



To: Commission  
 From: Gregory S. Matson  
 Date: July 31, 2024  
 Subject: Annual Report of the Executive Director

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This report is a summary of the Commission’s organizational and staff activities for the fiscal year 2024 (July 1, 2023, to June 30, 2024).

## I. Programs & Activities

### A. Joint Audit Program

The Joint Audit Program staff completed 4 income tax audits and parts of 8 other income tax audits during FY 2024. Audit staff also completed 4 sales tax audits and parts of 5 other sales tax audits during the fiscal year. Currently, there are 18 income tax audits and 24 sales tax audits in progress.

During FY 2024, the income tax program proposed net assessments of \$297,738,703 for completed and partially completed income tax audits. Income tax program staff also proposed NOL and tax credit reductions of \$2,217,973. The sales tax program proposed net assessments of \$3,400,352 for completed and partially completed sales tax audits.

The following chart summarizes hourly data for completed audits during FY 2024:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	4	4	8
<b>Total States Audited</b>	94	41	135
<b>Total Hours</b>	17,245	10,618	27,863
<b>Average Hours per State</b>	183	259	206

The Audit Committee met three times in fiscal year 2024. At each meeting, the committee reviewed the status of all audits in progress or recently closed. Discussions were held on

income tax and sales tax audits that had significant issues. MTC legal staff also provided a presentation on recent state tax litigation at each meeting.

Minnesota joined the audit program for sales and use tax audits and Philadelphia joined the audit program for income and tax audits.

## B. National Nexus Program

The Nexus Program results for FY 2024 are provided below.

- Nexus states' collections: \$28,743,260 (\$25,846,276 FY 2023)
- Nexus states' executed agreements: 494 (391 FY 2023)
- Nexus states' average contract value: \$58,185 (\$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 June 30, 2024), 94 taxpayers have so far applied. Most of the applications are based on sales/use tax economic nexus.

There were 39 participating states (including the District of Columbia) in the NNP in FY 2024. Commission staff continues to reach out to non-member states.

The National Nexus Program Director 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. As a guest contributor, Richard published a short article supporting the Pennsylvania Supreme Court’s interpretation in *Zilka v. Tax Review Board City of Philadelphia*, Nos. 20 EAP 2022, 21 EAP 2022 (Pa. 2023), included as part of the Tax Analysts advisory board’s article by Audrey E.P. Pollitt, “Zilka: A No-Wynne Situation?,” in the April 29, 2024 issue of *Tax Analysts Tax Notes State*, Volume 112, Number 5. That decision was the subject of a petition for certiorari filed with the U. S. Supreme Court, which is pending.

A Nexus School was held on May 16-17, 2024, in Charleston, West Virginia, hosted by the Department of Revenue. Thirty-two students attended.

The National Nexus Program presently has three permanent full-time staff members: Richard Cram, director, Diane Simon-Queen, voluntary disclosure program manager, Michelle Lewis, paralegal.

## C. Legal Division

In addition to the activities described below, the 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;

- 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 U.S. 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. 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.

A free group of training modules suitable for attorneys and other tax agency staff on the basics of partnership tax remains available in relation to the Uniformity Committee's project on the taxation of partnerships and staff is developing more advanced partnership tax training.

On October 19, 2023, MTC 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, 2-hour 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 by request with state attorneys and other state representatives on litigation matters, including strategy, issues, and 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
- Illinois
- Kansas
- Massachusetts
- Minnesota
- Montana
- Nebraska
- New Jersey
- New Mexico
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- Vermont
- Washington, DC
- West Virginia
- Wisconsin

### 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

The MTC filed one amicus brief this fiscal year at the request of Arkansas to support the state’s position in the case of *Hudson v. Murphy Oil USA, Inc., Arkansas*, Supreme Court Case No. CV-24-8. The issue involves whether the debt (and resulting interest payments) incurred by the taxpayer to fund a spinoff from its corporate parent should be treated as “business” expense or “non-business” expense. The taxpayer treated the interest payments as apportionable expense in every state, and it apportioned the expense on its original Arkansas return. But shortly before the statute of limitations on refund claims expired, the taxpayer filed a refund claim in Arkansas, its corporate domicile, arguing the interest deductions were non-business income and should be allocated entirely to Arkansas. It did not similarly amend its returns in the other states in which it filed.

