



## **National Nexus Program Director's Report**

Radisson Salt Lake City Downtown hotel  
Salt Lake City, Utah  
March 3, 2016

This report updates the Nexus Committee on activity of the National Nexus Program from July 1, 2015 until February 29, 2016, except as otherwise noted.

It also contains in the Appendices certain documents that the Nexus Committee will discuss at its March 3, 2016 meeting. Please familiarize yourself with them before the meeting.

1. We will discuss whether and how to change three fundamental documents of the multistate voluntary disclosure program: the template disclosure agreement, the template application for disclosure, and the Procedures of Multistate Voluntary Disclosure, which this committee approved as the guidelines to govern problems that arise, such as how missed deadlines are handled and the like. The Nexus program requested comments from the committee by email a few weeks ago; those received are appended at the end of the document they address. The committee may wish to discuss these comments and those raised at the meeting. *Preparation for this discussion entails reacquainting yourselves with these documents, all found in the Appendices.*
2. We will also discuss in what order to prioritize strategic planning projects that the committee has already identified as worthy. *Preparation for this discussion includes reading the criteria that the project team used to guide its prioritization ("Criteria the Project Team Used....") and the document in which each project is scored according to the criteria ("Scores the prioritization Team Gave....").* You may also want to read the full descriptions of the potential projects. All are in the Appendices.
3. The committee will discuss non-confidential goings-on within members' states with respect to nexus statutes, regulations, rulings, and the like. *Preparation for this includes knowing about the situation in one's state and being prepared to give a few words about it.* There will be an opportunity to discuss confidential matters in closed session.
4. There will likely be discussion under New Business of appointing a Nexus vice-chair. The position is currently unfilled.

The Commission produces reports cumulatively over each fiscal year beginning on July 1 and updates over the fiscal year (June 30 year-end) until the final report of the fiscal year that is presented at the committee's July meeting the following calendar year.

Italicized text unless the context indicates otherwise represents either an action of the committee or a matter for the committee or someone to follow up on.



## **Nexus Committee Agenda**

Radisson Hotel Salt Lake City Downtown  
215 W. South Temple, Salt Lake City, Utah  
March 3, 2016

1:00 p.m. till 5:00 p.m. local time (Mountain – time zone corrected)

State government personnel and members of the public may attend this meeting either in person or by teleconference. Only state personnel may participate in the closed session. To participate by teleconference, please dial 719-234-0214; the guest password is 102826. There is no security code for the open session.

Members of the public wishing to address the committee with respect to an agenda item are welcome to do so during Comments from Public or when the committee turns its attention to that item. The committee encourages public participation.

- I. Welcome and Introductions
- II. Review of Agenda
- III. Review of Open Session Minutes of December 9, 2015 Meeting
- IV. Comments from Public
- V. Nexus Director's Report
- VI. Discussion regarding updates to Procedures of Multistate Voluntary Disclosure, template application for disclosure, and text of the template agreement
- VII. Report of project team regarding prioritization of new strategic planning projects to recommend to the Strategic Planning Steering Committee
- VIII. Roundtable discussion of updates regarding nexus cases, legislation, and administrative guidance
- IX. New Business
- X. Closed Session
- XI. Report from Closed Session
- XII. Adjournment (before 5:00 p.m. if business is concluded)

## Multistate Voluntary Disclosure

This year has started off well and signs point to a good year overall for disclosure revenue. Staff has at least one in-process disclosure that is expected to recover several million dollars (not reflected below). The average value of each disclosure to date has increased substantially from last fiscal year.

These amounts include only funds actually received by the Commission before the Commission closes its File. Interest on back tax paid and the value of a new taxpayer, both substantial revenue producers, are not included. The difference between Nexus states' collections and all states' collections has narrowed to almost zero because the NNP stopped accepting applications on behalf of non-member states on July 1, 2014. The small amount collected on behalf of non-member states to date in FY 2016 comes from disclosures begun before July 1, 2014.

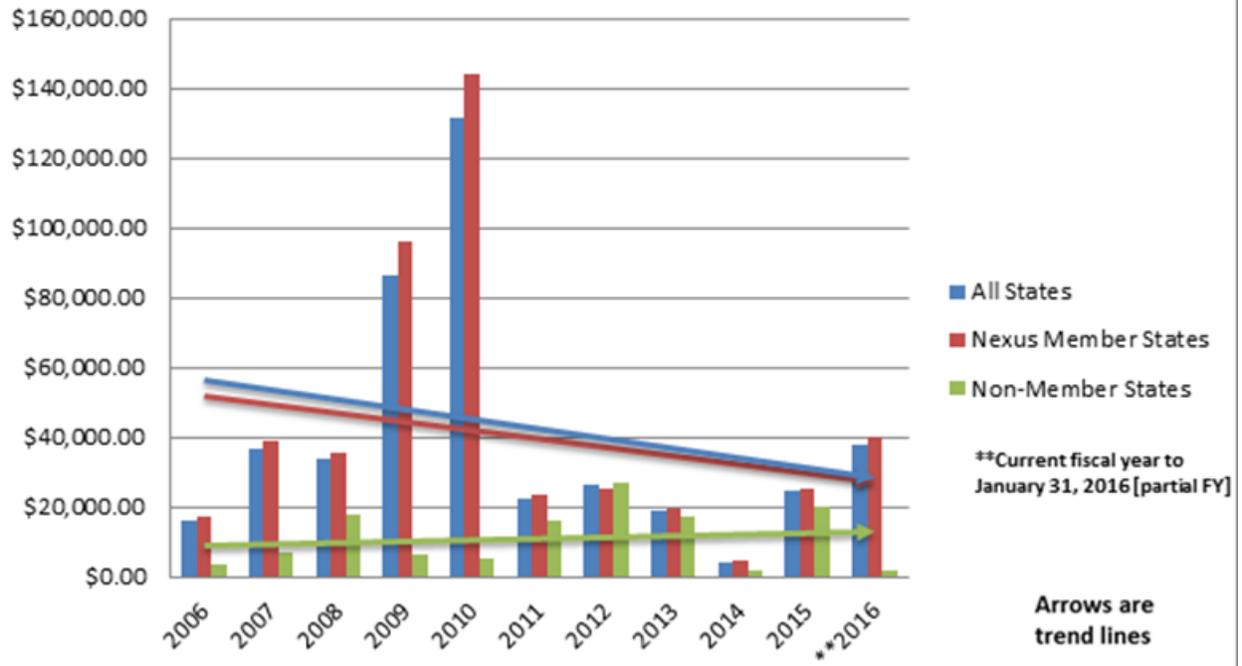
### Statistics from **July 1, 2015 through January 31, 2016:**

• Nexus states' collections:	<b>\$10,456,721</b>	<b>(\$13,850,712</b> in all FY 2015)
• All states' collections:	<b>\$10,488,566</b>	<b>(\$15,392,887</b> in all FY 2015)
• Nexus states' executed contracts:	<b>260</b>	<b>(551</b> in all FY 2015)
• All states' executed contracts:	<b>276</b>	<b>(628</b> in all FY 2015)
• Nexus states' average contract value:	<b>\$40,218</b>	<b>(FY 2015: \$25,137)</b>
• All states' average contract value:	<b>\$38,002</b>	<b>(FY 2015: \$24,511)</b>

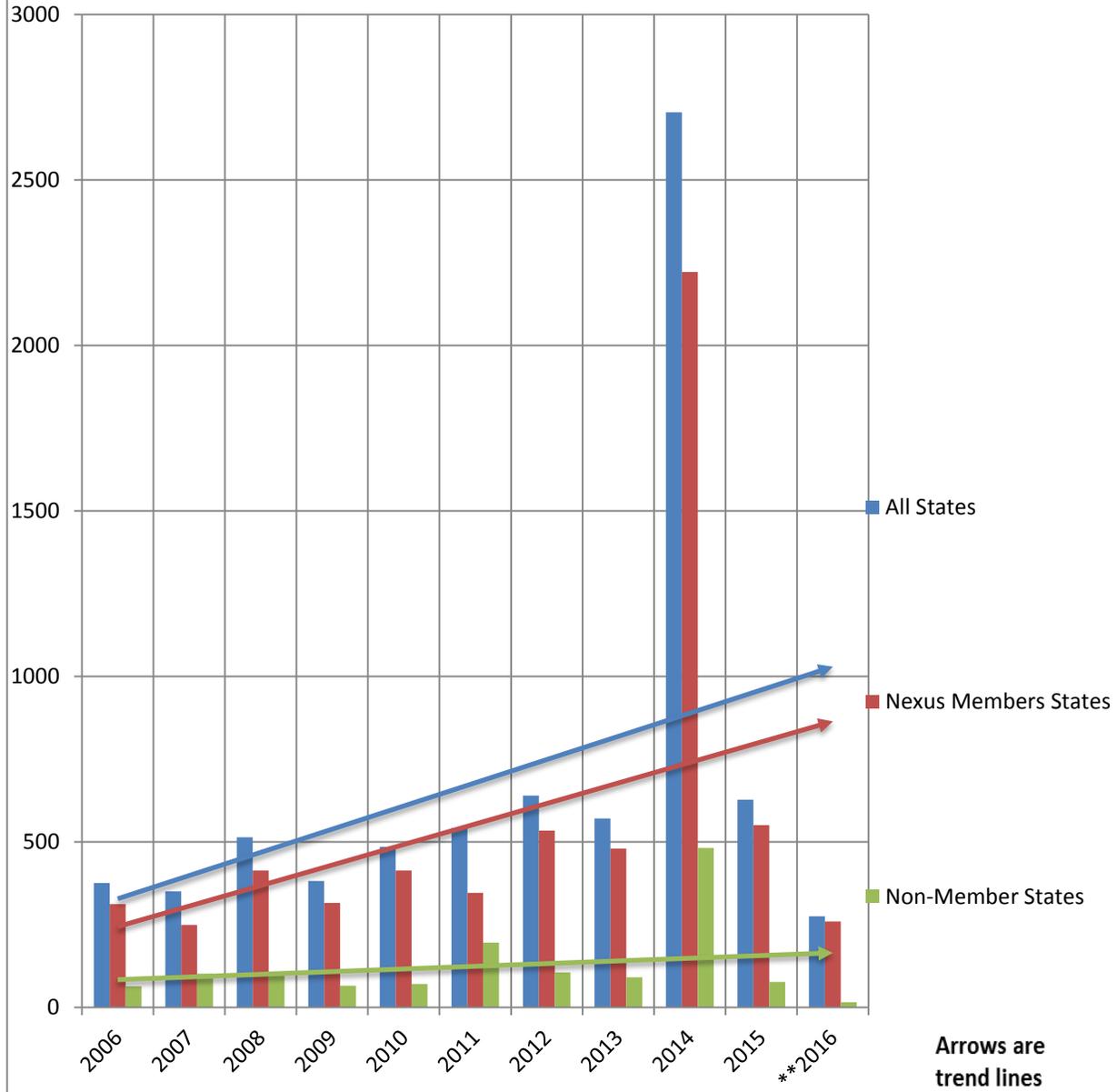
Please note that the numbers of contracts and dollars collected for non-member states will be eliminated by the end of fiscal year 2016 on account of having stopped accepting new voluntary disclosures on July 1, 2014 from non-member states.

The following charts provide context over a 10-year period.

