



Minutes
Nexus Committee Meeting (Open Session)
December 13, 2016
Westin Houston, Memorial City, Houston, TX

List attendees:

First Name	Last Name	State or Affiliation
Tracee	Abel	Montana Dept. of Revenue
Lee	Baerlocher	Montana Dept. of Revenue
Tripp	Baltz	Bloomberg BNA
Michelle	Biermeier	Wisconsin Dept. of Revenue
Karolyn	Bishop	Washington State Dept. of Revenue
Gil	Brewer	West Virginia State Tax Dept.
Michael	Christensen	Utah State Tax Commission
Lennie	Collins	North Carolina Dept. of Revenue
Holly	Coon	Alabama Dept. of Revenue
Richard	Cram	Multistate Tax Commission
Latonia	Dooley	Kentucky Dept. of Revenue
Cathy	Felix	Multistate Tax Commission
Keith	Getschel	Multistate Tax Commission
Frank	Hales	Utah State Tax Commission
Richard	Jackson	Idaho State Tax Commission
Rusty	Johnson	Texas Comptroller of Public Accounts
Gene	Walborn	Montana Dept. of Revenue
Joan	Wittig	New Mexico Taxation and Revenue
Steve	Yang	Multistate Tax Commission
Katie	Lolley	Oregon Department of Revenue
Matt	Peyerl	ND Office of State Tax Commissioner

First Name	Last Name	State or Affiliation
Greg	Matson	Multistate Tax Commission
Helen	Hecht	Multistate Tax Commission
Jeff	Silver	Multistate Tax Commission
Harold	Jennings	Multistate Tax Commission
Don	Jones	Oregon Department of Revenue
Josette	Fullen	State of New Jersey
Marshall	Stranburg	Multistate Tax Commission
Marcia Ann	Oakman	Kentucky Department of Revenue
Jayne	Kulberg	Wisconsin Department of Revenue
Randy	Tilley	Idaho State Tax Commission
Christy	Vandevender	Alabama Dept. of Revenue
Luke	Morris	Louisiana Department of Revenue
Krystal	Bolton	Louisiana Department of Revenue
Diane	Simon-Queen*	Multistate Tax Commission
Michelle	Lewis*	Multistate Tax Commission
Joan	Cagle*	Tennessee Department of Revenue
Lee	Evans*	New Jersey Division of Taxation
Patricia	Calore*	Michigan Department of Treasury
David	Wilson*	Arkansas Dept. of Finance and Admin.
Misgana	Tesfaye*	Colorado Department of Revenue
Christi	Daniken*	Oregon Department of Revenue
Leanne	Johnson*	North Carolina Department of Revenue
Angela	Stephenson*	North Carolina Department of Revenue
Troy	Hopkins*	Nebraska Department of Revenue
Scott	Spilinek*	Nebraska Department of Revenue
Steven	Alvarez*	Georgia Department of Revenue
Janice	Shannon*	New Mexico Taxation and 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 July 25, 2016 open session meeting of the Nexus Committee, and the motion passed unanimously.

Richard Cram, Director of the National Nexus Program, presented the FY 2017 to date Nexus Program Director's Report and Update on Recent Nexus Law Developments since July 25, 2016.

Work Group 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 from their November 3, 2016 teleconference meeting, which included a draft list of state lookback periods for the Committee's consideration and recommended introductory disclaimer language, making clear that a state's lookback period is a matter of individual state policy, and is subject to the particular facts and circumstances of the taxpayer.

Randy Tilley, Idaho, moved for approval of the disclaimer language on the draft list of state lookback periods. Matt Peyerl, North Dakota, suggested that the word "generally" be inserted in the first sentence of disclaimer language, after the word "relief" and before the word "must." Randy Tilley amended his motion to include Matt's suggestion. The motion passed, with 16 states voting in favor and none against.

Pat Calore, Michigan, suggested that the list of state lookback periods be dated and that a link to each participating state's voluntary disclosure website be added. Michael Christensen, Utah, cautioned that links could quickly become outdated. Katie Lolley, Oregon, expressed concerns about publishing the list.

Richard Cram advised that the list of lookback periods includes a column for states to add any notes concerning their specific lookback periods. He will circulate the draft list among the Nexus Committee members to confirm that the information for each state is accurate, and to obtain any information that a state wants included in the "notes" column.

Chair Lennie Collins suggested that the Committee meet by teleconference, once the list has been circulated and its accuracy confirmed, in order for the Committee to vote on approval of the list for publication on the National Nexus Program website prior to the Committee's next in-person meeting, which will be on March 9, 2017 in San Diego. Richard Cram stated that he would try to get the teleconference meeting scheduled sometime in late January or February of 2017.

