



To: Executive Committee  
From: Gregory S. Matson  
Date: November 16, 2023  
Subject: **Report of the Executive Director**

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This report is a summary of the Commission's organizational and staff activities for the first quarter of fiscal year 2024, July 1, 2023, to September 30, 2023. Some activities and presentations that occurred in October have also been included.

## I. Programs & Activities

### A. Joint Audit Program

The Joint Audit Program completed one (1) income tax audit and parts of seven (7) other income tax audits and parts of five (5) sales tax audits during the first quarter of fiscal year 2024. Currently, there are nineteen (19) income tax audits and twenty-three (23) sales tax audits in progress.

During the first quarter, the income tax program proposed net assessments of \$119,192,874 for partially completed income tax audits. Income tax program staff also proposed NOL reductions of \$1,346,846. The sales tax program proposed net assessments of \$350,927 for partially completed sales tax audits.

The following chart summarizes hourly data for completed audits during the first quarter of the 2024 fiscal year:

	Income & Franchise	Sales & Use	Total
Total Audits	1	1	2
Total States Audited	22	7	29
Total Hours	5,533	2,970	8,503
Average Hours per State	252	424	293

The Audit Committee met once during the first quarter of the fiscal year, on July 24, 2023 in Austin, Texas. During the meeting, the committee received an update on the progress of open audits and a SALT case update from MTC legal staff.

Philadelphia has joined the Commission's Joint Audit Program.

## **B. National Nexus Program**

The Nexus Program results for the first quarter of FY 2024 (July 1, 2023, through September 30, 2023) are provided below.

- Nexus states' collections: \$2,123,382 (\$25,846,276 FY 2023)
- Nexus states' executed agreements: 67 (391 FY 2023)
- Nexus states' average contract value: \$31,692 (\$66,103 FY 2023)

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 October 25, 2023), 167 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

### 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

During FY 2024 through the 1st Quarter, Richard participated in several outreach events. These are listed in the Outside Presentations section.

Richard published an article entitled "The Last Word on *Quad Graphics*: A Requiem for *Dilworth*," in the September 4, 2023, issue of *Tax Analysts Tax Notes State*, vol. 109, number 10, p. 769.

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

### Nexus School

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.

### Staffing

The Nexus Program presently has three permanent full-time staff members.

## **C. Legal Division**

The eight 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 400 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.

### Training

The legal division provides a combination of in-person and online training programs for state attorneys and other state tax personnel.

On October 19, 2023, MTC Senior Counsel Bruce Fort and Field Audit Supervisor Jeff Silver presented an online "Tax Talk" titled *Understanding the Role of Equitable Apportionment in Business Income Taxation*.

### 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:

- California
- District of Columbia
- Hawaii
- Idaho
- Kansas
- Massachusetts
- Minnesota
- Nebraska
- New Jersey
- New Mexico
- Oklahoma
- Pennsylvania
- South Carolina
- West Virginia

### 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. For example, at each in-person Audit Committee meeting MTC attorneys provide a court case update. MTC

attorneys also provide 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

None to date during this fiscal year.

#### 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 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 Law360's 2023 State & Local Tax Editorial Advisory Board.

### **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 (MBS) course has been accessed by close to 150 state staff participants. Additional courses are being developed and will be placed the learning management system. In person courses, particularly Nexus Program schools are being considered and planned.

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.

Upcoming meetings and training have been scheduled:

- 2024 Spring Committee Meetings, April , 2024 – Kansas City, Missouri
- 57th Annual Conference and Meetings, July , 2024 – Denver, Colorado
- 2024 Fall Committee Meetings, November 13-16, 2024 – Santa Fe, New Mexico

## II. Administration

### A. Staffing and Administration

Recently, the MTC accountant Wendy Margolis has announced her retirement. Active recruiting for a replacement has begun. In addition, recruiting for an auditor for the Audit Program is also taking place.