## Average Contract Value by FY\*- 10 yr

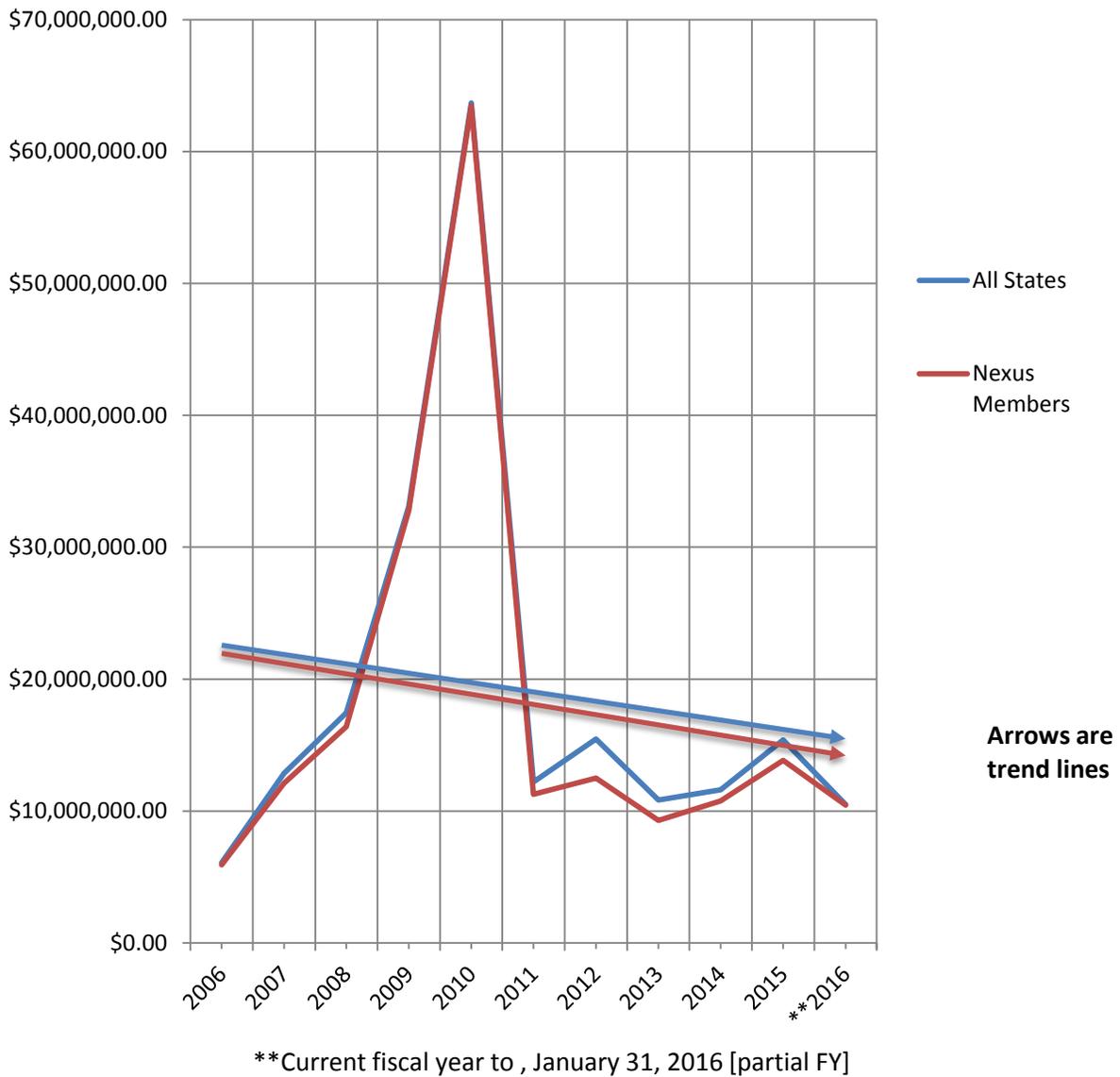


# Executed Contracts by FY\* - 10 yr



\*\*Current fiscal year to , January 31, 2016 [partial FY]

## Back Tax Collected by FY\* - 10 year



### Strategic Planning

#### Background:

The Nexus Committee decided at its January 8, 2014 teleconference to pursue strategic planning in accordance with the Commission's overall strategic planning, which has been under way for about four years. With the assistance of consultant Elizabeth Harchenko, the Nexus Committee launched two projects:

1. Increase membership by identifying barriers to membership, giving members a fuller appreciation of the benefits of membership, and increasing those benefits; and
2. Identify improvements to the NNP's multistate voluntary disclosure process.

Each project has had a project team composed of volunteers from the Nexus Committee. The teams have worked between meetings of the Nexus Committee to advance the projects and to identify decisions for the full committee.

### **Status of Membership Project**

This project is completed.

Background:

The committee began substantive work on this in January 2015. The project team presented its final report for the Nexus Committee's review at its July 27, 2015 meeting.

Currently there are thirty-seven member-states (including the District of Columbia). The Membership project team contacted personnel in non-member states to discuss reasons for not joining, or for having withdrawn, and similar issues.

At the Nexus Committee meeting in Nashville on December 2014, Chairman Lennie Collins solicited committee participants for information on how state members have benefitted from the Nexus Program, how the program could better assist states, and what attracted the states to join it. The Chairman asked that the representatives, upon their return to their states, direct those questions to those in their respective departments who were in the best position to answer them, and to come to the March 11, 2015 Nexus meeting to discuss the responses. The committee discussed the information at that meeting.

Teleconferences of the project team took place through July 2015. The project-team submitted its final report to the Nexus Committee at its meeting in Spokane, Washington on July 27, 2015. The committee approved the report for submission to the Strategic Planning Steering Committee, which Chairman Collins did later that week.

### **Status of Project to Improve Multistate Voluntary Disclosure**

The Nexus Committee decided at its December 2015 meeting on four projects worthy of doing. And it spawned a project team to recommend to the Nexus Committee which of the four to do first and to flesh out some details. The Nexus Committee's decision to accept or choose an alternate project will go to

the Strategic Planning Steering Committee for approval, modification, or rejection. The Nexus Committee will consider the project team's recommendation at its March 3, 2016 meeting. *Kindly come to the meeting ready to discuss the options. See report in Appendices.*

## **Technology**

The NNP and information technology (IT) staffs continue to work with a software vendor to maintain and upgrade the NNP's technology. Technological efficiencies are critical given the program's small staff and the large number of disclosures. However, progress has been slow on account of stretched resources.

The vendor and Commission staff have verified the accuracy of voluntary-disclosure reports, documented the source of their data, and documented on the face of the reports precisely what data they provide. All prior reports given to the Nexus Committee were accurate, but we did not fully understand how the data were computed.

The next project is to revamp the online application for voluntary disclosure. Because it does not work consistently, the director of the NNP has removed it from the website so that it is no longer an option for voluntary disclosure applicants. Designed in 2007, it needs to be re-written to work well with contemporary browsers. The work-around is to submit multiple fill-in PDF files. The NNP removed the option to submit an application in Word from the Commission's website some time ago; it was insecure because applicants could change the wording of the questions, and it was a bit less professional-looking than the fill-in PDF. The options to apply for multistate voluntary disclosure are now only one: the fill-in PDF.

The NNP and IT department have been proceeding cautiously in revamping the online application. First, we are carefully comparing the cost and benefit of the online application over less sophisticated methods such as the fill-in PDF. Second, our project requires that the vendor not only have the proper programming skills but must also understand the unique function of the online application. Third, and most critically, it must both take very seriously that the product be highly secure and have the technical ability to make it so. Fourth, it must commit to supporting its creation. And fifth, the price must be reasonable. Such vendors are rare.

## **Staffing**

The National Nexus Program employed slightly more than three FTEs (full-time employee equivalents) for the first part of fiscal year 2016. Staff were voluntary-disclosure processors (paralegals) Diane Simon-Queen and Michelle Lewis; part-time administrative assistant Eva Wu (preceded by Elyn Conn);

and director Thomas Shimkin (succeeded by Mr. Cram). Ms. Wu is an undergraduate at Georgetown University; she will leave her position in May because she plans to spend the summer outside Washington. There are budgeted funds for the new Nexus director to replace her if he chooses to do so.

Richard Cram, formerly director of Policy at the Kansas Dep't of Revenue, replaced Thomas Shimkin as Nexus director on February 29. Mr. Shimkin is now director of Legislative Counsel. He will work on legislation and legal issues for the Commission. Mr. Cram has assumed Mr. Shimkin's former telephone number, (202) 695-8139. His email is rcram@mtc.gov.

Associate Director Ben Abalos resigned effective June 5, 2015. His position remains vacant. The Commission intends to fill it now that the new Nexus director has arrived. Persons interested in this position may contact Mr. Cram at (202) 695-8139 to learn a little more about it, although the position has not yet been officially announced and the Commission is not yet accepting applications. The position will be in Washington, D.C. The duties will depend on the preferences of the new Nexus director and the executive director.

The work of the administrative assistant is chiefly to support the voluntary disclosure service by filing papers, entering data, and preparation of mailings. Hiring an employee directly is far less expensive than hiring a temp agency to supply someone. Assumption of these and other administrative activities has allowed NNP paralegals more time to focus on the more complicated aspects of multistate voluntary disclosures and to speed processing.

Ms. Simon-Queen and Ms. Lewis work almost exclusively on the processing of disclosures. This entails preparing standard contracts, answering process questions, communicating between states and taxpayers, consolidating and mailing documents, and documenting their activities in our computer system. They consult with the Nexus director as needed. The Nexus director handles the more complicated issues and questions from states and taxpayers.

Mr. Abalos taught Nexus School, answered taxpayer questions about voluntary nexus and voluntary disclosure, processed a small number of disclosures, made outreach presentations, staffed strategic planning, worked with the Commission's IT department and a software vendor to make needed repairs and updates to voluntary disclosure technology, and assisted Mr. Shimkin generally with management of the NNP.

Mr. Shimkin had management and supervisory responsibility for the National Nexus Program, which includes personnel, keeping up to date on nexus law to answer questions from taxpayers, advise states, and assist the Legal Division on selected projects; reviewing disclosure applications and contracts for legal and policy issues; fielding initial contacts with voluntary disclosants and

trouble-shooting their disclosures; maintaining relationships with taxpayers and states; staffing the Nexus Committee; ensuring uniformity of NNP policy and procedures; encouraging states to remain uniform in their voluntary disclosure policies; and making outreach presentations to taxpayer groups and states about the Commission and the NNP. Mr. Cram, the new Nexus director, will likely have similar responsibilities.

### **Meeting Schedule**

The next regularly-scheduled Nexus Committee meeting after the one on March 3, 2016 will take place in late July in Kansas City, Missouri. Details will be available as the time approaches. The meeting will be held in conjunction with other program meetings and the annual meeting of the Commission (representatives of all Compact states).

### **Nexus School**

Nexus director Thomas Shimkin, counsel Bruce Fort, and contractor Joe Thomas (formerly Director of Audit, Conn.) taught a well-attended Nexus School in Helena on November 17 and 18, 2015.

The next Nexus School will take place in Milwaukee, Wisconsin on March 30 and 31, 2016. Please see the training section of the Commission's website for details ([www.mtc.gov](http://www.mtc.gov)) if you are interested.

Mr. Ken Beier retired from the position of director of Training. The Commission has not replaced him.

### **Outreach Speaking Engagements**

Mr. Shimkin served on a panel that discussed multistate voluntary disclosure in on March 2, 2016 at the ABA/IPT tax conference in New Orleans.

### **Request for Web links**

Please consider adding a link to the Commission's voluntary disclosure page if your state does not yet have one. Links from states' web pages, as well as referrals after a state audit, are an important source of applicants who would not otherwise know of the program. Apply the Golden Rule: Do it for your sister states! The link should read along the line of,

*"For voluntary disclosures involving more than one state you may contact the Multistate Tax Commission's National Nexus Program for a streamlined, multistate disclosure process: [www.mtc.gov](http://www.mtc.gov) or [Nexus@mtc.gov](mailto:Nexus@mtc.gov) or (202) 695-8140."*

# APPENDICES

**MINUTES OF MEETING OF NEXUS COMMITTEE  
ON DECEMBER 9, 2015  
(Not Confidential)**

**Attendance**

<b>NAME</b>	<b>AFFILIATION</b>
Christy Vandevender	AL
Math [sic]	AL
Raven Reynolds	AL
Deanna Munds-Smith	AR
Jennifer McLaughlin	Bloomberg BNA
Erika Hoxeng	CO
Joe Huddleston	EY
Anita DeGumbia	GA
Chester Cook	GA
Christy Vandevender	GA
Steven Alvarez	GA
Jason Neal	IA
Dufy Neal	IA
Randy Tilley	ID
Richard Jackson	ID
Steve Wynn	ID
Richard Cram	KS
Don Richardson	KY
Marcia Ann Oakman	KY
Gene Walborn	MT
Kory Hofland	MT
Lee Baerlocher	MT
Bruce Fort	MTC
Cathy G	MTC
Daniel Keating	MTC
Greg Matson	MTC
Harold Jennings	MTC
MTC: Diane Simon-Queen	MTC
Christi Daniken	OR
Anita Connor	PA
Andrew Glancy	WV

Sign-ins that are difficult to read are reproduced here per best efforts.

Chairman Collins brought the meeting to order, requested that attendees introduce themselves, and invited public comment. No member of the public commented.

