



MULTISTATE TAX COMMISSION

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To: The Commission
From: Christy Vandevender, Nexus Committee Chair
Re: Nexus Committee Activities FY 2019
Date: August 7, 2019

Nexus Committee Annual Report for FY 2019

The Nexus Program FY 2019 results (July 1, 2018, through June 30, 2019) are provided below.

- Nexus states' collections: \$14,695,429 (\$18,601,151 FY 2018)
- Non-Nexus states' collections: \$48,892 (\$0 FY 2018)
- Nexus states' executed agreements: 379 (3,087 FY 2018)
- Nexus states' average contract value: \$38,774 (FY 2018: \$6,026)

The above amounts include checks received by the Commission or amounts paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the value of a new taxpayer are not included.

The Nexus Committee met in person on July 23, 2018, in Boston, Massachusetts, on November 6, 2018, in Orlando, Florida, on April 24, 2019, in Denver, Colorado.

The Committee considered and approved the following issues at the July 23, 2018 meeting:

Changes were recommended to the standard voluntary disclosure application, given that states will be moving toward minimum sales volume/number of transactions thresholds for nexus as a result of *South Dakota v. Wayfair*. Taxpayers applying for voluntary disclosure should provide information on when physical presence nexus-creating activities commenced, as well as information on sales volume and number of sales transactions in the state, and when such sales

commenced. The approved changes to the application form are intended to obtain that information from applicants.

The Committee considered and approved the following issues at the November 6, 2018 meeting:

Richard Cram will circulate the following survey among participating states, with the responses used to provide guidance to Nexus Program staff on how pass-through entities applying for voluntary disclosure should be treated in the voluntary disclosure agreement:

1. Which states are willing to consider including both pass-through entities and their owners within one voluntary disclosure agreement and which states are not?
2. For those states willing to consider including both pass-through entities and their owners within one voluntary disclosure agreement, must the owners, in addition to the pass-through entity, also sign the agreement?
3. Which states are willing to consider accepting consolidated income tax returns filed by a pass-through entity on behalf of its nonresident owners and which states are not?
4. If the entity applying for voluntary disclosure is a disregarded entity for federal income tax purposes, will your state enter into a voluntary disclosure agreement concerning income tax with such an entity?

The Committee considered and approved the following issues at the April 24, 2019 meeting:

Revisions were made to the standard voluntary disclosure agreement, for use in situations when the taxpayer has only economic nexus and no physical presence in the state and is applying for sales and use tax voluntary disclosure. The revised agreement provides that the lookback period would commence as of the date that the state commenced enforcement of economic nexus for sales and use tax and the remote seller has exceeded that economic nexus threshold.

Richard Cram will circulate a survey to determine how states are calculating income/franchise tax lookback periods when the voluntary disclosure application is received after the tax year has ended but before the return is due for that tax year. States appear to be taking different approaches. Some states may include that tax year in the lookback period, and other states would consider it outside the lookback period, since the return was not due or delinquent at the time the application was received. Richard will also solicit additional responses

to the survey circulated following the November 6, 2018 meeting. The results of both surveys will be distributed prior to the next meeting, and will be discussed at that meeting.