

DRAFT - July 7, 2016

State Intercompany Transaction Advisory Service Committee Participation Commitment and Exchange of Information Agreement

Article I. Introduction

This Participation Commitment and Exchange of Information Agreement (“Agreement”) is entered into among the signatory member states (“signatory states”) of the Multistate Tax Commission’s State Intercompany Transaction Advisory Service Committee (“Committee”) and the Multistate Tax Commission (“Commission”). Collectively, the signatory states and the Commission are referred to in this Agreement as “signatory agencies.” This Agreement is executed by the authorized representatives of the signatory agencies pursuant to the laws of their respective states pertaining to the exchange of confidential taxpayer information with other taxing authorities.

Article II. Purpose

By entering into this Agreement, a signatory state reflects its intention to actively participate in the development and operation of the Committee. A signatory state agrees to collaborate with the other signatory agencies to this Agreement on matters of tax administration which include providing a representative to the Committee, establishing training objectives, and participating in the mutual exchange of confidential taxpayer information. A signatory state likewise acknowledges that in order for the Committee to continue its work a fee structure and funding mechanism may need to be developed. The signatory states agree to work in good faith toward the development and implementation of any such fee structure and funding mechanism to be approved by the Commission’s Executive Committee.

This Agreement establishes the nature and operation of information-sharing conducted through the Committee. This Agreement is intended to operate within existing state authority for the exchange of confidential taxpayer information among the signatory states, and as between each signatory state and the Commission, for the purposes of improving tax administration and taxpayer compliance. This Agreement also covers protocols for sharing information with authorized agents, contractors, employees, and representatives retained by the signatory agencies for the purposes described in this document.

Article III. Authority

Each signatory state to this Agreement acknowledges that its laws permit the exchange of confidential taxpayer information with the other signatory agencies participating in this Agreement. This Agreement incorporates each signatory state’s laws which pertain to the exchange of confidential taxpayer information with other states and with the Commission. This Agreement is not intended to expand or contract any other state law or agreement pertaining to the exchange of confidential taxpayer information.

The signatory states also acknowledge that the Committee, composed of designated representatives of the signatory states, has the authority to utilize Commission staff to further the activities of the

Committee, including but not limited to facilitating case discussions by the signatory states, having the Commission contract to provide the signatory states with expert advice and assistance, providing training to the signatory states, and providing when requested support and assistance for audit, compliance, enforcement, and litigation activities undertaken by the signatory states.

Article IV. Information Subject to Exchange

1. INFORMATION SUBJECT TO EXCHANGE:

This Agreement applies to any information in the possession of any signatory state which could reasonably be considered useful to other signatory states in tax administration, including taxpayer compliance measures and litigation. Such information includes, but is not limited to, (1) lists of taxpayers or potential taxpayers including identifying data; (2) tax or information returns or documents including supporting schedules, attachments, and lists; (3) nexus information and questionnaires; (4) research and revenue estimating materials; (5) audit reports and other information regarding or acquired through audit; (6) contingent tax liability and tax reserve work papers; (7) proprietary taxpayer information, including without limitation, information on inter-company pricing decisions, intellectual property values and profits, comparable industry profits, risk factors, capital costs, employee compensation, division and subsidiary profits, salaries and benefits, overhead charges, interest charges, transfer pricing reports and recommendations, comparable profits, charges, royalty rates, investment decisions, business location decisions, transfers of personnel, transfers of property, collection and enforcement activities, responses to interrogatories, depositions, any other documents with respect to private letter ruling requests, protests, appeals and criminal tax matters with respect to any taxpayer, potential taxpayer, or group of taxpayers or potential taxpayers; and (8) any other information eligible to be exchanged pursuant to laws of the signatory states.

2. INFORMATION NOT SUBJECT TO EXCHANGE:

This Agreement does not apply to information received directly from the Internal Revenue Service pursuant to Section 6103(d) of the Internal Revenue Code, unless the Internal Revenue Service authorizes the exchange.

Any information the disclosure of which would be in violation of state or federal law or detrimental to the administration of the tax laws of any signatory state is not subject to exchange. Each signatory state reserves the right to make the determination whether information is subject to exchange under the terms of this Agreement.