**Consideration of final report from Strategic-Planning Project-Team regarding improvements to multistate voluntary disclosure service**

Mr. Vosberg presented the proposed final report of the Strategic-Planning Project-Team to Improve Multistate Voluntary Disclosure. He briefly explained the problem (how to improve speed and efficiency of multistate voluntary disclosure), the risks of action and no action, the process the team used, and the team’s findings.

Mr. Vosberg explained the process. The team collected information from interviews of taxpayer representatives, surveys widely emailed to states and discussions at Nexus Committee meetings, a few in-depth interviews of state voluntary-disclosure personnel, and a study by NNP staff of the steps in the voluntary disclosure process and how long each takes.

Mr. Vosberg and Mr. Christensen reviewed the team's recommended projects and actions for the committee.

- ❑ Project: Review document submission processes and identify ways to further automate and avoid the Postal Service.
- ❑ Project: Review MTC Multistate Voluntary Disclosure materials on the web site for clarity and ease of use
- ❑ Project: Eliminate state-specific voluntary disclosure requirements from the otherwise uniform process
- ❑ Action Item: Solicit information from the states on changes in laws, rules, policies, procedures, and amnesties
- ❑ Action Item: NNP staff host an annual training for state personnel who work with voluntary disclosure to review MTC procedures and policies
- ❑ Action Item: NNP staff should reach out to state, local and regional practitioner groups to seek greater awareness of the Multistate Voluntary Disclosure Program
- ❑ Action Item: The MTC Nexus Committee should have a regular discussion about the performance of the Multistate Voluntary Disclosure service

*The committee approved the team's final report.* Ms. Harchenko said that the Steering Committee will review it the following day but will need additional detail before approving a project. The committee turned its discussion to choosing the top three projects in ordinal order for the Steering Committee to consider at a later meeting. *The committee asked Christy Vandevender (AL), Stephen Alvarez (GA), and Michael Christensen (UT) to consider the committee's discussion of what priority to give each project and to make a recommendation with supporting reasons.* The committee leaned toward ordering the projects: Project 3 first, then 1, then 2. (See report in Appendix). The committee anticipated that it would approve the details and make a final decision on the order of importance of the three recommended projects at either its March or July meeting in calendar year 2016.

## **Reconsideration of policy regarding processing disclosures with estimated revenue less than \$500**

The committee discussed whether to change its policy implemented in July 2014 that the NNP not process disclosures when the total for all lookback years is estimated to be less than five hundred dollars. Members pointed out that a major purpose of voluntary disclosure is to get non-filers to begin filing and that collection of back tax and interest might be a secondary goal. Members also considered the original reason for the policy – processing small disclosures is a burden on NNP staff, some states will not consider them, and non-filers with small liabilities might more efficiently begin filing and pay back tax and interest on their first returns. *The committee unanimously approved a motion to keep the policy as it is, and to examine at a future date whether a policy to accept disclosures of all amounts would decrease the efficiency of multistate voluntary disclosure.*

## **Compliance Information Exchange**

The committee continued its discussion from the July 2015 meeting regarding how the NNP might be used to facilitate sharing of compliance information. Randy Tilley (ID), John Ryser (WA), and Christi Daniken (OR) are working to develop a description and details for proposal to the Strategic-Planning Steering-Committee.

*The committee asked volunteers Christi Daniken (OR), John Ryser, and Randy Tilley to further define and develop details about this project for the Nexus Committee to consider, although it gave no deadline. Chairman Collins said that he would discuss this idea with Mr. Cram after he begins his work as director of the NNP.*

## **Legislative and Regulatory Updates Through the Commission**

The committee recommended that Nexus staff survey member states annually about nexus updates – important court decisions, legislative changes, regulatory/policy changes, and administrative decisions such as bulletins, letter rulings, and the like.

## **Discussion of Possible Project to Amend Application for Multistate Voluntary Disclosure**

Committee members considered the following ideas.

- Speak with policy makers of member states to encourage acceptance of a uniform agreement (no footnotes, no separate state agreements, etc.)
- With permission from the state's Nexus Committee representative, speak with the front-line state staff to the contents of the standard agreement with footnotes, and their state's agreement if they decline to use the NNP's.

It was suggested that this work might become a project (a formal process limited to a small group) because the last update of the contract language was time-consuming for the full committee.

*The committee requested that members, including those not present, submit comments about the Procedures of Multistate Voluntary Disclosure, the standard application, and the standard agreement to NNP staff for discussion at its March meeting. [Comments received are appended to the documents in the Appendices]*

## **New Business**

Chairman Collins told the committee that staff had spoken with Lee Evans of New Jersey about his role as vice chair in consideration of his absence from meetings over the last several years and learned that Mr. Evans assumed that the committee replaced him when he stopped participating. *Mr. Evans clarified to Mr. Shimkin that he resigned the position.* The committee accepted Mr. Evans' resignation. *Chairman Collins asked committee members to be ready at the March meeting to discuss appointment of his successor.*

Chairman Collins reminded those attending by telephone to send an email to [nexus@mtc.gov](mailto:nexus@mtc.gov) if they wish to record their presence in the minutes.

## **Closed Session**

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

## **Open Session**

The committee returned to open session. There were no members of the public present to whom the committee could make a report about the closed session.

---

---

## DIFFERENT DOCUMENT FOLLOWS

---

Multistate Voluntary Disclosure Improvement Team  
Report to  
Nexus Committee and Strategic Planning Steering Committee  
December 17, 2015

THE PROJECT-PRIORITIZATION TEAM CONSIDERED RECOMMENDATIONS FROM THIS REPORT IN ITS PRIORITIZATION PROJECT.

### Background

At the recommendation of the Nexus Committee, the MTC Strategic Planning Steering Committee approved a project to identify opportunities to streamline the Multistate Voluntary Disclosure Program so that it works more efficiently for taxpayers and states. The project team began working in January 2015. This report describes our process and findings, and recommends further action that the project team believes will help improve the Multistate Voluntary Disclosure process for states and taxpayers.

### Project Description

*Problem:* The Multistate Voluntary Disclosure Program is often labor-intensive for taxpayers, state personnel and the MTC National Nexus Program staff. There are opportunities to streamline the voluntary disclosure program to make it more efficient for both the states and taxpayers.

*Risks:* A labor-intensive process is less likely to be used by taxpayers and states. The MTC Multistate Voluntary Disclosure Program is currently the primary program offered by the National Nexus Program. If it isn't being used by significant numbers of states or taxpayers, it cannot return the best value to both constituencies. Also, a complex system can result in a slower process.

*Expected outcomes from the project:*

- List of opportunities for improvement to the MTC Voluntary Disclosure Program.
- Estimate or description of likely costs and benefits of any recommended changes.

- List of recommended measures for determining whether more taxpayers and states are using the MTC VDP.
- Recommended targets for time to complete a voluntary disclosure.

## Process

We gathered information in four ways. First, we interviewed taxpayer representatives who have used the Multistate Voluntary Disclosure Program. Second, we asked for feedback from the states through e-mail and during Nexus Committee meetings. Third, the MTC Nexus staff gathered data on the time it takes to process a voluntary disclosure, including the time elapsed between the major steps in the process. Finally, we conducted interviews of some states from which we thought we could gain more insight into the causes for delay in the process. We were looking for stages in the process where significant amounts of time elapsed between steps, causing the overall process to be delayed.

## Findings

The Multistate Voluntary Disclosure process involves nine major stages of activity:

1. Taxpayer application for voluntary disclosure
2. MTC staff prepares draft voluntary disclosure agreement for taxpayer
3. Taxpayer approves draft agreement (or requests changes, which may result in a period of negotiation)
4. MTC staff sends draft of taxpayer agreement to state(s)
5. States review and approve agreement (or make counter offer to taxpayer changes)
6. MTC staff sends final agreement to taxpayer for signature
7. Taxpayer returns signed agreement with appropriate returns/spreadsheets/payment
8. MTC staff transmits full package to state(s)
9. MTC staff enters records data in database and retains copies of contract and accompanying documents.

According to the *Procedures of Multistate Voluntary Disclosure*, posted on the MTC web site, there are time frames specified for the major stages of activity. The time frames are *maximum* time frames. For taxpayers, the time frames are the maximum allowable to protect the taxpayer from losing anonymity and protection from discovery while the application is pending. For the MTC staff, the time frames are maximum times within which information or documents are to be provided to taxpayers or the states. For the states, the time frames are the maximum time the states represent that they may need in order to make a decision or take an action. Based on the maximum time frames specified in the Procedures, a voluntary disclosure should take no more

than 7 months if there are no counter offers or requests for information involved. Data gathered by MTC National Nexus staff indicate that “clean” applications typically take between three and four months to complete. If counter offers or requests for information are involved, the time frame for completion of a voluntary disclosure may be increased by several months.

The stages in the process in which MTC staff are directly involved usually occur in a timely way, and staff actions are generally completed well within the maximum time specified in the Procedures. The stages at which delays are most likely to occur are those in which the taxpayer or the states must take some action. Specific examples include:

- Taxpayer questions about process before a completed application is filed
- Taxpayer requests for special treatment, such as different look back period, which must be reviewed by the state
- State delays in responding to MTC contacts
- State requests for additional information from taxpayers
- Taxpayer delays in completing tax returns, schedules and registration forms after a voluntary disclosure agreement has been signed by the state

With the exception of one unusual situation (2013), data for the years 2012, 2013 and 2014 indicate that the numbers of applications filed by unique taxpayers has remained fairly constant at around 100 per year, resulting in between 550 and 750 individual voluntary disclosure applications (one taxpayer/one state). Of those applications, at least half were for 5 or fewer states. The 2012-2014 data also indicates that, typically, around 500 disclosure agreements (between one taxpayer and one state) are executed each year. Exceptions occur when a large number of applications have come in.

In 2013 a single taxpayer representative filed applications on behalf of about 150 similarly-situated taxpayers. Those applications each involved more than 20 individual states. In 2014, over 2,260 disclosure agreements were executed, reflecting the significant number of applications from the prior year. According to the National Nexus Program Director, you can count on this kind of thing happening occasionally, you just cannot predict when it will happen.

Other issues that can affect the total amount of time for completion of a voluntary disclosure agreement are:

- MTC staff noted that processing paper documents submitted by either taxpayers or the states takes longer than processing materials submitted electronically
- MTC staff also noted that they are often unaware of changes in state law or policy, and learn about these kinds of changes only when a state submits a counter offer or a request for additional information
- MTC staff and the states noted that the complexity of a filing – either the total number of states for which a taxpayer is seeking to make disclosure or the

number of tax types for which a taxpayer seeks to make disclosure – adds to the total amount of time that completing agreements can take

- There are a variety of electronic data formats requested by the states for schedules that support applications for disclosure, which can contribute to taxpayer confusion, error or delay in submitting the final disclosure package
- Turnover in state personnel, internal state procedures, and states' resources that are devoted to voluntary disclosure also affect the efficiency of the voluntary disclosure process

Our interviews with state agency personnel indicated that there are many differing sets of expectations about what the MTC National Nexus staff should be doing once an agreement has been reached between the state and the taxpayer. One difficult area to address seems to be identifying the best time for MTC to hand the matter off to the state for direct follow up with a taxpayer – after an agreement is reached; after payment is received; or only after all information requested by the state (registration, returns, supporting schedules, etc.) are completely and correctly submitted by the taxpayer.

Finally, we have heard that although national accounting firms are well aware of the Multistate Voluntary Disclosure program, practitioners in smaller local or regional firms are not as familiar with the program.

### Recommendations

Based on our research and the feedback we have received, the project team recommends the following action items and projects to improve the efficiency of the Multistate Voluntary Disclosure process:

*Project: Review document submission processes and identify ways to further automate these steps in the process* – according to MTC National Nexus Program staff, many of the documents that move between taxpayers and the states are still going through the paper mail system. Time savings can be achieved if most or all documents can be transmitted electronically. The project team recommends that the Nexus Committee consider sponsoring a project to review the processes by which documents are transmitted.

*Project: Review MTC Multistate Voluntary Disclosure materials on the web site for clarity and ease of use* – the materials on the MTC web site are detailed and consist exclusively of text material. It is difficult for taxpayers to find key requirements, deadlines and other information that is important for preparation of a disclosure application and successful completion of the voluntary disclosure process. States and taxpayers could save significant amounts of time if key requirements and time lines were highlighted. The project team recommends that the Nexus

Committee consider sponsoring a project to review the web site materials and organize them for clarity and accessibility.

