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To: Lennie Collins, Chair, Nexus Committee

Prepared By: Richard Cram

Re: Report to Nexus Committee from Closed Sessions held April 18, May 16, June 20 and July 18, 2017

Date: July 18, 2017

The Nexus Committee met by teleconference in closed session on April 18, May 16, June 20 and July 18, 2017 in order to discuss and develop for consideration a limited-time voluntary disclosure Proposal to be made available to online sellers that have nexus with a state as a result of having inventory located in a fulfillment center or warehouse in that state operated by a marketplace provider or from other nexus-creating activities of a marketplace provider in the state.

During the April 18 teleconference, Richard Cram informed the Committee that he had attended the 2017 Prosper Show in Las Vegas on March 22-23, 2017, which hosted Amazon FBA sellers. These businesses sell merchandise on the Amazon website, and Amazon also handles fulfillment services, billing and returns for them. Amazon's storage of inventory for these sellers creates nexus in states where that inventory is located. Amazon will collect tax for the seller, but only if the seller requests this, and then the seller is obligated to report and remit the tax to the state. Mr. Cram gave a presentation on tax compliance to the group and explained the voluntary disclosure process. Several sellers in attendance told Mr. Cram that they would be interested in coming forward for voluntary disclosure, but the fact that they would face payment of past sales/use tax liability for uncollected tax for the states' lookback periods prevents them doing so, as it would put them out of business. Mr. Cram asked whether the Committee would be interested in putting together a proposal to offer Amazon FBA sellers (and other internet marketplace third-party sellers) voluntary disclosure relief with prospective compliance and waiver of back-tax liability, interest and penalties. Lennie Collins, Chair, directed Mr. Cram to prepare and send a survey to participating states for response prior to the next teleconference meeting concerning the interest level in assembling a proposal to offer Amazon FBA sellers and other internet marketplace third-party sellers, voluntary disclosure with prospective tax compliance and relief or partial relief from tax liability for prior years.

At the teleconference closed session meeting on May 16, 2017, Mr. Cram presented the results of the survey to the Committee. By that date, Utah, Kansas, Kentucky, Colorado, Nebraska, Iowa, Wisconsin, Alabama had expressed interest in participating in the proposal. Mr. Cram also indicated that he had recently participated in a teleconference with 10 Amazon FBA sellers, who remained anonymous during the call. The purpose of the call was to gain their feedback on the voluntary disclosure proposal. They expressed strong interest in a voluntary disclosure proposal that would allow them prospective tax compliance and relief from backtax liability. Most on the call responded that even a shortened lookback period for tax liability would discourage them from participating, considering the time and expense involved in getting set up to start collecting sales/use tax. They also expressed very strong concerns about participating if they came forward for voluntary disclosure relief from one state and their identity ends up being disclosed to other states that they have not come forward to. If there was a possibility that the state they came forward to would disclose their identity to other states, then they would have no interest in the proposal. They also indicated that backtax liability relief should include not only sales/use tax but also income/franchise tax. They were not interested in coming forward to receive voluntary disclosure relief for back sales/use taxes only to thereafter receive an assessment for back income/franchise taxes.

At the teleconference closed session meeting on June 20, 2017, Mr. Cram indicated that additional states have expressed interest in the proposal. Chair Lennie Collins brought up the following issues for developing the Proposal:

1. Should the proposal be made available only to online sellers using a marketplace provider platform and with nexus only through presence of inventory in the state?
2. Should a provision be included providing that states cannot disclose the identities of any of the Amazon FBA sellers coming forward for voluntary disclosure?
3. Should the proposal allow for prospective compliance with no lookback period, or should it include a shortened lookback period?
4. Should the proposal include both sales/use tax and income/franchise tax or be limited to sales/use tax?
5. Should there be a minimum tax liability threshold?
6. How should the proposal be publicized?

Chair Lennie Collins directed Mr. Cram to prepare a draft voluntary disclosure agreement form to be used with the Proposal.