The MTC has an interest in ensuring consistent interpretation of uniform statutes on behalf of its members. That interest is especially pronounced when, as here, the statute in question is part of UDITPA. The MTC amicus brief provided context for the state's supreme court on the history of UDITPA and the value of uniformity, without addressing other aspects of the case that concerned the specific construction of Arkansas tax statutes.

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

Bloomberg Tax's magazine *The Exchange* published an article by Senior Counsel Bruce Fort in November of 2023 entitled: *Pepsi Tax Case Shows Why the 80/20 Exclusion is a Bad Idea for the States*. State Tax Notes published an article, also by Bruce, on June 17, 2024 entitled: *State Taxation of MNEs under the TCJA: It's Time for a Policy Reassessment*.

### **D. Training and Events**

Training continues to be an important focus of the MTC staff. Staff are continuing to develop content for and utilize a new virtual learning platform (LMS) with increased capabilities and options. Courses on partnerships and market-based sourcing have been offered on the old LMS and over 250 have accessed the 2 courses.

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, in-person training is again being planned. A Nexus School was held May 16-17, 2024, in Charleston, West Virginia.

## II. Administration

### A. Staff Notes

**Wendy Margolis**, accountant with MTC, retired in November. Following her retirement, the MTC contracted with My Valuable Business (MVB), an accounting firm based in D.C. (also used by FTA), to provide accounting services.

Senior Auditor **Ben Morris** resigned at the end of January to take a position with the Internal Revenue Service.

**Inderjeet (Angie) Kaur** was hired as a sales tax auditor in February but resigned in June to take a position with the Internal Revenue Service.

Senior Auditor **William (Bill) Locascio** resigned at the end of March to take a position with the Internal Revenue Service.

After 33 successful years with the MTC, Director of Administration **William “Bill” Six** retired in May. Regan Mahoney has been hired as the administrative and finance officer to replace him.

Auditor **Kim Stewart** resigned in June.

### Honors & Awards

General Counsel **Nancy Prosser** and Uniformity Counsel **Helen Hecht** were each elected this year as a Fellow of the American College of Tax Counsel. The American College of Tax Counsel works on tax policy and improvements to the U.S. tax system.

### 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 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)

#### APRIL 2024

- None

#### MAY 2024

- 2024 ABA Tax Section Annual Meeting; *The Impact of State Administrative Procedure Acts on Informal DOR "Guidance"* (Prosser, panelist); Washington, D.C.
- Streamlined Sales Tax Governing Board meeting, Omaha, Nebraska (White)
- NCSL SALT Task Force meeting, Quebec City, Quebec (Prosser)

JUNE 2024

- Villanova University Graduate Tax Program's 2d Annual State and Local Tax Forum (State Taxation of a Digital Economy); *How Legislators Define "It"* (Matson, panelist); Villanova, Pennsylvania
- FTA Annual Conference; *Income Tax Developments* (Fort, panelist), *Litigation Trends* (Prosser, panelist), *AI Versus the Experts* (Fort, panelist); Long Beach, California (Matson, Pattison attendees)
- The Institute for Tax Policy Leaders seminar; *Combined Reporting 101* (Matson, panelist), *Recent Trends in Digital Taxation* (Prosser, panelist); Arlington, Virginia
- Independent SALT Alliance meeting, *MTC Statement on P.L. 86-272* (Hamer, speaker); Chicago, Illinois
- New Mexico Tax Research Institute; *Challenges Facing State Tax Administration – Different Perspectives* (Hecht, panelist); Albuquerque, New Mexico
- *Basics of Nexus and the MTC Multistate Voluntary Disclosure Program*; CPAcademy webinar (Cram)