*Project: Review the Multistate Voluntary Disclosure application and agreement format, and update them to determine whether current state-specific voluntary disclosure requirements are absolutely necessary.* One of the primary goals of the multistate voluntary disclosure program is that it provides a “one stop” process for taxpayers that is more streamlined than going to each of the states separately. One of the “time eaters” that we heard about was the need to “tailor” the voluntary disclosure agreement for specific state requirements. There are now numerous footnotes in the MTC standard agreement that reflect specific state requirements that have been added over time. It appears to the team that it is time to review the application and agreement formats so that a single document can be used for all states. The team recommends that the Nexus Committee consider sponsoring a project to review the application and agreement forms to make them usable for all of the states with a minimum of tailoring.

*Action Item: MTC National Nexus Program staff should annually solicit updated information from the states on changes in laws, rules, policies or procedures (including tax amnesties).* Tax nexus is a constantly changing area of law and policy. The National Nexus Program staff can provide better service to both taxpayers and states if those staff members have the most up-to-date information about state nexus and voluntary disclosure programs available.

*Action Item: MTC National Nexus Program staff host an annual training for state personnel who work with voluntary disclosure to review the MTC procedures and policies.* We learned from our conversations with many states that the people who work with voluntary disclosure applications may not be the people who attend Nexus Committee meetings. Also, there is turnover among state personnel. A regular review, which could be by teleconference, would help both MTC National Nexus Program staff and state personnel have a common understanding of how the process works, and what issues are causing concerns.

*Action Item: The MTC National Nexus Program staff should reach out to state, local and regional practitioner groups to seek greater awareness of the Multistate Voluntary Disclosure Program.* Although many national level practitioners are aware of the multistate voluntary disclosure program, regional and state practitioners are not as well informed. Asking for regional, state and local associations to include material about the program on their web sites and in newsletters would raise the profile of the program and enable more taxpayers to use it.

*Action Item: The MTC Nexus Committee should have a regular discussion about the Multistate Voluntary Disclosure Program performance.* Our discussions with the states revealed that their expectations for the multistate voluntary disclosure program change over time. Two policies were adopted recently in recognition of MTC staff resource limitations (\$500 minimum threshold

to process a disclosure application for a state; eliminate service for taxpayers who want to file in a state that is not a Nexus program member). These changes were effective July 1, 2014. Nexus Committee should review the effect of these changes on levels of service to taxpayers after they have been in effect for a few years. The Nexus Committee should regularly discuss the fundamental purpose for the multistate voluntary disclosure program and review the balance between resources, state expectations and taxpayer convenience in light of the program's purpose and goals.

Respectfully submitted,  
Multistate Voluntary Disclosure Improvement Team

Anita DeGumbia, Georgia  
Christi Daniken, Oregon  
Myles Vosberg, North Dakota  
Mike Christensen, Utah  
Ted Shiraishi, Hawaii  
Diane Simon-Queen, MTC  
Thomas Shimkin, MTC  
Lennie Collins, ex officio

---

## **DIFFERENT DOCUMENT FOLLOWS**

---

### **EXPLANATION OF STATUS OF PROJECT-PRIORITIZATION PROJECT**

#### *Background*

During the past year, the Nexus Committee heard reports from two project teams. The first team looked at what steps the Nexus Committee could take to increase membership in the National Nexus Program. That team recommended that the Nexus Committee develop tools for information sharing among the states to increase nexus compliance. The second team looked at the Multistate Voluntary Disclosure Process and recommended that the MVDP web page be updated, the document submission process be further automated and the MVDP application and agreement formats be reviewed and possibly updated. Descriptions of each of these project recommendations are attached to this memo.

A group of Nexus Committee members was asked to evaluate these four project ideas and recommend a priority order for the Nexus Committee. The group discussed the potential benefit to the states and taxpayers, the potential cost and complexity of the projects, and the potential effect on compliance for each of the projects.

#### *Priority Considerations*

Generally, the group agreed that starting with a project that could be relatively quickly and easily completed would be best. The group members also agreed that a project that would benefit both the

states and taxpayers would be good to start with. The group also recognized that the states would need to work together with the MTC staff in order for any of the projects to be successful. Any one of these projects would need to be more thoroughly fleshed out before being started.

### *Recommendations*

The group recommends the following priority for these for projects:

1. First priority - Review MTC Multistate Voluntary Disclosure materials on the web site for clarity and ease of use.
2. Second priority - Review the Multistate Voluntary Disclosure application and agreement format; or Review MVDP document submission processes and identify ways to further automate these steps in the process
3. Third priority - Develop tools for nexus compliance information sharing among the states.

### *Rationale*

The group concluded that the multistate voluntary disclosure projects would most likely be easier to do relatively quickly and with less resource than the information sharing project. The voluntary disclosure projects also would have beneficial results for both states and taxpayers. The web page project appeared to us to be the most useful for the voluntary disclosure program and its users. Information sharing has been a very popular topic among the states. However, there are at least two significant issues that would have to be addressed – the extent to which security and confidentiality of information must be protected, and the technical requirements of any solutions that involve automation and electronic transmission of data.

Our task was to suggest an order in which these projects could be undertaken and we are not recommending that any of these projects be set aside.

### *Action Needed*

*The Nexus Committee needs to decide whether to go forward with a project, and if so which project to start with. If the committee decides to go forward with a project, we need volunteers to serve on a project team.*

---

DIFFERENT DOCUMENT FOLLOWS

---

## DETAIL OF POTENTIAL PROJECTS FROM VOLUNTARY-DISCLOSURE IMPROVEMENT TEAM (SUPPLEMENTS ABBREVIATED EXPLANATION ABOVE) AND ONE RECOMMENDATION FROM THE MEMBERSHIP PROJECT TEAM

This memo details four possible strategic planning projects that were identified by the project teams on Membership and the Multistate Voluntary Disclosure Program. The Priority-Project Team has suggested a prioritization for each of these projects. See below.

Below are detailed project descriptions for the Nexus Committee to consider from the reports of the Membership Project Team and the Improve Multistate Voluntary Disclosure Process team -

**Membership Project Recommendation: Develop tools for information sharing among the states.**

The team recommends that the Nexus Committee consider sponsoring a project to develop better tools for information sharing among the states on audit results, and best practices for taxpayer discovery and developing leads.

The purpose of this project is to identify best practices for taxpayer discovery, developing nexus leads and sharing nexus audit information among the states.

*Problem:* The states often have limited resources to identify taxpayers that have taxable nexus and that should be filing returns and paying taxes due under state law. Also, not all states are aware of best practices for taxpayer discovery. At present, the states do not have secure automated tools for sharing nexus leads or information on taxpayer nexus audit results.

*Risks:* Limited resources and inefficient or ineffective taxpayer discovery tools result in reduced tax compliance. The inability to share compliance information through secure automated tools also increases the risk that taxpayers will not comply with state tax reporting and payment requirements.

*Issues for review:*

- What are the best practices being used by states to discover taxpayers that should be filing?
- How could the states share information about nexus audits and nexus leads in a secure way?
- What information sharing tools already exist that could be adapted for use to exchange nexus leads and audit results?
- What specific kinds of information would be most beneficial for the states to share?

*Expected outcomes from the project:*

- List of best practices for taxpayer nexus discovery
- List of information-sharing tools currently in use
- Summary of information of the most value for the states to share
- Recommendations for information sharing model

*Who should be involved in the project:*

- States
- MTC staff
- Others?

**MVDP Project Recommendation: Review document submission processes and identify ways to further automate these steps in the process**

– according to MTC National Nexus Program staff, many of the documents that move between taxpayers and the states are still going through the paper mail system. Time savings can be achieved if most or all documents can be transmitted electronically. The project team recommends that the Nexus Committee consider sponsoring a project to review the processes by which documents are transmitted.

The purpose of this project is to further streamline the Multistate Voluntary Disclosure Process administered by MTC National Nexus Program staff. The project would evaluate the document exchange and transmittal processes and identify additional opportunities for reducing the use of paper documents.

*Problem:* According to MTC National Nexus Program staff, many of the documents that move between taxpayers and the states go through the paper mail system. Time savings can be achieved if most or all documents can be transmitted electronically.

*Risks:* The MTC Multistate Voluntary Disclosure Program is currently the primary program offered by the National Nexus Program. It is used by a significant number of states. Transmittal of documents using the paper mail system creates delays in conclusion of a voluntary disclosure and affects taxpayers, the states and the MTC staff. Many states have deadlines for conclusion of a voluntary disclosure. The use of paper mail to transmit documents creates delays in the process.

*Issues for review:*

- Which documents are most likely to be transmitted between taxpayers, states and MTC staff using paper mail?
- Which documents could easily be transmitted electronically?
- What barriers exist that prevent electronic document transmission?
- What solutions would allow more documents to be transmitted electronically?
- Are there significant costs associated with electronic transmission of documents?

*Expected outcomes for the project:*

- Identification of documents that could be transmitted electronically
- Description of barriers to electronic document transmittal
- Description of solutions to barriers
- Costs, if any, for movement to greater electronic document transmittal

*Who should be involved in the project:*

- State staff who work with voluntary disclosure
- MTC staff who work with voluntary disclosure
- Taxpayers and practitioners
- Others?

**MVDP Project Recommendation: Review MTC Multistate Voluntary Disclosure materials on the web site for clarity and ease of use** – the materials on the MTC web site are detailed and consist exclusively of text material. It is difficult for taxpayers to find key requirements, deadlines and other information that is important for preparation of a disclosure application and successful completion of the voluntary disclosure process. States and taxpayers could save significant amounts of time if key requirements and time lines were highlighted. The project team recommends that the Nexus Committee consider sponsoring a project to review the web site materials and organize them for clarity and accessibility.

The purpose of this project is to identify improvements that can be made in the presentation of information and forms on the MTC Multistate Voluntary Disclosure Program web pages.

*Problem:* The materials on the MVDP web pages are detailed and consist exclusively of text material. It is difficult to find key requirements, deadlines and other information that is important for complete and accurate preparation of a disclosure application and successful completion of the voluntary disclosure process. States and taxpayers could save significant amounts of time if key requirements and time lines were highlighted, and if the information presented was organized for greater clarity and accessibility.

*Risks:* The MTC Multistate Voluntary Disclosure Program is currently the primary program offered by the National Nexus Program. It is used by a significant number of states. If information that is essential to a complete and accurate voluntary disclosure application is not easy to find, taxpayers and their representatives are more likely to submit applications that must be corrected or resubmitted. This can require additional time for taxpayers and their representatives, the states and the MTC National Nexus Program Staff.

*Issues for review:*

- What information is essential for a complete and accurate MVD application to be prepared?
- Are there states that have good web page models that we could learn from?
- Are there better ways to present the material so that it is easier to navigate through the MVD web page?

*Expected outcomes from the project:*

- Recommendations for improvements in the MVD program web pages

*Who should be involved in the project:*

- State communications staff or web designers
- MTC National Nexus Program staff
- State staff who work with voluntary disclosure
- Others?

**MVDP Project Recommendation: Review the Multistate Voluntary Disclosure application and agreement format, and update them to determine whether current state-specific voluntary disclosure requirements are absolutely necessary.** One of the primary goals of the multistate voluntary disclosure program is that it provides a “one stop” process for taxpayers that is more streamlined than going to each of the states separately. One of the “time eaters” that we heard about was the need to “tailor” the voluntary disclosure agreement for specific state requirements. There are now numerous footnotes in the MTC standard agreement that reflect specific state requirements that have been added over time. It appears to the team that it is time to review the application and agreement formats so that a single document can be used for all states. The team recommends that the Nexus Committee consider sponsoring a project to review the application and agreement forms to make them usable for all of the states with a minimum of tailoring.

The purpose of this project is to review and update the MTC Multistate Voluntary Disclosure application and agreement forms to make them usable for all of the states with a minimum of exceptions for individual states.

*Problem:* One of the primary goals of the multistate voluntary disclosure program is that it provides a “one stop” process for taxpayers that is more streamlined than going to each of the states separately. There are now numerous footnotes in the MTC standard agreement that reflect specific state requirements that have been added over time. In addition, many states ask for information from applicants for voluntary disclosure that is not included in the current MTC MVD application form.