At the teleconference closed session meeting on July 18, 2017, Mr. Cram stated that the following states so far have indicated interest in participating in the Proposal: Alabama, Colorado, Connecticut, Florida, Kansas, Kentucky, Louisiana, Utah, and Vermont, with the following states considering whether to participate: Arizona, Idaho, Iowa, Michigan, Nebraska, New Jersey, North Dakota, Tennessee, Texas, and Wisconsin. States are to confirm their interest in participating by July 31, 2017. The Nexus Committee developed the following Proposal for consideration and possible approval by the Nexus Committee at its open session meeting in Louisville, Kentucky on July 31, 2017:

During the time period August 17, 2017 through October 17, 2017, the States of _____ will consider applications for voluntary disclosure received by Multistate Tax Commission (MTC) staff during that time period from taxpayers meeting the following eligibility criteria:

1. The taxpayer has not registered as a seller or retailer, filed sales/use tax or income/franchise tax returns with, made payments of such taxes to, or had any other prior contact with the state concerning liability or potential liability for sales/use taxes or income/franchise taxes.
2. The taxpayer is an online seller using a marketplace provider (such as the Amazon FBA program or similar platform or program) to facilitate retail sales into the state and has no physical presence nexus in the state, except for the online seller's inventory stored in a third-party fulfillment center located in the state or through other nexus-creating activities of the marketplace provider in the state. A "marketplace provider" is a person who facilitates a retail sale by an online seller by (1) listing or advertising for sale by the online retailer on a website, tangible personal property, services, or digital goods that are subject to sales/tax; (2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the online seller; and provides fulfillment services to the online seller.
3. The taxpayer has made total online retail sales exceeding \$10,000 to customers located in the state during the prior twelve-month period.
4. The taxpayer has timely applied to the state for voluntary disclosure relief through the MTC Multistate Voluntary Disclosure Program (MVDP), in accordance with the process set forth at <http://www.mtc.gov/Nexus-Program/Multistate-Voluntary-Disclosure-Program>. The taxpayer will need to

state in the application that the taxpayer is applying for voluntary disclosure relief under this Proposal and provide the information needed to establish eligibility.

5. The taxpayer is seeking relief from any past due sales/use tax or income/franchise tax liability (including interest and penalties) in connection with its online retail sales activity in the state, except for sales/use tax collected but not remitted, with the taxpayer agreeing to register as a seller or retailer with the state and timely collect, report and remit sales/use tax on all taxable retail sales to customers in the state prospectively as of the effective date of the voluntary disclosure agreement, **[which must be a date not later than December 1, 2017? January 1, 2018?]**. If subject to income/franchise tax, the taxpayer further agrees to timely file income/franchise returns and pay such taxes due, commencing with the tax year including the effective date of the voluntary disclosure agreement. If the taxpayer has any collected but unremitted sales/use tax, then the taxpayer agrees to remit such tax to the state, including penalties and interest.

As provided in the MTC Procedures of Multistate Voluntary Disclosure, a taxpayer can apply to a state for voluntary disclosure anonymously and will not be required to disclose its identity to the state until the voluntary disclosure agreement is executed. The taxpayer can also withdraw the application for voluntary disclosure with any state at any time prior to execution of the voluntary disclosure agreement.

Normally, when a taxpayer applies for voluntary disclosure relief with states through the MTC MVDP, the taxpayer will be required to file returns and pay back tax liability, plus interest, for the lookback period that the state uses, which is generally the prior three to four years or more, depending on the state's law or policy. The state will then waive tax liability, interest and penalties for the time period prior to the lookback period. Under the time-limited Proposal described above, for taxpayers meeting the above criteria, the states identified above will consider waiving sales/use and income/franchise backtax liability, including penalties and interest, for prior tax periods, without regard to any lookback period, **[except that the following states may use a shortened lookback period of one year? two years? and require payment of back tax liability and interest for that lookback period: _____,]** provided the taxpayer registers as a seller or retailer to collect, report and remit sales/use tax and commences to file sales/use

tax returns and remit sales/use tax as of the effective date **(not later than December 1, 2017? January 1, 2018?)** set forth in the voluntary disclosure agreement, and if the taxpayer is subject to income/franchise tax, the taxpayer commences filing income/franchise tax returns and paying tax due, commencing with the tax year including the effective date of the voluntary disclosure agreement.

The States participating in this time-limited Proposal have agreed not to disclose to other taxing jurisdictions the identity of any taxpayer entering into a voluntary disclosure agreement under this Proposal, except as required by law, or pursuant to a court order.

If approved by the Committee, this Proposal will be published on the MTC website.

The Committee reviewed the attached agreement form for use with voluntary disclosure applications received under this Proposal.

Attachment: Draft Voluntary Disclosure Agreement Form