



To: Executive Committee
From: Gregory S. Matson
Date: May 2, 2024
Subject: **Report of the Executive Director**

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 March 31, 2024. Some activities and presentations that occurred in April have also been included.

I. Programs & Activities

A. Joint Audit Program

The Joint Audit Program staff completed two (2) income tax audits and parts of ten (10) other income tax audits. Audit staff also completed three (3) sales tax audits and parts of five (5) other sales tax audits during the first three quarters of fiscal year 2024. Currently, there are twenty (20) income tax audits and twenty-two (22) sales tax audits in progress. During the first three quarters, the income tax program proposed net assessments of \$239,554,230 for completed and partially completed income tax audits. Income tax program staff also proposed NOL reductions of 2,217,973.00. The sales tax program proposed net assessments of \$ 3,231,322 for partially completed sales tax audits.

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

| | Income & Franchise | Sales & Use | Total |
|--------------------------------|-------------------------------|------------------------|--------------|
| Total Audits | 2 | 3 | 5 |
| Total States Audited | 47 | 29 | 90 |
| Total Hours | 10,027 | 7,492 | 17830 |
| Average Hours per State | 213 | 256 | 230 |

Program staff support the work of the Audit Committee, which submits a separate report to the Executive Committee with additional information about Joint Audit Program activities.

B. National Nexus Program

The Nexus Program results for the third quarter of FY 2024 (July 1, 2023 through March 31, 2024) are provided below.

- Nexus states' collections:\$19,396,340 (\$25,846,276 FY 2023)
- Nexus states' executed agreements:304 (391 FY 2023)
- Nexus states' average contract value: ..\$63,804 (\$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 203 taxpayers in calendar year 2023. For calendar year 2024 to date (as of March 31, 2024), 41 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

Nexus Program Director Richard Cram 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.

Program staff support the work of the Nexus Committee, which submits a separate report to the Executive Committee with additional information about National Nexus Program activities.

C. Legal Division

In addition to the activities described more fully below, the eight legal division attorneys—

- Staff the Uniformity and Litigation Committees;
- 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 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. After a multi-year effort, the MTC has an established CLE policy and dedicated webpage that helps attorneys claim CLE credits in many states. In January 2024, the State Bar of Texas, Committee on MCLE, approved the MTC for "accredited sponsor" status. This means reduced costs to our members and reduced time and effort for MTC staff when submitting training for accreditation.

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

On December 13, 2023, MTC Counsel Jonathan White and Jenn Stosberg, along with MTC Audit Supervisor Larry Shinder, presented a free, virtual ethics program, "The Force of Ethics," attended by over 500 state tax attorneys and auditors that provided two hours of CLE and CPE training.

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: Arkansas, Arizona, California, District of Columbia, Hawaii, Idaho, Kansas, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, and 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.

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. Counsel Chris Barber serves on the Bloomberg Pass-Through Entity Navigator working group.

D. Training and Events

Staff are continuing to develop content for and utilize a new virtual learning platform, a learning management system (LMS). A course on partnerships has been available and the market-based sourcing (MBS) course has been accessed by more than 165 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.

The staff is also working to ensure that in most cases, training will qualify for continuing education credits for lawyers and accountants.

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.

The following training and meetings have been scheduled —

- Income and Sales Tax Nexus School, May 16-17, 2024, in Charleston, West Virginia.
- 57th Annual Conference and Meetings, July 29-August 1, 2024, in Denver, Colorado
- 2024 Fall Committee Meetings, November 18-21, 2024, in Santa Fe, New Mexico

II. Administration

A. Staffing and Administration

In January 2024, General Counsel **Nancy Prosser** was elected as a Fellow of the American College of Tax Counsel.

A new employee was recently hired. **Inderjeet (Angie) Kaur** started with the MTC on February 20, 2024, as a sales tax auditor. Angie's experience includes having worked for the Washington State Department of Revenue as a revenue auditor for approximately fifteen years.

Two employees have recently left the MTC. Accountant **Wendy Margolis** retired in November 2023. Wendy had worked for the MTC since October 2014. Senior Auditor **Ben Morris** resigned at the end of January 2024. Ben began employment with the MTC as an income tax auditor in December 2003. Ben has taken a position with the Internal Revenue Service. Senior Auditor **William (Bill) Locascio** resigned at the end of March 2024. Bill began employment with the MTC as an income tax auditor in February 2012. Bill has also taken a position with the Internal Revenue Service.

Following the resignation of Wendy Margolis, MTC is working with a firm, My Valuable Business (MVB), to provide accounting services including production of its monthly financial statements. MVB is based in the Washington, D.C., area.

B. Technology

The telephone system has been fully integrated with Teams Voice.

