

To: Lennie Collins, Chair, Nexus Committee

From: Richard Cram, National Nexus Program Director

Date: March 9, 2017

Re: Update on Survey of Participating States Concerning Allowance of NOLs in Voluntary Disclosure Agreements

Prior to the December 13, 2016 Nexus Committee meeting, participating states were surveyed on their policies concerning taxpayers claiming NOLs before, during or after the lookback period. The Committee discussed those responses at the December 13, 2016 meeting. Although the responses showed a lack of consensus, they did contain some threads of consistency.

Survey responses generally indicated that if a taxpayer wants to claim an NOL that accrued prior to the lookback period and the taxpayer has been relieved of the obligation to file a return for such time period, then the taxpayer cannot claim such an NOL during or after the lookback period. The taxpayer must file a return to establish an NOL. When a taxpayer enters into a voluntary disclosure agreement with a state, it is assumed that nexus with the taxpayer begins at the commencement of the lookback period. If a taxpayer tries to accrue an NOL prior to the lookback period, that would be prior to the taxpayer having nexus with the state. The taxpayer should not be allowed to claim an NOL that accrued prior to nexus being established with the state.

Some states have unique policies concerning specific aspects of NOLs in voluntary disclosure agreements. For example, two states require waiver of an NOL that accrued during the lookback period. One state does not permit a taxpayer to amend a return for a time period in the lookback period to claim an NOL. Another state indicated it would allow a taxpayer to claim a longer lookback period in order to accrue an NOL.

The question remains whether it would be helpful to include any guidance concerning claims of NOLs in voluntary disclosure agreements as part of the explanatory materials published on the Nexus Program website.