*Risks:* As states ask for more information and add more, different, and sometimes unique requirements to the agreement the amount of time needed to conclude a voluntary disclosure grows. In addition, individual state requirements make it more time consuming for taxpayers and practitioners to complete the application process, and it takes more time for MTC National Nexus Program staff to handle information moving back and forth between the states and taxpayers.

*Issues for review:*

- How many states ask for additional information in connection with the initial MVD application?
- What kind of information do they ask for?
- What information is essential for the states to make a determination whether to approve a MVD application?
- What changes should be made to the current application format?
- How should special requests be handled?

---

DIFFERENT DOCUMENT FOLLOWS

---

CRITERIA THE PROJECT-PRIORITIZATION TEAM USED TO EVALUATE POTENTIAL COMPLIANCE PROJECTS

Project Name	Project Description
Information Sharing Among States	Develop information-sharing tools: audits, leads, discovery
MVDP - Automate Document Submission	Process for electronic transmission of MVDP documents
MVDP - Web Page Review	Review and redesign MVDP web page for ease of use
MVDP - Update Application and Agreement Format	Simplify MVDP Application and Agreement

**Scoring  
Criteria**

Ratings: For each category - High, Medium, Low or Not Applicable

Criteria:

**Value to states:**

High: most states would derive value from the project;  
Medium: about half the states would derive value from the project;  
Low: few states would derive value from the project.

**Resource needed:**

High: significant amount of resources needed to conduct project and implement result;  
Medium: moderate amount of resources needed to conduct project and implement result;  
Low: minimal resources needed to conduct the project and implement the result.

**Project complexity:**

High: Very difficult to conduct the project and implement the result;  
Medium: somewhat difficult to conduct the project and implement the result;  
Low: Relatively easy to conduct the project and implement the result

**Effect on Compliance:**

High: A successful project will have a significant impact on taxpayer compliance;  
Medium: A successful project will have a moderate effect on taxpayer compliance;  
Low: A successful project will have a low impact on taxpayer confidence

**Benefit to Taxpayers:**

High: A successful project is highly likely to benefit taxpayers;  
Medium A successful project is moderately likely to benefit taxpayers;  
Low: A successful project is not very likely to benefit taxpayers

SCORES THE PRIORITIZATION TEAM GAVE TO EACH ELEMENT OF EACH PROJECT

Project Name	Value to states	Resource needed	Project complexity	Effect on Compliance	Benefit to Taxpayers	TOTAL Points
Information Sharing Among States	H, H, H, H, H, H	M, H, M, H, M, L	M, M, M, M, H, M	H, H, H, H, M, M	L, M, NA, NA, L, L	65
	18	13	13	16	5	
MVDP - Automate Document Submission	M, H, H, H, M, H	M, L, M, M, H, H	M, L, M, L, H, H	M, M, M, L, M, L	H, H, H, M, H, H	68
	16	13	12	10	17	
MVDP - Web Page Review	M, H, H, M, M, H	L, M, H, M, M, M	L, M, H, L, M, M	H, M, H, M, M, L	H, H, H, H, M, H	68
	15	12	11	13	17	
MVDP - Update Application and Agreement Format	M, H, M, M, L, M	M, M, H, L, M, H	M, H, H, L, M, H	H, M, M, M, L, M	H, H, H, H, M, M	65
	10	13	14	12	16	
Key:						
Raw scores - H=3; M=2; L=1; NA=0						
Overall highest scores - Automate docs; Web page review						
Web page review - 3 of 5 best scores						
Highlights:						
Highest value to states - Info sharing						
Lowest resource need - Web page review						
Lowest complexity - Web page review						
Highest effect on compliance - Info sharing						
Highest benefit to taxpayers - Automate docs, Web page review						

---

## DIFFERENT DOCUMENT FOLLOWS

---

THE FOUR DOCUMENTS THAT FOLLOW ARE FOR THE NEXUS COMMITTEE'S DISCUSSION OF IMPROVEMENTS TO SOME OF THE NNP'S BASIC DOCUMENTS, AS NOTED ON THE AGENDA. THEY ARE THE APPLICATION FOR MULTISTATE DISCLOSURE, THE PROCEDURES (RULES), THE TEMPLATE CONTRACT, AND SUGGESTIONS FROM NEXUS COMMITTEE MEMBERS AS TO HOW TO IMPROVE THESE DOCUMENTS.

# Application for Multi-State Voluntary Disclosure Multistate Tax Commission National Nexus Program

## Instructions

Thank you for your interest in multi-state voluntary disclosure. To apply with respect to sales/use tax or income/franchise tax, please provide an Application for Multi-state Voluntary Disclosure in PDF or Word format for each state to which you wish to apply. Please provide a separate Application for each state. Paper Applications will be accepted, but submission in electronic format is strongly encouraged.

The easiest way to fill this out is to prepare a template electronic version of this Word file, insert information common to all application states, then make copies of the template to create a separate file for each application state; then insert the state-specific information into each state's file. The information you provide will be submitted to the appropriate states without alteration other than to remove contact information and any other identifying information. It is therefore important to limit state-specific information to the applicable state only. Please do not put information regarding more than one state in the same document. Please do not alter the

wording of a question.

The information about the applicant's factual circumstances will be incorporated into the voluntary disclosure agreement and the states will rely on this information to evaluate the request for voluntary disclosure. Material omissions or misrepresentations may invalidate the agreement. You may add additional information (few applicants do).

Please send the completed applications in PDF format to [Nexus@mtc.gov](mailto:Nexus@mtc.gov). You may use your own secure email system or ask to use ours if security concerns you. The telephone number for use of commercial delivery services and for questions is (202) 695-8140.

It is important that you not make any filing, payment, or other contact with respect to the type of tax intended to be disclosed to a state in which you intend to pursue voluntary disclosure. All past due taxes and past due filings will be addressed within the voluntary disclosure process. Anonymous inquiries to customer service personnel of a department of revenue regarding filing requirements, how to compute tax, and similar general information issues are okay.

**State Name:**

**Application for Multistate Voluntary Disclosure  
Multistate Tax Commission  
National Nexus Program**

**Date:**

By submitting this Application, the applicant acknowledges its obligation to supplement, revise, or replace this Application in the event that before execution of the voluntary disclosure agreement by all parties its material circumstances change, or in the event that it becomes aware at any time of any material omission or material error in the information contained herein.

The Multistate Tax Commission has strict policy to protect the identity of all applicants for voluntary disclosure. It will not disclose that identity except to a state with which the taxpayer has a signed contract or to another party at the request of the applicant. The applicant need not remain anonymous to the Commission, but may if it prefers. However, to conduct business the Commission will need at a minimum the name of a contact person and that person's telephone number and email address. The contact person may be an employee of the taxpayer or an outside tax advisor.

Answers to the following questions will likely be the same for all states:

1. PRIMARY CONTACT (tax representative or other):

Name:

Address:

Telephone:

E-mail Address:

SECONDARY CONTACT (if any):

Name:

Address:

Telephone:

E-mail Address of tertiary contact (if any):

Last digit of taxpayer FEIN: (The last digit is used to distinguish the applicant from similarly situated applicants while protecting its anonymity. Providing this information is recommended, but optional.)

1

**State Name:**

2. What is the applicant's form of entity:

C corp                  Sub S                  LLC                  LLP                  Sole Proprietorship

If the form of entity has changed during the four years immediately preceding the date of this Application, please state the form(s) of the predecessor entities and the approximate periods in which they existed. \_\_\_\_\_  
\_\_\_\_\_

3. Has the Federal Employer Identification Number (FEIN) changed during the past four years?

Yes                  No

If yes, please briefly describe the circumstance that caused the change. \_\_\_\_\_  
\_\_\_\_\_

4. What is the applicant's fiscal year-end?

If it has changed within the past four years, please list all fiscal year-ends and the applicable time periods. \_\_\_\_\_  
\_\_\_\_\_

5. What are the applicant's business activities? Please include a description of the potentially nexus-creating activity. Examples:

- It manufactures tangible personal property that it sells to end-users through six independent contractors who each spends about five days per year in your state.
  - It sells tangible personal property remotely (internet, catalogue, etc.) to customers in your state and has an affiliation with an in-state physical store. The store and the remote vendor are owned 49% by the same parent company. The physical store accepts returns of the remote vendor's products and uses similar trademarks and trade dress.
  - It is a partner in an LLP that owns real property in your state.
- \_\_\_\_\_  
\_\_\_\_\_

6. Other than as disclosed above, what type of in-state property does applicant own:

Owner                  Lessor                  Lessee

Please describe generally. Include both real property, personal property, and intellectual property (e.g., trademarks or patents used in-state). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**State Name:**

7. Other than as disclosed above, does the applicant have personnel in the state for any period of time, whether employees, independent contractors, or other representatives? Include all such contacts, even if transitory. Please generally describe their activities, their approximate amount of time spent in the state, and their relationship to the applicant, if not previously described. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

8. If not described above, in what other activities does the applicant engage that potentially give rise to nexus? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

9. What gives rise to this application for voluntary disclosure? Examples include reliance on erroneous professional advice, acquisition of a non-compliant entity, and a contact from another state regarding the applicant's non-filing status. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

10. Has the applicant contacted or been contacted by this state or by the Multistate Tax Commission on behalf of this state regarding its potential liability or filing status for the type of tax sought to be covered by this voluntary disclosure?

Yes      No

If so, please give details. Contact prior to commencement of the voluntary disclosure may disqualify the applicant from voluntary disclosure in the contact state. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

11. Is there additional information that the applicant would like to provide or does it request special terms in the voluntary disclosure contract to address an unusual circumstance?

Yes      No

Please describe if so. Answering Yes to this question is uncommon. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**State Name:**

12. To assist the MTC in making its voluntary disclosure services available to as many potential taxpayers as possible, please tell us how you came to know of the Multistate Tax Commission's voluntary disclosure program. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**State Name:**

**STATE NAME:**

Answers to the following questions will likely vary state:

A. Which type(s) of tax would the applicant like to disclose? The Multistate Tax Commission assists with disclosures for (see definitions above):

SUT Sales/Use Tax

IFT Income/Franchise Tax (including Hawaii's GET and Washington's B&O).  
See definitions above.

B. If the applicant does not propose to settle both sales/use and income/franchise tax obligations, what is the reason that a type of tax is excluded? Possible reasons include application of Public Law 86-272 and making only sales exempt from sales/use tax.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. What is your good-faith estimate of the amount of back tax liability over the last four tax years? Please break it out by type of tax. The Commission will generally not process a disclosure for a state when the good-faith estimate for all tax-types over the four years is less than \$500 in that state.

Tax Type	Tax Year	Estimate
----------	----------	----------

D. Is the applicant organized under the laws of this state?

Yes                      No

If the applicant is a natural person, is the applicant a resident of this state?

Yes                      No

**State Name:**

E. If this Application concerns sales/use tax, has the applicant ever registered, filed a return, paid interest or penalty, or paid any sales/use tax to this state, other than in the capacity of a consumer paying sales/use tax to a vendor? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. If this Application concerns income/franchise tax, has the applicant ever filed a return, filed a request for extension to file, paid any tax, or made any estimated payment with respect to income/franchise tax? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. For Iowa, Minnesota, and Utah only: please state in which fiscal year business activities began in the states to which a voluntary disclosure offer is to be made. The answer to this question will not be construed to be an admission of nexus.

Fiscal Year

Calendar Year

H. For Louisiana: please describe all business activities in the state after December 31, 1997; if there were none for any portion of this period please so state explicitly. This information is requested to comply with state constitutional and statutory requirements related to voluntary disclosure; it does not mean that back tax must be paid from this date. The answer to this question will not be construed to be an admission of substantial nexus. \_\_\_\_\_  
\_\_\_\_\_

I. With respect to Utah and Minnesota only, if the applicant makes sales to customers in the state, please indicate the approximate number of sales per year for the last three years and the approximate average value of each sale.

Tax Year

Number of Sales

Average Sale Value

J. With respect to Utah only, please provide an estimate of the amount of potential tax liability prior to the look-back period that the state would waive. Assume that the look-back period is three years from the date of this Application. Providing this estimate is not an admission that substantial nexus existed.

**State Name:**

*Please feel free to bring any questions or concerns regarding this application to the attention of the National Nexus Program staff at (202) 695-8140 or Nexus@mtc.gov*

7

COMMENTS FROM NEXUS COMMITTEE MEMBERS:

Hawaii:

Hawaii has no footnotes on the agreement template. Hawaii will extend deadlines upon request. If Hawaii has additional questions, we will ask. These documents cannot cover every eventuality for every state.

