



To: Multistate Tax Commission
From: Gregory S. Matson
Date: July 26, 2023
Subject: Annual Report of the Executive Director

This report is a summary of the Commission's organizational and staff activities for the MTC fiscal year 2023, July 1, 2022, through June 30, 2023.

I. Programs & Activities

A. Joint Audit Program

The Joint Audit Program completed parts of 9 income tax audits during fiscal year 2023. Audit staff also completed 3 sales tax audits and parts of 7 other sales tax audits. Currently, there are 19 income tax audits and 24 sales tax audits in progress.

During the fiscal year, the income tax program proposed net assessments of \$170,817,148 for partially completed income tax audits. Income tax program staff also proposed NOL and tax credit reductions of \$3,007,624. The sales tax program proposed net assessments of \$3,439,663 for completed and partially completed sales tax audits. Sales tax program staff also proposed reductions in tax refunds of \$192,554.

B. National Nexus Program

The Nexus Program results for FY 2023 (July 1, 2022, through June 30, 2023) are provided below.

- Nexus states' collections: \$25,846,276 (\$28,337,506 FY 2022)
- Nexus states' executed agreements: 391 (493 FY 2022)
- Nexus states' average contract value: \$66,103 (\$57,480 FY 2022)

The above amounts include amounts paid by the taxpayer directly to the states and reported to the Commission. The Commission received applications from 161 taxpayers in calendar year 2022. For calendar year 2023 to date (as of June 30, 2023), 99 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

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Membership

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

Outreach

The NNP director 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.

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

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

The legal division attorneys:

- Staff the Uniformity Committee;
- Staff the Litigation Committee;
- Provide attorney and other training to state tax agency and MTC staff;
- Provide litigation and amicus support and legal advice to states as requested, including serving as expert witnesses;
- 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;
- Oversee the MTC Alternative Dispute Resolution Program established and governed by Bylaw 14;
- Publish articles in tax journals and serve on related advisory boards;
- Monitor state and federal legislation and publish the MTC legislative newsletter;
- Speak at conferences and seminars; 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

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 roster, which includes more than 300 attorneys across all states, plus the District of Columbia and one of the US Territories. 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.

Legal 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 sponsored by the Litigation Committee and held in conjunction with the MTC's August 2022, November 2022, and April 2023 meetings are described in the Litigation Committee's annual report to the Commission. Each of these trainings also included a litigation roundtable where state participants shared ideas and discussed recent developments in their states.

On December 16, 2022, Jonathan White and Jenn Stosberg, along with MTC Audit Supervisor Larry Shinder, 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 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.

In May, the Legal Division held a states-only information sharing session on the state taxation of partnerships in Minneapolis, Minnesota, to which 30 states sent individuals from their revenue agencies—including representatives of executive, policy, audit, and

legal functions. This unique event sought to bring states together to begin sharing their experiences with taxing partnerships and to help them identify issues and challenges. The participants were able to ask questions, direct the discussion, and work in smaller groups. MTC legal staff provided information for participants to take back to their states.

On May 24, 2023, Senior Counsel Bruce Fort co-presented an online training session concerning economic substance and transfer pricing for intercompany transactions. Attorney Mark Zimmer of the Wisconsin Department of Revenue co-presented, along with MTC Audit Director Holly Coon who discussed transfer pricing principles. 224 auditors and lawyers from 30 states participated.

On June 28, 2023, Senior Counsel Bruce Fort presented an online training program to 25 employees of the New Mexico Taxation and Revenue Department on the basics of UDITPA, combined filing, and New Mexico's income tax imposition statute.

Litigation Support and Legal Advice

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

In January 2023, Bruce Fort, counsel, provided expert witness testimony for South Carolina in *Tractor Supply Company v. South Carolina*, No. 19-ALJ-17-0416-CC.

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. It 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; reviewing and drafting contracts; and filing corporate registrations and reports.

Amicus Briefs Filed on Behalf of the Commission

In September 2022, NNP 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

Legal division staff tracks 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 the 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 the 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 Law 360* as a two-part article on March 29 and 30, 2023. A one-part version of the article will appear in a compendium of articles from the 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 the market-based sourcing has been offered.

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

In addition to regular meetings, events staff support the following in-person events:

- Nexus School (for income tax), October 6-7, 2022, in Salem, Oregon
- Partnership Training Summit, May 16-18, 2023, in Minneapolis, Minnesota.
- Nexus School (for sales and income tax), July 28-30, 2023, in Boise, Idaho.

Additional in-person and virtual events are being planned.

II. Administration

A. Staffing and Administration

James Lee, program specialist for the National Nexus Program, resigned effective May 31, 2023, to begin another job opportunity. James had worked with the MTC since March 2018, and we appreciated his excellent service.