There are several vacancies at the Commission following departures earlier in the year in addition to the two positions being recruited for right now. There is a Nexus position vacancy and the evaluation of the program workload is occurring to determine when and if to recruit for the position. There are two additional audit program vacancies and recruitment for those positions will start soon.

### B. Technology

The telephone system is being updated to utilize Microsoft Teams Voice instead of the current system. Since staff already utilize Teams, this will be an efficient improvement. An updated process used for managing the MTC global address book (email addresses and lists) is being worked on. In addition, preparations are being made to replace the firewalls for our information technology offsite backup systems in Covington, Kentucky.

## 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 2023

- Southeastern Association of Tax Administrators Conference; *Updates on Taxing Partnerships and Pass-Through Entities* (Hecht, panelist), *The Sales Taxation of Digital Products from the Government and Business Perspective* (Disque, panelist), *The Coming State Fiscal Cliff: A Mountain or Molehill?* (Pattison, presenter); Little Rock, Arkansas (Matson, attendee)

### AUGUST 2023

- FTA Technology Conference; Boston, Massachusetts (Lane, attendee)
- *Taxation of Digital Goods and Services*, NCSL Executive Committee Task Force on State and Local Taxation, Indianapolis, Indiana (Prosser)
- *Multistate Tax Compliance and Auditing*, Texas Society of CPA's Annual Summit, San Antonio, Texas (Fort)

- Midwestern States Association of Tax Administrators Conference; *State Taxation of Partnerships and Pass-Through Entities*, (Barber, panelist), *The Coming State Fiscal Cliff: A Mountain or Molehill?* (Pattison, presenter), *The Sales Taxation of Digital Products from the Government and Business Perspective* (White, panelist); Madison, Wisconsin (Matson, attendee)
- COST Mid-Atlantic Regional State Tax Seminar; *What's New at the MTC and FTA* (Matson, panelist); McLean, Virginia

#### SEPTEMBER 2023

- Northeastern States Tax Officials Association pre-conference function, *Legal-Audit State Representatives Roundtable* (Hamer, participant); Wilmington, Delaware
- Northeastern States Tax Officials Association Conference; *The Sales Taxation of Digital Products from the Government and Business Perspective* (Prosser, panelist), *State Taxation of Partnerships and Pass-Through Entities* (Hecht, panelist), *Four Perspectives: The Future of State Tax Administration* (Hecht, panelist), *The Coming State Fiscal Cliff: A Mountain or Molehill?* (Pattison, presenter); Wilmington, Delaware (Hamer, Matson, attendees)
- *Wayfair: Five Years Out – Legal and Practical Issues*, National Association of State Bar Tax Sections, Washington, DC (Prosser)
- Northeastern States Tax Officials Association, Wilmington, DE (Pattison)
- Foley & Lardner Client Luncheon Talk; *Demystifying the MTC* (Matson, Prosser, speakers); Washington, D.C.

#### OCTOBER 2023

- Western States Association of Tax Administrators Conference; *The Sales Taxation of Digital Products from the Government and Business Perspective* (White, panelist), *The Coming State Fiscal Cliff: A Mountain or Molehill?* (Pattison, presenter); Reno, Nevada (Matson, attendee)
- University of Iowa College of Law State and Local Tax Course, *The MTC and PL 86-272* (Hamer, Prosser, guest lecturers); virtual
- Paul J. Hartman State and Local Tax Forum; *Top Ten Income Tax Cases* (Fort, panelist); Nashville, Tennessee (Hecht, Matson, Stosberg, attendees)
- *Economic Trends Affecting State Taxation*, Joint Committee on Revenue Estimation and Tax Policy, New Mexico (Pattison, presenter)
- ABA Tax Section Fall Meeting; *The Continued Relevance – or the Obsolescence – of Older State Tax Cases* (Cram, panelist); *Sourcing Digital Goods and Services for Sales and Use Tax Purposes* (Prosser, panelist); Chicago, Illinois (Hamer, attendee)