Alabama:

“To the extent that this Agreement contains Business Income or Withholding tax, MTC 00-00 may file spreadsheets in lieu of actual returns? Initial here: Yes. No.” and adding “Withholding Tax” language to the previous Sales/Use Tax statement, thus reading “To the extent that this Agreement concerns Sales/Use Tax *and Withholding Tax*, MTC 00-00 may...” or in the alternative, use the blanket statement of “Trust Fund taxes”. The reasoning being that Sales/Use Tax and Withholding Tax are usually both filed on a monthly basis, lending themselves to spreadsheet format. Also, we do not believe that any State would accept Income Tax or any other similar annual tax be filed in spreadsheet format.

2. In lieu of footnotes, a state-specific FAQ/Information page be created on the MTC'S VDP website page. We suggest that a link for each state would allow a VDA TP to click on each state for which VDA application has been made. Each state's page may contain questions/statements common to all states, e.g. State's definition of Business Activity Tax, and also state specific questions/statements. It would be each state's responsibility to provide the MTC such information.

Montana:

On the application for VDA I have concern about state specific questions a good example is the following: “For Louisiana: please describe all business activities in the state after December 31, 1997; if there were none for any portion of this period please so state explicitly...” A question of this magnitude maybe should be asked by the Louisiana directly after the agreement has been made, not on a multi-state application.

District of Columbia

- Right off the top of my head, you can eliminate all of the footnotes from the standard template which specify for the District that the word “penalty” is defined to include

“fees.” The “and fees” is a leftover from a time when DC assessed collection fees before cases had been referred to collection agencies or to collection staff. Now we do not assess such fees until the cases have proceeded some way through our case flow. I cannot imagine the circumstances with respect to a VDA coming to us through the MTC where there would be fees of any kind which would have to be waived.

- I agree with the premise of your last question – that the request for information on the precise activities of the applicant over many prior years seems burdensome on the applicants. I suspect (though can't prove) that few NNP program members make decisions on which applications to accept on the basis of what is reported and even fewer disavow our agreements on the grounds that the disclosures were erroneous. I do not have any specific recommendations, but would urge that these requests be lightened up a bit.
- Since you are soliciting comments and preparing to rewrite these documents, I recommend dispensing with as many of the split infinitives contained in the template and procedure document as possible. I know there's a school of thought that regards them as acceptable. But, that said, readers can never be sure whether the writer is *avant-garde* as to grammar or just ill-informed. I have in mind re-writing phrases like “to be voluntarily disclosed,” “to further consider” and “to not continue.”

---

DIFFERENT DOCUMENT FOLLOWS

---

**Multistate Tax Commission**  
**Procedures of Multi-state Voluntary Disclosure**

1. Definition and Purpose of Multi-state Voluntary Disclosure

- 1.1. The Multistate Tax Commission National Nexus Program (NNP) is a state instrumentality to which member states delegate enumerated, limited powers to act on their behalf. The NNP's multi-state voluntary disclosure program (MVD) is one such limited delegation.
- 1.2. MVD is the process whereby a taxpayer that has not filed a return of sales/use or business activity tax in one or more *states* may come into compliance through a single point of contact and substantially uniform procedure. Business activity taxes include taxes such as income, franchise, business and occupation, commercial activity, and net worth tax. In exchange for compliance in a state, the taxpayer receives a benefit from that state, usually relief of all penalty and, except with respect to the *lookback period*, waiver of all back tax and all back interest. The *lookback period* is the range of past tax filing periods with respect to which the taxpayer must file returns as part of the MVD. *Lookback periods* vary. However, sales and use tax collected from others must be surrendered in its entirety, without regard to the *lookback period*, and may in some *states* involve a small, non-waivable penalty. In most *states* interest is not waived.
- 1.3. Because a taxpayer's obligation to file tax returns outside its state of domicile is sometimes unclear, it is appropriate for *states* and taxpayers to compromise by means of MVD. Taxpayers are relieved of the financial uncertainty of potential tax obligations while *states* protect the public interest and promote compliance with their tax laws.

- 1.4. MVD furthers the purposes of the *Commission* and its *National Nexus Program* by:
  - 1.4.1. Fostering increased state tax compliance by businesses engaged in multi-jurisdictional commerce;
  - 1.4.2. Establishing national cooperation in the administration of state tax issues arising in the nexus area, including the identification of businesses involved in multi-jurisdictional commerce which are not now in compliance with applicable state tax laws;
  - 1.4.3. Educating taxpayers as to their state tax reporting responsibility when they become involved in the systematic development of a market in a specific state; and
  - 1.4.4. Promoting fair and consistent state tax enforcement in the nexus area.
- 1.5. *State* as used in these procedures includes only the fifty United States and the District of Columbia. It includes political subdivisions only to the extent their taxes are administered and collected by the *state*.

## 2. Role of the *Commission*

The National Nexus Program is a program of the Multistate Tax Commission available to *states* by subscription independent of membership in the Multistate Tax Commission itself. To encourage participation in MVD, the *Commission* seeks to play the role of a fair broker between *states* and taxpayers as they seek to settle their nexus issues.

## 3. Purpose of Multi-state Voluntary Disclosure Procedures

- 3.1. The purpose of this document is to set forth guidelines with respect to multi-state voluntary disclosure in order to ensure fair and consistent treatment of all taxpayers. This in turn allows taxpayers to better order their affairs with respect to these procedures, and to reduce the burden on state and taxpayer

personnel by reducing the need to address policy issues on a case by case basis.

- 3.2. Participating *states* believe that established guidelines will encourage greater participation in multi-state voluntary disclosure by taxpayers and *states*, and thereby increase compliance with *state* tax laws, to the benefit of the citizens of the participating *states* and of taxpayers wishing assistance to come into compliance.

#### 4. Adoption of Procedures

- 4.1. All member states of the NNP accept these procedures as the state's procedure with respect to multi-state voluntary disclosure except:
  - 4.1.1. The following *states* accept no part of these procedures: \_\_\_\_\_;  
and
  - 4.1.2. A *state* may opt out of a particular section, which is noted by footnote where it occurs in the text.
- 4.2. These procedures do not apply to a *state's* single-state voluntary disclosure program.
- 4.3. Except as a *state* may exempt itself per § 4.1.1 or 4.1.2, NNP member *states* adopt these procedures as an expression of current policy based on discretionary administrative authority; they shall not be construed to be promulgation of regulations.
- 4.4. Participating *states* acknowledge that taxpayers entering into multi-state voluntary disclosure do so in reliance on these procedures; therefore, participating *states* agree to apply to a taxpayer with an Open MVD case the procedures as they existed when that taxpayer opened that MVD case.

## 5. Eligibility

- 5.1. Generally, a taxpayer may participate in MVD unless it is ineligible. However, a state is not required to accept a taxpayer's MVD offer even if it is otherwise eligible.
- 5.2. A taxpayer is generally ineligible to participate in MVD with respect to a tax type and a *state* if it has at any time in the past filed a tax return or similar filing or made a payment with respect to that tax type and that *state*, or if it has been *contacted* by that *state* (or the *Commission* on behalf of that state) with respect to the taxpayer's potential or actual obligation to file a return or make a payment with respect to that tax type and that *state*. However, if a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax.<sup>1</sup> Each state may make its independent decision with respect to eligibility, taking into consideration extenuating circumstances, such as passage of time See §15 for the definition of *state contact*.<sup>2</sup>
- 5.3. A taxpayer who would generally be ineligible for MVD but nevertheless wishes to pursue it, should so advise *Commission* staff, who will inquire of the affected *states* and inform the taxpayer which, if any, care to receive an application.

## 6. Anonymity and Disclosure

- 6.1. A taxpayer may, but need not, be anonymous to the *Commission* during the MVD process. Because the *Commission* needs to easily communicate with a taxpayer (directly or through its attorney or tax advisor) in order to conduct its business, taxpayers wishing to remain anonymous to the *Commission* may approach through a representative such as an attorney or tax advisor. A taxpayer choosing to remain anonymous while approaching the *Commission*

---

<sup>1</sup> A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the *contact*. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

<sup>2</sup> Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted*. Such persons will ordinarily not know of their ineligibility before they apply.

directly should make arrangements to ensure timely communication by telephone, e-mail, US Postal Service, and private overnight delivery service, which will prevent delay in processing the application. The *Commission* must know a taxpayer's identity after an MVD contract is executed in order to ensure proper processing.

6.2. In the event the *Commission* knows the taxpayer's identity, it shall not knowingly release it to any other party under any circumstance except:

6.2.1. To a *state* after an MVD contract has come into effect with respect to that *state*;

6.2.2. To any other party with the taxpayer's written consent;

6.2.3. By order of a court of competent jurisdiction; or

6.2.4. In accordance with § 12.

6.3. Participating *states* agree to not require, whether by court order or otherwise, that the *Commission* release a taxpayer's identity except:

6.3.1. To a *state* after an MVD contract has come into effect with respect to that *state*; or

6.3.2. To any other party with the taxpayer's written consent; or

6.3.3. In accordance with § 12.

## 7. Disclosure of Taxpayer's Identity

7.1. The Commission shall take reasonable care to review a taxpayer's application and other communications intended to be sent to a state to ensure that nothing therein identifies the applicant (except to the extent the taxpayer has given its written consent to that disclosure). However, under no circumstance shall the

Commission be liable for failure to detect such information or for having made such application or communication available to a *state*. Ensuring that communications intended to be forwarded to a *state* be in a form appropriate for that *state* to see is primarily the taxpayer's responsibility.

7.2. Neither the *state* nor the Multistate Tax Commission shall use information acquired as a result of a taxpayer's participation in MVD to develop independent sources of information about the taxpayer for the purpose of discovering its identity except in accordance with § 12. Neither the *Commission* nor a *state* shall attempt to learn the identity of a taxpayer in MVD except:

7.2.1. When the taxpayer voluntarily discloses it as a result of completing an MVD contract or otherwise;

7.2.2. In the course of governmental activity that does not use any information acquired as a result of the taxpayer's participation in MVD; or

7.2.3. In accordance with § 12.

7.3. Except to the extent that the taxpayer consents otherwise in writing or the state is acting pursuant to §12, if a state learns the identity of a taxpayer before the MVD contract is in effect with respect to that state, the state shall:

7.3.1. make no use of the identity; and

7.3.2. conduct itself as if the identity had never been disclosed.

7.4. A state may, however, disclose the taxpayer's identity and related information if required to do so pursuant to an inter-government exchange of information agreement or by state statute.

8. Opening A Voluntary Disclosure Case  
(see also § 19 for definitions of Case and File)

- 8.1. A taxpayer opens a voluntary disclosure case with respect to a *state* and a tax type when the *Commission* receives a writing that:
  - 8.1.1. States that the taxpayer “applies for voluntary disclosure” (or other words to that effect);
  - 8.1.2. Lists the *state(s)* to which the taxpayer wishes to voluntarily disclose;
  - 8.1.3. Lists the type(s) of tax sought to be voluntarily disclosed; and
  - 8.1.4. Provides the last digit of the taxpayer’s federal employer identification number (FEIN) or last digit of its taxpayer identification number (TIN).
- 8.2. Providing the FEIN or TIN information allows the *Commission* to positively distinguish the applicant from other taxpayers without compromising its anonymity.
- 8.3. A writing may be presented in any way, including Postal Service, fax, and e-mail. It need not be signed.
- 8.4. Having an open case means that the taxpayer is *protected from discovery* in the listed *states* beginning 12:01 AM (Washington, D.C. time) on the calendar day following the *Commission’s* receipt of the writing and ending on the calendar day following expiration of a time limit (deadline) as set forth in §16. Unless the *case* is *closed*, *protection from discovery* in that *case’s state* resumes at 12:01 AM (Washington, D.C. time) on the calendar day after the taxpayer takes the required action. See § 14.1 for the definition of *protected from discovery*.

## 9. Mistaken Filing or Payment to *State*

- 9.1. If a *state* receives notice or otherwise becomes aware that it mistakenly received a return, filing, or payment, the *state* shall:

- 9.1.1. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received; and
- 9.1.2. Apply a mistaken payment (or payments) to the tax owed, apply any remainder to interest, and refund any further remainder to the taxpayer.
- 9.2. The *state* shall not be required to refund a mistaken payment except to the extent it exceeds a taxpayer's total tax liability at the end of the MVD process.
- 9.3. Notwithstanding §9.1.1, the *state* may process a mistakenly received registration or filing.