B. Technology

Website

The migration to another CMS system has taken place. 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

After four years or more, new laptops have been provided for all staff. A new system of file sharing has been added, called BOX, replacing the CLEO file sharing system, which has been taken offline.

In addition, all staff that have MTC issued cell phones are set up for Multi-Factor Authentication for Microsoft 365 login. The next step will be discussions to determine how best to set up the remaining staff with Multi-Factor Authentication.

A new information security training plan is being rolled out at the beginning of the fiscal year. It incorporates short monthly security related videos and very short quizzes as well.

III. Outside Presentations & Events

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

The executive director serves as a member of 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. He welcomes your suggestions of state tax administration staff for speaking on state and local tax topics.

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 testimony)
- 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, New York (Prosser, panelist)
- *Pass Through Entity Taxation*, Northeast State Tax Officials Association; Niagara Falls, New York (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)
- *Corporate Taxation Conciliation Conference Exercise*, Prof. Hayes Holderness' SALT class, University of Richmond School of Law; virtual presentation (Prosser, guest presenter)
- *Current Developments in State Income Taxation of Partnerships and LLCs*, American Bar Association 2022 Fall Tax Meeting; Dallas, Texas (Barber, panelist)
- *Sales Taxation of Digital Goods, Advertising, and Services*, 29th Annual Paul J. Hartman State and Local Forum, Vanderbilt University Law School; Nashville, Tennessee (Prosser, 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; virtual (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, MD (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; New York, New York (Barber, Panelist)
- *State Implications of the Inflation Reduction Act*, NYU School of Professional Studies 41st Institute on State and Local Taxation; New York, New York (Fort, Panelist)
- *SALT Workaround: Considerations for Electing PTE Taxation*, 2022 New Mexico Tax Conference – State Bar and CPA Association; New Mexico (Hecht, Panelist)
- *Pass-Through Entity Taxes, Advanced Topics on Flow-Through Taxation*, Illinois CPA Society Conference; virtual (Cram, panelist)
- *Super-marketplace sales tax issues*, NYU School of Professional Studies 41st Institute on State and Local Taxation; New York, New York (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; New York, New York (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, California (Hamer, panelist)

MARCH 2023

- *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)

APRIL 2023

- *BGov State Policy Breakfast*; Washington, D.C. (Prosser, panelist)
- *A Discussion with the Multistate Tax Commission: Resources and Current Projects*, D.C. Bar Association SALT Committee; virtual (Cram, Matson, Prosser, presenters)

MAY 2023

- *Update on the MTC Digital Products Uniformity Project to the Streamlined Sales and Use Tax Semi-Annual Governing Board*; Rapid City, South Dakota (Prosser)
- *The Inherent Tensions Between the Principles Of Fair Apportionment And Single Factor Apportionment Formulas Based On Market-Place Sales*, Georgetown 45th Annual State & Local Tax Institute; virtual (Disque, panelist)
- *Pass-Through Taxation and Trends in the Digital Economy*, New Mexico Tax Research Institute Annual Conference, Albuquerque, New Mexico (Hecht, presenter)
- *State Revenues: Current Fiscal and Economic Impacts*, New Mexico Tax Research Institute Annual Conference, Albuquerque, New Mexico (Pattison, presenter)

JUNE 2023

- *The Struggles of Applying Traditional Tax Laws to Today's Digital Economy*, Villanova University Charles Widger School of Law First Annual SALT Forum; Philadelphia, Pennsylvania (Prosser, speaker)
- *Emerge CPA Annual Conference – Update on the MTC*, AICPA; Las Vegas, Nevada (Hecht, presenter)
- *Digital Goods & Services*, FTA Annual Meeting; Providence, Rhode Island (Prosser, panelist)
- *Court Case Update*, FTA Annual Meeting; Providence, Rhode Island (Prosser, panelist)
- *Remote Worker Issues*, FTA Annual Meeting; Providence, Rhode Island (Hecht, panelist)
- *2023 State and Local Tax Symposium: Projecting the Future of SALT*, “In Defense of the Corporate Income Tax,” Northwestern Pritzker School of Law; Chicago, Illinois (Hamer, commenter)
- *Implementing Tax Changes - A Discussion on Tax Administration and Digital Taxation, Online Marketplaces, and Artificial Intelligence*, The Institute for Tax Policy Leaders Tax Academy Policy Seminar; Arlington, Virginia (Prosser, panelist)
- *Remote Workers Issues*, National Taxpayers Union Federation, Tax Academy, Institute for State Policy Leaders; Arlington, Virginia (Cram, panelist)