



Minutes
Nexus Committee Meeting (Open Session)
July 25, 2016
Crowne Plaza Hotel Downtown, Kansas City, Missouri

List attendees:

First Name	Last Name	State or Affiliation
Tracee	Abel	MT Department of Revenue
Steven	Alvarez	GA Department of Revenue
Walter	Anger	AR Dept. of Fin. and Admin. Rev. Div.
Sara	Archer	PwC
Dan	Armer	NM Taxation and Revenue
Tom	Atchley	AR Dept. of Fin. and Admin. Rev. Div.
Lee	Baerlocher	MT Department of Revenue
Karolyn	Bishop	WA Department of Revenue
Jessica	Brown*	D.C. Office of Tax and Revenue
Joan	Cagle*	TN Department of Revenue
Mike	Christensen	UT State Tax Commission
Lennie	Collins	NC Department of Revenue
Anita	Conner	PA Department of Revenue
Richard	Cram	MTC
John	Frasier	NH Department of Revenue Admin
Scott	Fryer	AR Dept. of Fin. and Admin. Rev. Div.
Kurian	Geemon	D.C. Office of Tax and Revenue
Keith	Getschel	MTC
Andrew	Glancy*	WV Department. of Revenue
Richard	Jackson	ID State Tax Commission
Harold	Jennings	MTC
Rusty	Johnson	TX Comptroller of Public Accounts
Don	Jones	OR Department of Revenue
Hal	Jones	TN Department of Revenue
Jayne	Kulberg	WI Department of Revenue
Michelle	Lewis*	MTC
Jennifer	McLoughlin	BNA
Luke	Morris	Louisiana Department of Revenue
Deanna	Munds-Smith	AR Dept. of Fin. and Admin. Rev. Div.

Marcia	Oakman	Kentucky Dept. of Revenue
Matt	Peyerl	ND Department of Revenue
Rouen	Reynolds	AL Department of Revenue
Don	Richardson	KY Department. of Revenue
Diane	Simon-Queen*	MTC
Michael	Smith	Delaware Div. of Revenue
Shawn	Stacy	KY Department of Revenue
Jenny	Starr	MN Department of Revenue
Marshall	Stranburg	MTC
Randy	Tilley	ID State Tax Commission
Christy	Vandevender	AL Department of Revenue
Tyler	Wallace	OR Department of Revenue
Marjorie	Welch*	OK Tax Commission
Donna	Whitcomb	NH Department of Revenue

*participation by telephone

Chairman Lennie Collins, North Carolina, brought the meeting to order, introductions of attendees were made, and public comment was invited. No public comment was made.

Randy Tilley, Idaho, moved for approval of the minutes of the March 3, 2016 open session meeting of the Nexus Committee, and the motion passed unanimously.

Marshall Stranburg, Deputy Executive Director, emphasized to the Committee the importance of always keeping strategic planning in mind as to how that process can help the Multistate Tax Commission successfully accomplish its mission, values, vision and goals. He mentioned referrals to Audit Committee as an illustration. He complemented the Committee on recently completing two strategic planning projects and in continuing with a new project to improve the Nexus Program website materials for clarity and ease of use.

Richard Cram, current Director of the National Nexus Program, presented the FY 2016 Nexus Program Director's Report.

Karolyn Bishop, Washington, leader of the work group (also including Michael Christensen, Utah, Rebecca Johnston, Washington, and Deborah Lee, Alabama) for the project to review MTC Multistate Voluntary Disclosure materials on website for clarity and ease of use, presented the work group's report, which included several recommendations to improve the Nexus Program website information, many of those having already been implemented. The work group also recommended that a list of the states' lookback periods be published on the Nexus Program website, in order to provide helpful information to potential voluntary disclosure applicants.

Several Committee members expressed concerns about publishing the list of lookback periods for the states. On one hand, this information would certainly be helpful to prospective voluntary disclosure applicants in estimating potential back tax liability. On the other hand, publication of

the list might create the expectation that a taxpayer should always be offered a particular lookback period from a state, no matter what the factual circumstances may be. If suitable disclaimer language were included with the list, this could alleviate the concerns about publication. Christy Vendevender, Alabama, noted that several states currently publish their lookback periods on their websites.

Lennie Collins directed the work group to draft suitable disclaimer language to include with the list of state lookback periods, making it clear that the length of the lookback period for a particular state is always a matter of policy for that state, and factual circumstances surrounding the taxpayer's disclosure may change the length of the lookback period that a state is willing to offer. This draft disclaimer language will be brought back to the Committee for its consideration and approval, along with consideration and approval of publication of participating state lookback periods.

New Business

The Committee considered and Randy Tilley moved for approval of the proposed amendments to the Standard Voluntary Disclosure Agreement form. The motion passed unanimously by voice vote. Richard Cram explained that his staff suggested the proposed amendments in order to shorten and clarify the provisions, without making any substantive changes. Lee Baerlocher, Montana, suggested making the document an online form. Richard noted that would present resource and security issues, but would be worth further investigation.

The Committee considered and Randy Tilley moved for approval of the proposed amendments to Paragraphs 1.2 and 15.2 of the Procedures of Multistate Voluntary Disclosure. The motion passed unanimously by voice vote. Lennie Collins suggested these amendments: the amendment to Paragraph 1.2 provides that when a taxpayer withholds but does not remit any withholding taxes, those must be remitted as part of the voluntary disclosure process without regard to any lookback period, similar to how collected but unremitted sales or use taxes are treated; the amendment to Paragraph 15.2 strikes the language limiting only to combined reporting states the treatment of all constituent entities of a unitary group as a "person" for purposes of that paragraph. Matt Peyerl, North Dakota, commented that confusion can exist as to who the taxpayer is: the parent? subsidiary? Karolyn Bishop added that Washington includes all affiliated entities in the voluntary disclosure agreement if they are a unitary group.

The Committee requested that staff research how states are treating the question of "who is the taxpayer" in the context of a unitary group, in order to consider whether that issue should be further addressed in a "frequently asked question" or in a provision added to the Standard Voluntary Disclosure Agreement form.

The Committee discussed the question of whether a provision should be included in the Standard Voluntary Disclosure Agreement form to require the taxpayer to waive net operating losses incurred prior to the lookback period. Richard Cram explained that the current form includes

such provisions for Arizona, Georgia, and Missouri, but not for the other states. Lee Baerlocher commented that a survey of the states as to how they treat net operating losses incurred prior to the lookback period in voluntary disclosure agreements would be useful.

The Committee requested that staff conduct a survey of Nexus Program participating states as to how they treat net operating losses in voluntary disclosure agreements.

The Committee discussed the question of whether procedures should be developed to handle electronic payments in the voluntary disclosure process. Don Jones, Oregon, stated there was a need to come up with such procedures. Matt Peyerl noted that this comes up when a foreign bank account is involved. Randy Tilley commented that the challenge is linking the payment to the return. Mike Christensen commented that the problem is being able to identify the taxpayer when electronic payment is received. Karolyn Bishop suggested that a prepayment could be set up, but the Department needs to know when the payment is coming. There was no consensus reached.

Randy Tilley brought up that barriers from I.T. infrastructure (such as noncompatibility of browsers, security concerns) are hindering exchange of information among states both in Audit Committee and Nexus Committee areas, and Executive Committee input is needed. Randy requested feedback on how the Commission staff is dealing with those issues.

Closed Session

The committee entered closed session to discuss matters protected from disclosure.

Open Session

The Committee returned to open session for Richard Cram to present the Director's Update on Nexus Law Developments since March 3, 2016. The Committee then adjourned.