#### 10. Mistaken Filing or Payment to *Commission*

- 10.1. If the *Commission* receives notice that it mistakenly received a return, filing, or payment other than of a collected fiduciary tax, the *Commission* shall:
  - 10.1.1. At the applicant's option, either return, destroy, or retain for future use the mistaken return, filing or payment;
  - 10.1.2. Make no use of mistakenly received information except as the taxpayer permits; and
  - 10.1.3. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received.
- 10.2. However, without regard to the applicant's preference, the *Commission* shall forward to the *state* a mistakenly received collected fiduciary tax payment and shall not return, destroy, or retain it for future use. A collected fiduciary tax is sales tax, use tax, excise tax, withholding tax, or any other tax or funds collected or received from another on behalf of the state under color of state authority.

## 11. Premature or Incomplete Filing or Payment to the *Commission*

- 11.1. A signed MVD contract, returns, registration forms (sales/use tax only) and payment are generally due to the *Commission* from the applicant at the end of the MVD process (the MVD contract governs this).
- 11.2. If the *Commission* receives one or more, but not all, required items, the *Commission* shall hold the received items pending receipt of the rest. However, if the *Commission* has not received all items within 60 days of their due date (see §16 for time limits on taxpayer), The *Commission* may return the received items to the sender.
- 11.3. Standard deadline procedures apply, as indicated in § 16, including the deadline to close an inactive *case* or *file*.

## 12. Material Misrepresentation

- 12.1. A *material misrepresentation* is a false or misleading statement by a taxpayer (or its representative), made in good faith or otherwise, about a fact, which successfully induces a state to take a position to its substantial detriment with respect to acceptance of a voluntary disclosure contract (or significant terms in it) with that taxpayer.
- 12.2. If the *Commission* has clear and convincing evidence that a taxpayer has made a material misrepresentation, the *Commission* shall present the evidence thereof to the taxpayer and invite it to show good cause why the *Commission* should not take action pursuant to this section 12.
- 12.3. If the taxpayer cannot otherwise be contacted after a good faith effort, the *Commission* shall send a certified letter to the contact person and address of record of both the taxpayer and its tax practitioner, if any.

12.4. If 10 days after the later of presenting the evidence to the taxpayer and mailing a certified letter the taxpayer has not shown good cause, the *Commission* shall:

12.4.1. With respect to states that have executed a contract with the taxpayer based on the *material misrepresentation*, the *Commission* shall identify the taxpayer and inform each state of the evidence regarding the material misrepresentation.

12.4.1.1. The state may in this case void the voluntary disclosure contract, or any part of it that was the result of the material misrepresentation, within ninety calendar days of receiving notice regarding the material misrepresentation. In such case, it will be as if the contract (or excised terms) never existed; the state may keep all revenue paid to it as a result of the voluntary disclosure and may pursue additional remedies as permitted by law.

12.4.2. With respect to states that received an offer from the taxpayer containing a material misrepresentation but have not accepted it, the *Commission* shall withdraw without comment the pending voluntary disclosure offer. An offer is considered pending until it has been either rejected, withdrawn or signed by both state and taxpayer (accepted and fully executed). The *Commission* shall not disclose the existence of the material misrepresentation or the identity of the taxpayer to these states.

12.4.3. With respect to states that did not receive a voluntary disclosure offer containing a *material misrepresentation* from this taxpayer, the *Commission* shall not disclose the existence of the *material misrepresentation* and shall not disclose the identity of the taxpayer to these states.

### 13. Withdrawal

13.1. A taxpayer may withdraw from a state *without prejudice* at any time before *the Commission* sends the signed contract, return, or payment to that *state*. *Without prejudice* means the taxpayer may apply again by submitting all new materials.

13.2. A withdrawal requested by a taxpayer shall be in writing and shall enumerate the *states* from which withdrawal is sought. Absent a contrary written statement, a withdrawal with respect to a *state* shall be presumed to include all tax types and shall be presumed to be effective upon receipt by *the Commission*.

13.3. *Protection from Discovery* per §14 ceases at 12:01 AM (Washington, D.C. time) on the calendar day immediately following withdrawal.

#### 14. Protection from Discovery

14.1. *Protection from Discovery* means that, upon receipt of notice per §15.2, the Commission and participating *states* shall suspend with respect to an eligible taxpayer (see § 5.2) so protected, all inquiry and other enforcement activity (except criminal enforcement activity), with respect to that taxpayer's non-filer status and the type of tax it seeks to voluntarily disclose, pending that taxpayer's completion of its MVD in accordance with the time limits set forth in §16.

14.2. Provided that the *state* (or the *Commission* on behalf of the *state*) has not *contacted* (see §15.1 for definition) the taxpayer, it is *protected from discovery* in a state with respect to a type of tax beginning at 12:01 AM (Washington, D.C. time) on the calendar day following the day that *the Commission* receives its request for MVD that meets the requirements of § 8

14.3. *Protection from discovery* ends at 12:01 AM (Washington, D.C. time) on the day following the last day available to a taxpayer to meet a deadline as set forth in these procedures. For example, given a seven day deadline and time period beginning on July 1, *protection from discovery* ceases at 12:01 AM

(Washington, D.C. time) on July 9. *Protection from discovery* resumes at 12:01 AM (Washington, D.C. time) on the calendar day after the taxpayer takes the required action.

15. *State Contact While Protected From Discovery*

15.1. *State contact* means any communication with respect to a type of tax from *state* personnel to a *person* with respect to that *person's* actual or potential tax obligation in that *state* with respect to that type of tax. Examples of *state contact* include but are not limited to: a telephone call or correspondence from a *state* revenue official, a nexus questionnaire mailed to the taxpayer, and a notice of audit or assessment.<sup>3</sup> A *state contact* is deemed received when mailed or sent. If a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax.<sup>4</sup>

15.2. For purposes of §15, a *person* means either a natural or a juristic person. With regard to a *state* whose laws allow for unitary, combined, or consolidated filing of returns, all constituent entities of a unitary or combined group, of a group filing on a consolidated basis, or of a group otherwise affiliated, are a single *person* for purposes of §15 without regard to whether the *state* was aware of the existence of such entity or of its relationship to its constituent entities.

15.3. A taxpayer *contacted* by a *state* with respect to which the taxpayer is *protected from discovery* may assert its *protection from discovery* by doing all of the following:

15.3.1. Inform the *Commission* of the *state contact*, including if possible the name and contact information of the *state* person who made the *state contact* and a copy of any writing that was part of the *state contact*, and

---

<sup>3</sup> Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted*. Such persons will ordinarily not know of their ineligibility before they apply.

<sup>4</sup> A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the Contact. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

15.3.2. Provide the *Commission* this, or a similar, written statement: “MTC Anonymous YY-XXX gives *the Commission* permission to disclose its identity to the *state* of [ *state name* ] for the purpose of *protection from discovery* as described by the Multistate Tax Commission Procedures of Multi-state Voluntary Disclosure.” YY-XXX stands for the taxpayer’s voluntary disclosure identification number.

15.4. Upon proper notice, the *Commission* shall timely inform the *state* in question that the taxpayer is involved in MVD with respect to that *state* and the type(s) of tax and the *state* shall suspend its inquiry or other compliance-related activity pending the taxpayer’s completion under the normal and usual terms of the MVD with respect to that *state* and that (those) type(s) of tax.

15.5. If a taxpayer fails to meet a time deadline of the MVD process after *contact* by the *state*, then *protection from discovery* shall thereupon cease and the *state* may, at its option, continue its *state contact*, inquiry, or compliance-related action. The *Commission* shall not grant an extension of time after *state contact*. The *state* should at this time advise the *Commission* whether it is willing to further consider the MVD application and the taxpayer should advise the *Commission* whether it wishes to continue the MVD application. If both taxpayer and *state* choose to continue, The *Commission* shall continue to process the MVD. If either the taxpayer or the *state* chooses to not continue, The *Commission* shall close its *case* on the taxpayer with respect to that *state*.

## 16. Time Limits: Taxpayer

16.1. The following time limits (deadlines) apply to the taxpayer for the purpose of determining whether the taxpayer is *protected from discovery*. Except to the extent that the *Commission* or *state* grants a written extension, failure to meet a time limit shall suspend the taxpayer’s *protection from discovery* until the action in question is completed and, in some cases as noted, result in closure of the *file*.

- 16.1.1. The *Commission* opens a *file* (see § 8) until the *Commission* receives a properly prepared Application: 14 days.
- 16.1.2. Taxpayer receives draft contract until taxpayer responds to draft contract by either accepting or requesting changes: 28 days. The draft contract is the text the *Commission* will send to the indicated *states* as part of the taxpayer's MVD proposal.
- 16.1.3. Taxpayer responds to state counter-offer to draft contract: 28 days.  
Taxpayer has 28 days to respond to each subsequent counter-offer.
- 16.1.4. Taxpayer responds to request for information from *state* or the *Commission*: 14 days. Taxpayer has 14 days to respond to each subsequent request for information from the *state* or the *Commission*.
- 16.1.5. From taxpayer receipt of a state-signed contract (or other expression of intention to enter into the voluntary disclosure agreement) until the *Commission* receives it back from the taxpayer together with all required filings, returns and payment: 60 days.
- 16.1.6. Notwithstanding the requirement of § 16.1.5, an MVD draft contract signed by a *state* shall remain a valid offer to the taxpayer for the period of time stated in the contract the state signed or, if no period is stated, 90 days from the day it was mailed or sent to the taxpayer or its representative (protection from discovery is lost 28 days after it was mailed or sent). It may be returned signed at any time within that period together with all required returns and payment, after which time it shall be void, unless the *Commission* or *state* issues an extension in writing.
- 16.2. The *Commission* may at its option close the *file* of a taxpayer at any time 90 days or more after the taxpayer loses and fails to regain *protection from discovery*. *Closing the file* means that the taxpayer must apply from the beginning if it wishes to pursue MVD.

16.3. Except when the *Commission* closes a taxpayer's *file* due to inactivity for 90 or more days after loss of *protection from discovery*, the taxpayer is free to miss any deadline it chooses without consequence other than temporary loss of *protection from discovery*. Therefore, the *Commission* may, without specific *state* authorization, grant one or more short extensions of time to a taxpayer, but only upon demonstration of extreme hardship that the taxpayer could not have reasonably prevented.

## 17. Time Limits: *State*

17.1. The *state* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

17.2. The following time limits apply:

17.3. From *state* receipt of draft contract until it sends its response to the *Commission*: 42 days (6 weeks);

17.4. *State* responds to counter-offer: 42 days (6 weeks);

17.5. *State* sends bill for interest to taxpayer: 42 days (6 weeks)

## 18. Time Limits: *Commission*

18.1. The *Commission* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time

requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

18.2. The following time limits apply to the *Commission*:

18.3. From *Commission* receipt of application for voluntary disclosure to sending draft contract to taxpayer: 7 days;

18.4. From *Commission* receipt of taxpayer's approval of draft contract to sending draft contract to *state*: 7 days;

18.5. Forwards requests for information, counter offers, and other communications: 2 business days;

18.6. Forwards *state*-signed contract to taxpayer: 7 days;

18.7. Forwards taxpayer signed contract, returns and payment to *state*: 7 days.

## 19. Definitions and Miscellaneous Time Procedures

19.1. *Days* are calendar days unless the text clearly states otherwise.

19.2. A time limit (deadline) falling on a federal holiday or a weekend shall be extended to the next business day.

19.3. *Days* are counted thus: the first day is the calendar day immediately after the day in which the initiating action took place.

19.4. A filing or document mailed or sent by a taxpayer shall be construed to have been received by a state or by the *Commission* on the date of actual receipt, without regard to its postmark and the date it was mailed or sent.

