

## MEMORANDUM

To: Christy Vandevender, Chair, Nexus Committee

From: Richard Cram

Date: July 28, 2020

Re: Proposed Revisions to Lookback Period Chart

Currently, the Nexus Program webpage on the MTC website includes a chart that lists each participating state's lookback period for sales/use tax and income/franchise taxes. These lookback periods, at least for sales/use tax, are based on the assumption that the taxpayer had physical presence nexus in the state. In the 2018 *South Dakota v. Wayfair* decision, the U.S. Supreme Court overruled *Quill* and determined that the physical presence nexus standard was incorrect, ushering in sales/use tax economic nexus, which all sales tax states, except for Florida and Missouri, have now adopted. The *Wayfair* decision contains language strongly discouraging application of sales/use tax economic nexus retroactively, so states that have adopted economic nexus laws have been careful not to attempt to enforce them prior to the effective date of their economic nexus laws.

The Nexus Committee previously addressed the issue of how sales/use tax lookback periods should be determined when the taxpayer coming forward for voluntary disclosure has only sales/use tax economic nexus in the state and no physical presence. The Nexus Committee agreed that the lookback period for sales/use tax for a taxpayer with sales/use tax economic nexus only should not begin before the effective implementation date of the state's sales/use tax economic nexus law. The lookback period for a taxpayer coming forward for voluntary disclosure for sales/use tax that has only economic nexus with the state may receive a lookback period that is considerably shorter than the normal lookback period that would apply if the taxpayer had physical presence nexus in that state.

In order to eliminate confusion for taxpayers, it is suggested that language be added to the currently published lookback period chart to clarify that the participating states' sales/use tax lookback periods will differ from those shown on the chart when the taxpayer has only economic nexus with the state. Also, an additional chart should be published showing the sales/use tax economic nexus lookback periods for those states.

Attached is the current lookback period chart published on the MTC website, with suggested added language shown in red, indicating that the lookback periods shown for sales/use are based on the assumption that the taxpayer has physical presence nexus in the state. That language will also refer the viewer to another chart (attached) showing the sales/use tax lookback periods for states that have adopted sales/use tax economic nexus, and which would apply when the taxpayer has only economic nexus in the state.

## Lookback Periods for States Participating in National Nexus Program

The lookback period includes the prior complete tax filing periods for which a taxpayer applying for voluntary disclosure relief must generally file returns and pay the past-due tax liability plus interest in return for the state's waiver of tax liability for periods prior to the lookback period and penalties. The lookback period also includes the current incomplete tax filing period, the return for which must be timely filed and tax paid when due. The prior and current tax filing periods are determined based on the date that the application is received by National Nexus Program staff. Each state determines its own lookback period. Lookback periods may vary between states. The lookback periods published below are provided for guidance purposes only to assist taxpayers seeking voluntary disclosure relief in estimating the amount of past-due tax liability payment that may be required. **For a state that has implemented sales/use tax economic nexus, if the taxpayer has only sales/use tax economic nexus and no physical presence in that state, the sales/use tax lookback period would not commence earlier than the state's sales/use tax economic nexus implementation date. For states that have adopted sales/use tax economic nexus, please see the chart entitled "Sales/Use Tax Lookback Periods for Taxpayers With Economic Nexus Only."** As each state makes the final determination of the lookback period, following review of the taxpayer's application, the guidance below does not constitute specific advice and accordingly should not be relied upon without further confirmation from the state(s). Please note that withholding tax retained from employee salaries and sales and use tax collected from others must be remitted in its entirety, without regard to the lookback period, and may involve non-waivable penalties.