At the end of January, there was a widespread network security vulnerability exploit in a VPN appliance affecting major private and public organizations (e.g., CISA, NASA), and also affected the MTC. Among other initial steps to mitigate our exposure, the MTC engaged an incident response team to do a thorough analysis of our networks and workstations. No data left our systems, and no confidential information was accessed. Other than the initial access efforts, there is no evidence of any current compromise.

Following this incident and the recommendations of the incident response team, the entire MTC security infrastructure has been upgraded. The anti-spam/anti-malware solution (Sophos) and email security (Barracuda) have been replaced with Checkpoint Harmony Endpoint. Additionally, the VPN portal (Ivanti) has been temporarily replaced by Checkpoint SecureRemote software but will ultimately be replaced by Checkpoint SASE (Secure Access Service Edge) service. This provides secure connections back to resources in the D.C. data center as well as encrypting all internet traffic on the endpoints. Additionally, all site-to-site VPN firewalls have been replaced and the Checkpoint firewalls in the D.C. office have been updated to the latest operating systems and service packs. MTC has subscribed to Checkpoint MDR (Managed Detection and Response),

allowing visibility into MTC computer assets 24/7 and acting on any incidents immediately.

III. Outside Presentations & Events

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.

The following are the programs, conferences, and other events of outside organizations at which MTC 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, D.C. (Prosser)

- 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)

NOVEMBER 2023

- *Tax Policy—State and Local Taxation*, University of Chicago Law School – Professor Jacob Goldin’s tax policy class, Chicago, Illinois (Hamer)
- *Update on the MTC Digital Products Uniformity Project*, Streamlined Sales Tax Governing Board, Louisville, Kentucky (Prosser)
- *Recent Nexus Law Developments and Commission Activities*, virtual presentation, NYU State Tax Study Group (Cram)
- *State Tax Developments*, National Tax Association Annual Meeting, Denver (Pattison, moderator/panelist)

DECEMBER 2023

- FTA Compliance Workshop; *State Taxation of Partnerships – Getting a Handle on Complexity* (Hecht, Stosberg, panelists), *Case Roundup: Trends in SALT Litigation Impacting Tax Administration* (Stosberg, panelist), *Taxation of Digital Products* (Prosser, White, panelists), *Legal Roundtable: Topics in Tax Controversy*, (Hecht, White, panelists), *Moore’s the Pity - A Discussion of Moore v. U.S.* (Prosser, panelist/Matson virtual guest); Tucson, Arizona
- FTA Commissioner’s Seminar; *MTC Update* (Matson, presenter), *Update on MTC/FTA Legal Matters* (Nancy, panelist); Tucson, Arizona
- NYU Institute on State and Local Taxation; *Big [Capital] Gains Hunting* (Fort, panelist), *Just Passing Through* (Barber, panelist), *What’s on the Horizon* (Matson, moderator); New York City, New York
- *The Taxation of Digital Products: An MTC Uniformity Project*, NCSL Fiscal Institute Symposium, Miami, Florida (Prosser)

JANUARY 2024

- *ABA Women in Tax Forum Virtual Tea* (Prosser)
- *Let's Get Digital – Sales Tax and Digital Goods*, California Taxpayers Association (Prosser, White)
- Independent SALT Alliance; *Multistate Tax Commission and Streamlined Sales Tax – Digital Products* (White, panelist); Las Vegas, Nevada
- *Multistate Tax Commission (MTC) 101*, GreenbergTraurig's GeTtin SALTy podcast (Prosser)
- *State Tax Compliance Through the MTC Multistate Voluntary Disclosure Program*, MyCPE Webinar (Cram)

FEBRUARY 2024

- Deloitte Tax LLP and The Tax Section of The Florida Bar's National Multistate Tax Symposium; *Envisioning a new multistate tax world with purpose: The next 20 years* (Hecht, panelist); Orlando, Florida
- *Trends in Sales/Use Tax Economic Nexus and Marketplace Facilitator Tax Collection Laws plus Voluntary Disclosure*, MyCPE Webinar (Cram)
- *Basics of Nexus and the MTC Multistate Voluntary Disclosure Program*; CPAcademy webinar (Cram)

MARCH 2024

- TaxOps *SALTovation* podcast (Prosser)
- *Mastering Multistate Sales and Use Tax Compliance: Navigating New Collection Law*; CPAcademy webinar (Cram)
- *Women in Sales Tax* podcast with Diane Yetter of Yetter Tax (Prosser)
- *MTC Update*, virtual presentation, NYU State Tax Study Group (Matson)
- ABA/IPT Advanced Tax Seminars; *Jazzing Up the Rules: Public Law 86-272 Updates* (Hamer, panelist), *The Annual Big Easy Brawl* (Cram, panelist); New Orleans, Louisiana
- *Public Law 86-272 Updates*, webinar, Chicago Tax Club (Hamer)