

Date: August 5, 2019

To: Christy Vandevender, Chair, Nexus Committee

From: Richard Cram

Re: Results of Lookback Period Calculation Survey Dated June 3, 2019

The survey is reprinted below, with the state responses shown in bold. Also provided are any comments submitted by the states.

Background

The Commission's website publishes an FAQ providing information about the Multistate Voluntary Disclosure Program, including determination of the state's "lookback period," based on the date that the application was filed. The following information is provided concerning determination of the lookback period for income/franchise tax:

What is the lookback period, and how is it determined?

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. 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.

Income/franchise Tax Lookback Period Example

For income/franchise tax, returns are filed on a tax year basis. The lookback period for a state agreeing to a three-year lookback period could be determined as follows: if the taxpayer using a calendar year for its tax year applied for voluntary disclosure on June 1, 2016 (the date Nexus Program staff received the application), then the lookback period would include the three prior calendar years, 2013, 2014 and 2015. Consequently, the lookback period would commence on January 1, 2013. If the taxpayer is using a tax year ending on July 31, 2016, then the lookback period would

include the three prior tax years, August 1, 2012 through July 31, 2013, August 1, 2013 through July 31, 2014, and August 1, 2014 through July 31, 2015. In that situation, the lookback period would commence on August 1, 2012. Returns and tax for tax years 2013, 2014 and 2015 would be filed and paid under the VDA. **The 2016 return would be filed and tax paid when due.**

The above the example may not necessarily address determination of the lookback period when the voluntary disclosure application is filed on a date after the close of the tax year, but before the return for that tax year becomes due. For example, if the state's lookback period for income tax is the prior three complete tax years, the taxpayer uses the calendar year for the tax year, and the application is filed with the Commission on January 5, 2019 (assume the 2018 income/franchise tax return is due by April 15, 2019), should the lookback period commence on January 1, 2016 and include tax years 2016, 2017 and 2018? Or must the return for the tax year be considered delinquent at the time the voluntary disclosure application is filed with the Commission for that tax year to be included in the lookback period? Also, is delinquency (for purposes of lookback period calculation) to be determined as of the original due date for the return, or an automatic extension due date for the return? States appear to have different positions on the above questions.

Please respond for your state (one response per state) to the questions below by inserting an "X" in the appropriate response and return your response to Richard Cram, email rcram@mtc.gov, by June 24, 2019. Please add any explanatory comments as needed. The results of the survey will be presented to the Nexus Committee for discussion at its meeting in Boise, ID on August 5, 2019.

1. Assuming your state has a three-year lookback period for income/franchise tax, and the taxpayer (using a calendar year tax year) submits an application for voluntary disclosure to the Commission on January 5, 2019, and the **2019** (should be 2018) income/franchise tax year return is due by April 15, 2019, which tax years would be included in the lookback period:
 - A. 2016, 2017 and 2018, because the application was filed after 2018 **MA MT NH VT**
 - B. 2015, 2016, and 2017, because the 2018 was not delinquent when the application was filed **AL AR CO CT FL GA ID KS LA MD ND NE NM OK OR SC UT WI**
 - C. Other **KY** (please state and explain)

Comments:

KY: KY requires a four-year lookback. If the 2018 return is due 4/15/19 we would ask for 2014, 2015, 2016 and 2017 returns. They would be required to file the 2018 return timely. Assuming a Jan. 5, 2019 contact date.

2. When would your state consider an income/franchise tax return to be delinquent (for purposes of lookback period calculation):
 - A. After the original due date (April 15 in above example)

AL CO FL GA ID KY LA NH NM SC UT VT WI

**B. After the automatic extension date AR CT KS MA MD MT ND NE OK
OR**

C. Other _____ (please state and explain)

Comments:

AL: For Sales & Use Tax purposes, Alabama establishes its lookback period as the last 36 delinquent months as of the date the application is filed with the MTC Nexus Program.

For example: Sales & Use Taxes are due on the 20th of the month. An application is submitted on March 18, 2019. February is not delinquent on that date, so we would count back beginning with January 2019, resulting in the lookback period beginning February 1, 2016.

GA: One comment regarding your note above (**highlighted**) regarding tax years that have been completed but are not past their due date when the VDA application is submitted: “The 2016 return would be filed and tax paid when due.” In Georgia, we allow the taxpayer to include these recent returns if they are submitted in conjunction with the other, required returns. If the most recent return is not ready to be submitted with the 3 required returns, we also allow the taxpayer to submit Estimated Payments for the most recent year, advising them we will process and, once they later file the recent return through normal processing, we will waive late payment penalties associated with those Estimated Payments if they send us an e-mail request, referencing their VDA number.

MT: Montana corporate income tax return is considered “delinquent” when a return has not been filed by its automatic extended due date. For purposes of the lookback period, please see our response to question 1, above.

ND: B, if a federal or state extension is obtained. If one is not obtained, then A.

UT: Utah would consider the income/franchise tax return delinquent after April 15 because we don’t have an automatic extension date.