STATE LOOKBACK PERIODS			
Nexus Program States	Income/franchise tax	Sales/Use Tax	NOTES
	Lookback Period (complete prior tax years)	Lookback Period (complete prior months)	
Alabama	3	36	
Arizona	4	48	Lookback period for TPT/use tax is 48 months.
Arkansas	3	36	
Colorado	4	36	
Connecticut	3	36	
D.C.	3	36	Lookback period for franchise tax is 3 prior tax years.
Florida	3	36	Lookback period includes the 3 years immediately preceding the postmark date of the VDA request.
Georgia	3	36	Lookback period may be reduced/eliminated if no liability or refunds/losses exist.
Hawaii	3	n/a	The lookback period for both the general excise (gross income) tax and corporation net income tax is 3 complete prior tax years plus the current year.
Idaho	3	36	Lookback period may vary depending on the specific facts and circumstances of each request.
Iowa	5	60	Lookback period is one-half the periods normally due, with maximum of 5 years (20 quarters, 60 months).
Kansas	3	36	Kansas will consider allowing a longer lookback period if requested.
Kentucky	4	48	
Louisiana	3	36	Look-back period is 36 months plus any months due for the current calendar year.
Maryland	4	48	
Massachusetts	3	36	Lookback period can be 7 years for an in-state entity.
Michigan	4	48	
Minnesota	4	36	Lookback-period for Minnesota corporate franchise tax, S corporation tax, and partnership tax is generally 4 years (3 lookback years and 1 current year that is ready and available to be filed).
Missouri	4	48	For franchise tax years beginning on or after 1/1/2016, no franchise tax is imposed under RSMO 147.010.
Montana	5	n/a	Montana has no state sales/use tax.
Nebraska	3	36	
New Hampshire	3	36	
New Jersey	3	36	
New Mexico	SEE MANAGED AUDIT PROCEDURES		
North Carolina	3	36	
North Dakota	3	36	While the general lookback period is 3 years, a longer lookback period may apply to circumstances where it is clear a significant taxable presence in the state existed prior thereto.
Oklahoma	3	36	
Oregon	3	n/a	Oregon has no sales/use tax.
Rhode Island	3	36	3 years for income/franchise and 36 months for sales/use.
South Carolina	3	36	
South Dakota	3	36	Lookback period is 3 prior tax years for bank franchise tax.
Tennessee	3	36	Lookback period is 3 prior tax years plus the current year. For both taxes, it could be up to 4 years or 48 months.
Texas	4	48	
Utah	3	36	
Vermont	3	36	
Washington	4	48	Lookback period is the prior 4 calendar years plus the current year through the end of the last completed calendar quarter.
West Virginia	3	36	The franchise tax ceased for taxable years beginning on or after January 1, 2015, under W. Va. Code Section 11-23-6(b)(11).
Wisconsin	4	48	

## Sales/Use Tax Lookback Periods for Taxpayers with Economic Nexus Only

The states below participate in the National Nexus Program and have adopted sales/use tax economic nexus. If the taxpayer has only economic nexus in the state and does not have physical presence nexus, then the state's sales/use tax lookback period would begin as of the date that the state has implemented sales/use tax economic nexus. The beginning dates for the sales/use tax lookback periods for taxpayers with sales/use tax economic nexus only in the state are shown below. The lookback periods published below are provided for guidance purposes only to assist taxpayers seeking voluntary disclosure relief in estimating the amount of past-due tax liability payment that may be required. As each state makes the final determination of the lookback period, following review of the taxpayer's application, the guidance below does not constitute specific advice and accordingly should not be relied upon without further confirmation from the state(s).

Nexus Program States	Sales/Use Tax
	Economic Nexus Lookback Period Start Date
<b>Alabama</b>	<b>10/1/2018</b>
<b>Arizona</b>	<b>10/1/2019</b>
<b>Arkansas</b>	<b>7/1/2019</b>
<b>Colorado</b>	<b>12/1/2018</b>
<b>Connecticut</b>	<b>12/1/2018</b>
<b>D.C.</b>	<b>1/1/2019</b>
<b>Georgia</b>	<b>1/1/2019</b>
<b>Hawaii</b>	<b>7/1/2018</b>
<b>Idaho</b>	<b>6/1/2019</b>
<b>Iowa</b>	<b>1/1/2019</b>
<b>Kansas</b>	<b>10/1/2019</b>
<b>Kentucky</b>	<b>10/1/2018</b>
<b>Louisiana</b>	<b>7/1/2020</b>
<b>Maryland</b>	<b>10/1/2018</b>
<b>Massachusetts</b>	<b>10/1/2019</b>
<b>Michigan</b>	<b>10/1/2018</b>
<b>Minnesota</b>	<b>10/1/2018</b>
<b>Nebraska</b>	<b>1/1/2019</b>
<b>New Jersey</b>	<b>11/1/2018</b>
<b>New Mexico</b>	<b>See Managed Audit</b>
<b>North Carolina</b>	<b>11/1/2018</b>
<b>North Dakota</b>	<b>10/1/2018</b>
<b>Oklahoma</b>	<b>7/1/2018</b>
<b>Rhode Island</b>	<b>7/1/2019</b>
<b>South Carolina</b>	<b>11/1/2018</b>
<b>South Dakota</b>	<b>11/1/2018</b>
<b>Tennessee</b>	<b>10/1/2019</b>
<b>Texas</b>	<b>11/1/2019</b>
<b>Utah</b>	<b>1/1/2019</b>
<b>Vermont</b>	<b>7/1/2018</b>
<b>Washington</b>	<b>10/1/2018</b>
<b>West Virginia</b>	<b>1/1/2019</b>
<b>Wisconsin</b>	<b>10/1/2018</b>