

Let the Training Begin: Multistate Tax Commission Transfer Pricing Audits Draw Near

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Deputy Executive Director Greg Matson (a nice guy at heart) announced this week that the **Multistate Tax Commission (MTC)** has hired its first transfer pricing training consultant and is scheduled to begin training state auditors. The training, titled “Identifying Related Party Issues in Corporate Tax Audits” will be hosted by the *North Carolina Department of Revenue* from March 31 to April 1, 2015 in Raleigh, North Carolina. While the much anticipated **Arm’s Length Adjustment Service** (ALAS, discussed in more depth in our February 6, 2015 blog post, available [here](#)) is still pending approval of the MTC Executive Committee and ratification at the annual meeting this summer, it has not stopped MTC officials from moving forward with training state auditors on transfer pricing. This training (and any subsequent training offered before the annual meeting) will be conducted as part of the MTC’s “regular training” schedule (and is not directly tied to the ALAS program since authority to train for that program has not vested). Nonetheless, Executive Director Joe Huddleston made it clear in a recent letter to the states that “[t]his course will preview the training to be provided through the Arm’s-Length Adjustment Service.”

The kickoff training session at the end of this month will be conducted by former Internal Revenue Service Office of Chief Counsel senior economic advisor, Ednaldo Silva. He is the founder of RoyaltyStat LLC, one of the transfer pricing consulting firms that is being considered by the MTC to provide their services for the ALAS. During yesterday’s teleconference of the ALAS Advisory Group, Matson and Huddleston were optimistic that additional training sessions would be offered by the MTC before the ALAS is finalized. It remains to be seen whether this training will be offered by Silva or another participant from the October 2014 Advisory Group meeting that has submitted a bid to be the contract firm for the ALAS. Because these trainings are a fundamental threshold step to commencing ALAS audits (projected to begin December 2015), they provide a strong signal that the MTC is optimistic that they will have sufficient support from the states to continue the ALAS program.

Too Soon?

In a letter distributed to 46 states and Washington, D.C. in February 2015, the MTC officially solicited state commitments to the ALAS program. States were given until the end of March 2015 to respond. By the terms of the ALAS proposal, the MTC will need a commitment from at least seven states for the program to move forward. MTC officials announced at yesterday's Advisory Group teleconference that the current count is zero (with one state declining). While there is still time to respond, several revenue department officials voiced concern about making a commitment without more detailed estimates of costs. Others voiced uncertainty about the ability to enter into a contract for such a long period under state law (the program requests that each state commit to four years). While there was no significant undertone of opposition to the ALAS program, there also was not a mass cry of support. Notably, only 10 states were participating in the March 4, 2015 Advisory Group teleconference. It remains to be seen whether the low turnout will conclude with few states participating (since the real benefit of a multistate audit is the ability to spread the costs across many states). Even with only 10 states participating, Huddleston and his staff estimate that the ALAS program could generate over \$110 million in revenues over the four-year pilot phase (with a majority of that amount coming in final two years).

Still to Come

The Advisory Group, led by Dan Bucks, announced that they will hold two more teleconference meetings (one before and one after the Executive Committee meeting on May 7, 2015). Expected on the agenda at the next meeting (projected for mid-April) is a discussion of how to best evaluate the success of the ALAS program. The goal is for the ALAS program to be finalized and ratified by the MTC at the annual meeting this July.

Practice Note: Taxpayers are encouraged to re-examine their interstate (and foreign) transfer pricing now to ensure they are properly supported by transfer pricing documentation. While the ALAS program still has the potential to fail, the MTC is taking the initiative to educate state auditors on transfer pricing issues—which will increase the risk of a transfer pricing audit regardless of the ALAS outcome.

Eric Carstens also contributed content for this article.

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