Survey Responses re Unitary Groups and NOLs

Richard Cram reviewed the results of a 9-question survey circulated to members of the Committee concerning state policies on entering voluntary disclosure agreements with unitary groups and handling of net operating losses (NOLs) accrued either prior to or during the lookback period.

For Question #1 (Can a unitary group apply for voluntary disclosure relief in your state as a unitary group, with each member of the unitary group listed as a party to the voluntary disclosure agreement?) 14 states responded “yes” and 11 states responded “no.”

For Question #2 (If a unitary group is seeking voluntary disclosure relief in your state, must a separate voluntary disclosure agreement be executed with each member of that unitary group?) 9 states responded “yes” and 16 states responded “no.”

Richard Cram stated that separate filing states generally responded “no” to Question #1 and “yes” to Question #2, and combined reporting states generally responded the opposite way to those questions.

For Question #3 (Does your state require that a taxpayer seeking voluntary disclosure relief for income tax waive any net operating losses that have accrued in a tax year prior to the lookback period?) 14 states responded “yes” and 9 states responded “no.”

For Question #4 (Does your state require that a taxpayer seeking voluntary disclosure relief for income tax waive any net operating losses that have accrued during the lookback period?) 2 states responded “yes” and the balance responded “no.”

For Question #5 (Does your state place any other restrictions on a taxpayer’s claim of net operating loss deductions from net operating losses accruing prior to or during the lookback period?) 10 states responded “yes” and the balance responded “no.”

For Question #6 (If the answer to No. 5 is “yes,” please explain.), several states responded that the taxpayer must file a return in order to establish an NOL. Otherwise, it is not allowed. Those states assume that nexus starts at the beginning of the lookback period, so if a taxpayer wants to file a return to establish an NOL, then the lookback period would need to include that tax year.

For Question #7 (Would your state support including a provision in the standard voluntary disclosure agreement placing any restrictions on a taxpayer’s ability to claim deductions for net operating losses that have accrued prior to or during the lookback period, when the taxpayer is seeking voluntary disclosure relief for income tax?) 12 states respond “yes” and 8 states responded “no.”

For Question #8 (If the answer to the prior question is “yes,” please describe what those restrictions should be.), Missouri indicated that it does not allow a taxpayer to amend a return to claim an NOL. Again, several states indicated that the taxpayer must file a return to establish an

NOL, and if no returns are to be filed for periods prior to the lookback period, then those NOLs would be considered waived.

For Question #9 (Is your state's policy in allowing or not allowing a taxpayer seeking voluntary disclosure relief for income tax to claim a net operation loss deduction in tax years included in the lookback period determined by statute or administrative policy? Please identify the statute or administrative policy.) most states responded that it was a matter of administrative policy, 1 state indicated court cases, and 4 states indicated statutory restrictions.

Lee Baerlocher, Montana, expressed concerns about adding additional provisions to the addendum to the standard agreement form concerning these areas, as that will add complexity and confusion.

Christi Daniken, Oregon, expressed surprise that the NOL issue had been brought up, as it has not been a problem with Oregon voluntary disclosure agreements.

Randy Tilley, Idaho, asked, if a taxpayer has no nexus, how can they file a return?

Matt Peyerl stated that North Dakota has had taxpayers file returns for periods prior to the lookback period.

Christy Vendevender, Alabama, commented that addressing NOL's in voluntary disclosure should be simple: if the taxpayer files a return, that can establish an NOL, but if the taxpayer does not file a return, then no NOL. She recommended against revising the addendum to the standard agreement and questioned the need for addressing the NOL issue.

Marcia Oakman, Kentucky, suggested that rather than amending the addendum to the standard agreement, why not simply publish guidance concerning NOLs to the voluntary disclosure policy information?

Michael Christensen, Utah, expressed concern about publishing or adding anything to the website about NOLs, as this could create confusion, given the diversity among states on this issue.

Lee Baerlocher, Montana, suggested that the survey questions concerning NOL's be simplified and refined, in order to determine whether this is really a topic that needs to be addressed in either the addendum to the standard agreement, or in published guidance.

Richard Cram stated that he would revise the survey questions concerning NOLs and recirculate for response by Committee members.

Electronic Payment Protocol

Chair Lennie Collins brought up the agenda topic concerning development of a protocol for electronic payments, in view of Idaho's policy requiring electronic payment of amounts in excess of \$100,000.

Richard Cram stated that payments to a state above \$100,000 are sometimes received, and it would be helpful to have a protocol in place to follow, when either the taxpayer wants to make an electronic payment, or the state requires it.

Marcia Oakman suggested that the participating states be surveyed on their requirements for receiving electronic payments in voluntary disclosure situations.

Richard Cram stated that he would send out such a survey.

New Business

No new business was brought before the Committee.

Closed Session

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

Open Session

The Committee returned to open session and following the motion of Randy Tilley, Idaho, approved unanimously, adjourned.