week to finalize a survey to send out for feedback from the states on this process. A revised survey will be sent to states for response, and Commission staff will compile those responses

and provide a status report at the upcoming fall meeting in Little Rock. Scott Pattison, deputy executive director, will also provide an update on the status of training.

#### **7. Report of the Uniformity Committee**

Maria Sanders (Missouri), chair, reported that the committee met three times, with innumerable work group calls on various projects. The Partnership Taxation Workgroup continues its work at an intensive pace, being led by Laurie McElhatton (California) and staffed by Helen Hecht. This project will be ongoing for some time. The Sales Taxation of Digital Products Project is led by Gil Brewer (Washington), staffed by several on the legal staff, and is still in the initial stages of establishing how to proceed. Helen Hecht presented an outline proposing initial steps. The Standing Subcommittee has been reviewing sourcing regulations. The Subcommittee decided to create a workgroup to review those regulations.

#### **B. Commission Action on Executive and Other Committee Reports**

Dee Wald (North Dakota) moved for approval of the Executive Committee's report and other committee reports presented, as well as ratification of all actions of the Executive Committee during FY 2022. The motion was adopted by unanimous voice vote.

### **VII. Unfinished Business**

There was no unfinished business to be considered at this meeting.

### **VIII. New Business**

#### **A. Vote on Proposed Amendment to Bylaw 14(d)**

Greg Matson explained that the Executive Committee approved in 2021 a bylaw amendment to the Commission's alternative dispute resolution program. Nancy Prosser, general counsel, has revised and rewritten the provisions of this underused program. The Commission worked with COST to develop the original program in 1995. The bylaws required the Commission to maintain a list of people available to mediate or arbitrate multistate or non-multistate tax matters under this program. The Executive Committee approved removing that requirement from the bylaws. The Proposed Amendment to Bylaw 14(d) removing that requirement has been duly noticed and is properly before Commission for a vote.

There was no discussion concerning the Proposed Amendment to Bylaw 14(d), and Brendon Reese (Colorado) moved for approval and adoption of the proposed amendment. The motion was approved by unanimous voice vote.

## **IX. Report of the Resolutions Committee**

Gil Brewer (Washington), chair, presented one substantive resolution, and seven honorary resolutions.

Resolution 2022A, *Recommending that States that Adopt the Statement of Information Concerning Practices of the Multistate Tax Commission and Supporting States Under Public Law 86-272 also Adopt the Model Factor Presence Nexus Standard for Business Activity Taxes*. Mike Williams (Alaska) moved to approve the resolution, and the motion was approved by unanimous voice vote.

The following honorary resolutions were presented:

*2022B—Appreciation of the Alaska Department of Revenue, Host of the 2022 Annual Meeting;*

*2022C—In Recognition of Frank Hales, Chair of the Audit Committee and Michael Williams, Vice Chair of the Audit Committee;*

*2022D—In Recognition of Dee Wald, Chair of the Litigation Committee and Ray Langenberg, Vice Chair of the Litigation Committee;*

*2022E—In Recognition of Christy Vandevender, Chair of the Nexus Committee, and Jayne Kulberg, Vice Chair of the Nexus Committee;*

*2022F—In Recognition of Maria Sanders, Chair of the Uniformity Committee, and Laurie McElhatton, Vice Chair of the Uniformity Committee;*

*2022G—In Recognition of John Ficara, Chair of the Strategic Planning Committee; and*

*2022H—In Recognition of Krystal Bolton, State Intercompany Transactions Advisory Service Committee Chair.*

Keith Richards (District of Columbia) moved for approval of all honorary resolutions, which motion was approved by unanimous voice vote.

## **X. Report of the Nominating Committee**

Mr. Matson thanked those on the Committee for their service and presented the report of the Nominating Committee, including the slate of nominees to fill the officer and at-large positions on the Executive Committee for 2022-2023:

Chair—Vernon Barnett, Commissioner of Revenue, Alabama

Vice Chair—Stephanie Schardin Clarke, Cabinet Secretary, New Mexico Taxation and Revenue

Treasurer—Glenn Hegar, Texas Comptroller of Public Accounts

Other members of the Executive Committee—

Charlie Collins, Deputy Director and Commissioner of Revenue, Arkansas  
Department of Finance and Administration

Mark Ferrandino, Executive Director, Colorado Department of Revenue

Betsy Imholt, Director, Oregon Department of Revenue

Lucinda Mahoney, Commissioner of Revenue, Alaska

There were no nominations from the floor.

#### **XI. Election of Officers and Executive Committee**

Dee Wald (North Dakota) moved to accept the slate of nominees presented in the Nominating Committee report, and the motion was approved by unanimous voice vote.

#### **XII. Report of the Chair**

Vernon Barnett (Alabama) thanked the Alaska Department of Revenue staff for hosting the meeting, commenting that this was a remarkable place and event, and it was great to see a new part of country and very friendly people. He further stressed that we need to all be at the conference table, and we must avoid unintended consequences when implementing decisions. We must collect revenues efficiently and safely in this challenging cyber environment. The private sector is rapidly adapting. We must keep up and review our business processes to keep updated. He thanked all who participated in person and online and urged continued participation and coordination.

#### **XIII. Adjournment**

Upon motion of Mr. Barnett (Alabama), and with no objections being raised, the Commission adjourned at 10:30 a.m. pursuant to unanimous consent.