Article V. Duties and Responsibilities

1. FACILITATE EXCHANGE OF CONFIDENTIAL TAXPAYER INFORMATION:

The signatory states will upon request provide reasonable assistance to and cooperation with each other to allow the sharing of confidential taxpayer information as desirable for the purposes of improving tax administration and taxpayer compliance. The signatory states also may agree to provide assistance with audit, compliance, enforcement, and litigation activities upon such terms as are mutually agreed upon and allowed by law.

2. REQUIRED STORAGE AND HANDLING OF CONFIDENTIAL TAXPAYER INFORMATION:

Each signatory agency, and their agents, contractors, employees, and representatives, are responsible for the storage, transmission, and destruction of confidential taxpayer information created, developed, exchanged, or transmitted by the Committee, subject to each signatory agencies' applicable authority regarding the protection and limits on disclosure of confidential taxpayer information received pursuant to this Agreement. The signatory states may develop information repositories and additional procedures for information sharing pursuant to this Agreement.

All information exchanged under this Agreement will be transferred between the signatory agencies pursuant to the established authority of each of the signatory agencies. In the event the laws of signatory agencies conflict, the parties to this agreement will exchange information under the most restrictive provisions applicable to any exchanging signatory agency. The signatory agencies agree to cooperate in establishing secure and efficient means of communication which are not inconsistent with established authority.

Any unauthorized disclosure of confidential taxpayer information obtained under the terms of this agreement will be reported immediately upon discovery to the information exchange officer and tax administrator of the providing state.

Nothing in this agreement expands or diminishes the legal responsibilities, obligations, penalties, or liabilities of the signatory agencies, or their agents, contractors, employees, or representatives for the storage, handling, or destruction of confidential taxpayer information as established under the laws applicable to each signatory agency.

3. OWNERSHIP OF INFORMATION AND RECORD DESTRUCTION:

All taxpayer information described in this Agreement belongs to the state for which such information was created, developed, transmitted, or received and is subject to that state's laws on information sharing and disclosure.

Nothing in this Agreement, and no exchange of information pursuant to it, waives or in any way alters any signatory agency's ability to assert law enforcement, governmental, attorney/client, attorney work product, or any other privileges applicable to such information.

All records received will be returned to the providing signatory state upon request when they are no longer needed for the purpose for which they were obtained. In the absence of a request that such records be returned to the providing signatory state, such records may be destroyed by a receiving signatory agency in accordance with that agency's authority on record retention and destruction.

4. PROTECTION OF CONFIDENTIALITY

The signatory agencies, and their agents, contractors, employees, and representatives, agree to protect the confidentiality of all information obtained pursuant to this Agreement in accordance with laws of the signatory states. No signatory agency shall disclose any information obtained pursuant to this Agreement to any other agency, department, or unit within the recipient's state or political subdivision thereof, except as authorized or required under the laws applicable to any signatory agency.

Nothing in this Agreement prohibits disclosure of any information obtained by virtue of the Agreement to the following:

(A) Other employees, contractors, agents, or other authorized representatives of the signatory agency who are charged with tax administration to the extent permitted by the laws of the signatory agency;

(B) A legal representative of the signatory agency for use in administrative, civil, or criminal proceedings concerning tax administration purposes;

(C) Other state employees, agents, or representatives of the signatory agency where such disclosure is permitted and as is necessary in connection with the processing, storage, and transmission of such information; or

(D) Other state employees, agents, or authorized representatives charged by that state's laws with the responsibility of auditing the activity of the signatory agencies.

Article VI. General Provisions

1. EFFECTIVE DATE AND TERMINATION:

This Agreement is binding on the signatory agencies, their agents, contractors, employees, and representatives from the date of its execution until the signatory agency provides written notice of withdrawal from the terms of the Agreement.

2. AMENDMENTS:

This Agreement may be amended in writing duly executed by all the signatory agencies.

3. SEVERABILITY:

In the event any portion or portions of this Agreement should, for any reason, be determined to be invalid or unenforceable, the remaining portions of the Agreement continue to be valid and enforceable.

4. COUNTERPARTS:

This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

Executed on the dates shown below by the following parties:

(State and Agency)
(Address Line 1)
(Address Line 2)
(Address Line 3)

By: _____
(Name of Signatory)
(Title of Signatory)

Date: _____

MULTISTATE TAX COMMISSION
444 North Capitol Street, N.W., Suite 425
Washington, D.C. 20001

FOR THE MULTISTATE TAX COMMISSION:

By: _____
Gregory S. Matson
Executive Director

Date: _____