- 19.5. No return, filing, or payment that was accidentally or prematurely made and returned to the sender for that reason shall count with respect to any time deadline of these procedures.
- 19.6. *File* means the total number of state cases existing with respect to an applicant. It is assigned a *file* number in the format MTC YY-XX, such as MTC 09-40 or MTC 09-99.
- 19.7. *Case* means that subset of a *file* that applies to only one state and one taxpayer, e.g., MTC 09-40 ND or MTC 09-99 MA
- 19.8. *Commission* means the Multistate Tax Commission.
- 19.9. *NNP* means the National Nexus Program, a division of the Multistate Tax Commission. *States* may subscribe to NNP independently of their membership in the *Commission* itself and any other program of the Commission.
- 19.10. The MVD process ends with respect to a *state* when:
- 19.10.1. that *state* and the taxpayer have each signed the MVD contract;  
and
  - 19.10.2. the *state* has received all tax returns, payment and other material due, including but not limited to any interest and non-discretionary fees that the state billed in accordance with the MVD contract after receipt of the tax returns.

## 20. Electronic Communications

- 20.1. Unless the text clearly states otherwise, communications by fax machine, electronic mail (e-mail), and similar technological means shall count as written communications for purposes of these procedures.

- 20.2. MVD contracts shall be signed with ink on paper unless the state and taxpayer each agrees to substitute one or more facsimile signatures. A facsimile signature for purposes of these procedures is a signature created or transferred by fax machine, over the internet as an image, or by similar technology, which the sender intends to be used to indicate and memorialize the sender's acceptance of an MVD contract.
- 20.3. The *Commission* may communicate with *states* and taxpayers through the internet, including its world wide web and electronic mail features. However, unless authorized in writing by the taxpayer or adequate encryption or reasonable safeguards are used, neither the *Commission* nor a *state* shall transfer over the internet in a manner susceptible of interception by an unauthorized person any confidential taxpayer information, such as a taxpayer's name, taxpayer identification number, telephone number, address, amount owed, factual circumstances, et cetera.

## 21. Non-Member States

- 21.1. If sufficient resources are available, the *Commission* may offer voluntary disclosure services to *states* that are not members of the National Nexus Program as a convenience to a taxpayer requesting such services and as a way for the state to become familiar with the *Commission's* voluntary disclosure services.
- 21.2. A *state* that participates in the multi-state voluntary disclosure process as a non-member *state* of the National Nexus Program shall not be required to take any action or refrain from taking any action as a result of these Procedures of Multi-state Voluntary Disclosure, but it is encouraged to abide by them voluntarily.

---

DIFFERENT DOCUMENT FOLLOWS

---

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

## **MULTI-STATE VOLUNTARY DISCLOSURE AGREEMENT**

**MTC 00-00 & [Signatory State]**

**[Tax Type]**

This Agreement concerns only [Tax Type]. In exchange for the mutual promises herein, the [State or Commonwealth] of [Signatory State], MTC 00-00, and the Multistate Tax Commission agree as follows:

### **1. Parties**

1.1. This Agreement is entered into by and among the [State or Commonwealth] of [Signatory State]; MTC 00-00; and the Multistate Tax Commission.

### **2. Purpose**

2.1. The parties acknowledge that tax nexus (jurisdiction required for a state to tax) is sometimes difficult to determine.

2.2. The parties neither admit nor deny that MTC 00-00's activities in [Signatory State] created tax nexus.

2.3. The parties agree to settle MTC 00-00's potential back [Tax Type] liability through compromise as set forth herein.

### **3. Scope**

3.1. The parties acknowledge that this Agreement concerns only [Tax Type], interest, and penalty<sup>1</sup> thereon, if any.

3.2. This Agreement is not a waiver of MTC 00-00's obligation, if any, to qualify or register with the [Signatory State] Secretary of State (or equivalent if not so named).

---

<sup>1</sup> With respect to **DISTRICT OF COLUMBIA** only, add "and fees".

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

#### 4. Procedures of Multistate Voluntary Disclosure

The [Procedures of Multistate Voluntary Disclosure](#) are incorporated herein by reference and, where applicable, govern this Agreement as if set forth in full. The text of the Procedures is available at [www.mtc.gov](http://www.mtc.gov) or by request from the staff of the National Nexus Program.

#### 5. Duties of MTC 00-00<sup>2</sup>

---

<sup>2</sup> For **ARIZONA CORPORATE TAX** only, add new Subsection 5.6 and further subsections that read:

- 5.6. *With regard to net operating losses in Arizona, MTC [XX-XXX] shall:*
- 5.6.1. *waive the carry-forward option on all net operating losses generated in tax years before the start date;*
  - 5.6.2. *suspend the deduction of net operating losses for periods beginning after [Lookback Date] through the Effective Date; and*
  - 5.6.3. *agree that net operating losses generated in periods beginning after [Lookback Date] through the Effective Date may be utilized, pursuant to statute, for tax years beginning after the first year ending after Effective Date.*

For **ARIZONA TRANSACTION PRIVILEGE TAX** only, add new Section 5.7. that reads:

- 5.7. *[MTC YY-NNN] shall become duly licensed for Transaction Privilege, Use and Severance Tax with the Department and applicable Program Cities and Towns by registering on [www.AZTaxes.gov](http://www.AZTaxes.gov) and pay all state and city license fees or by submitting a Joint Tax Application (Form JT-1) with payment for state and city license fees. The Taxpayer shall also become duly licensed for Privilege Tax with all applicable Non-Program Cities and Towns and pay all associated license fees for the Period. The Taxpayer shall comply with all licensing provisions of Title 42 of the Arizona Revised Statutes and the Model City Tax Code. Taxpayer will file TPT-1 returns and applicable Non-Program City and Town Privilege Tax returns that are due as of the [Effective Date] forward, as required by law, and continue to file returns for not less than eight (8) years from the Effective Date of the Agreement, provided that the business remains active, until such time as [MTC YY-NNN] no longer has nexus for tax purposes in Arizona, or until a change in law occurs due to legislative enactment or final judicial determination, in which the change clearly provides that [MTC YY-NNN] is not subject to Transaction Privilege and Use Tax. Taxpayer and the Department agree that such change will be applied prospectively only from the date of such legislative enactment or judicial determination, even though the change may be interpreted to apply retroactively. Taxpayer hereby waives any claim for refund and any right of appeal of any assessment for tax subject to the change in law for periods that would be subject to retroactive application.*

For **LOUISIANA [Tax Type]** only, add new Subsection 5.6 that reads:

- 5.6. *Anonymous [MTC XX-XXX] hereby makes an election to relinquish the carryback of future net operating losses to any taxable periods included under this Agreement. Such losses shall be treated only as a carryover as provided under LSA-R. S. 47:287.86(D).*

For **MISSOURI INCOME/FRANCHISE TAX**, add new Subsection 5.6 that reads:

- 5.6 *No loss carry forward for losses realized in any year before the first year filed pursuant to this agreement will be allowed for any filing period covered by this agreement or periods after this agreement. No loss carry back for losses realized in any year after the periods covered by this agreement will be allowed for such periods.*

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

- 5.1. Except to the extent that [Signatory State] or the Commission gives a written extension, MTC 00-00 shall send to the Commission the following within 60 days of written notice that [Signatory State] has approved its voluntary disclosure Agreement:
  - 5.1.1. the completed and signed MTC 00-00 Signature Page, if provided;
  - 5.1.2. the appropriate [Tax Type] returns, filings, or spreadsheets with respect to tax periods that begin after [Lookback Date], as the state may require;
  - 5.1.3. the appropriate registration forms (or register online), if the type of tax requires registration; and
  - 5.1.4. tax due under the returns, filings, or spreadsheets via negotiable instrument payable to the taxing authority of [Signatory State].
- 5.2. MTC 00-00 shall remit directly to [Signatory State] the penalty<sup>3</sup>, if any, and interest due with respect to periods beginning after [Lookback Date] (but all periods with respect to collected and unremitted use tax) not later than 30 days after receipt of notice of the amount due. Penalty<sup>4</sup> is not due unless required per the State Signature Page.<sup>5</sup>
- 5.3. If MTC 00-00 within 90 calendar days of the date that the Multistate Tax Commission sent the Agreement to MTC 00-00 fails to meet the requirements of Subsection 5.1, and neither [Signatory State] nor the Multistate Tax Commission has given a written extension of time, the Agreement is void. MTC 00-00 may apply again without prejudice or request that [Signatory State], in its sole discretion, execute and issue a replacement Agreement.
- 5.4. MTC 00-00 waives its right to allege a lack of nexus or jurisdiction to tax (including jurisdiction based on statute) as the reason for a protest of the tax, interest, or penalty (if

---

For **GEORGIA** [Tax Type] only, add new subsection 5.6 that reads:

- 5.6 In consideration for the Department waiving all applicable penalties and filing requirements for prior periods, [MTC XX-XXX] waives all rights to net refunds for all periods included in this agreement. Anonymous [MTC XX-XXX] also forfeits all NOL carryovers and waives its right to all net refunds for all periods included in this voluntary disclosure agreement.

<sup>3</sup> With respect to **DISTRICT OF COLUMBIA** only, add *and fees*.

<sup>4</sup> With respect to **DISTRICT OF COLUMBIA** only, add *and fees*.

<sup>5</sup> Without regard to whether it is stated on State Signature Page, **SOUTH DAKOTA** does not waive penalty for periods that begin after [Lookback Date].

Multi-state Voluntary Disclosure Agreement

MTC 00-00 and [Signatory State]

[Tax Type]

Application Date:

any) owed under this Agreement. A protest, however called, includes all claims for refund and disputes of the amount of tax, interest, and penalty (if any) owed. A protest may be administrative or judicial. MTC 00-00 does not waive its right to protest on any other basis, including without limitation calculation error and statutory interpretation with respect to issues other than nexus.

5.5. MTC 00-00 shall make its books and records available to [Signatory State] upon reasonable notice for the purpose of:

5.5.1. verifying the factual representations that [Signatory State] relied upon in deciding whether to enter into this Agreement; and

5.5.2. verifying the amount of tax due pursuant to the returns or filings.

## 6. Duties of [Signatory State]

6.1. Except to the extent that [Signatory State] indicates on the [Signatory State] Signature Page that there is a non-waivable penalty,<sup>6 7</sup> [Signatory State] waives all penalty<sup>8</sup> arising from MTC 00-00's failure to register and file [Tax Type] taxes and estimated taxes for all periods that begin before the Effective Date.

6.2. [Signatory State] shall not assess or collect any amount so discharged; however, notwithstanding the previous sentence, if state procedure requires it, [Signatory State] may assess any of said tax, interest, and penalty<sup>9</sup> and then immediately abate them. MTC 00-00 shall cooperate in that procedure if necessary.

6.3. So long as MTC 00-00 fully and timely performs all duties under this Agreement, and provided that the facts established are not materially different (this shall not include minor discrepancies or minor mathematical errors) from the facts disclosed by MTC 00-00 in this Agreement and the Exhibits hereto, [Signatory State] agrees:

---

<sup>6</sup> With respect to **DISTRICT OF COLUMBIA** only, add "and fees".

<sup>7</sup> **SOUTH DAKOTA** does not waive penalty for periods that begin after [Lookback Date]. It does not automatically waive interest for periods that begin after [Lookback Date], but will consider a written request for waiver of that interest.

<sup>8</sup> With respect to **DISTRICT OF COLUMBIA** only, add *and fees*.

<sup>9</sup> With respect to **DISTRICT OF COLUMBIA** only, add *and fees*.

Multi-state Voluntary Disclosure Agreement

MTC 00-00 and [Signatory State]

[Tax Type]

Application Date:

6.3.1. To not assess [Tax Type] and interest thereon based on 00-00's activities in [Signatory State] on and before [Lookback Date], other than as necessary to comply with the terms of this Agreement; and

6.3.2. To the extent permitted by its laws, to waive the assessment of all discretionary monetary penalty (whether or not so called) relating to the failure of 00-00 to register and file [Tax Type] returns and to pay [Tax Type] taxes and estimated taxes relating to all tax periods that begin on and before the Effective Date.

6.4. For the purposes of this Agreement, a "discretionary monetary penalty" is one that the laws of [Signatory State] permit the Tax Administrator, Commission, or other administrative body to waive or vacate upon a showing of a reasonable or good faith basis for a taxpayer's failure to file a particular return or to pay a particular tax. Interest due under this Agreement is not included in the term "discretionary monetary penalty".

6.5. MTC 00-00 agrees that with respect to those states that may be required by law to initially impose a discretionary penalty, but provide a process for the abatement or modification of such penalties, that MTC 00-00 must fully and timely pursue such processes, if it desires to do so, in order to avoid the final imposition of those discretionary penalties.

## **7. Duties of the Multistate Tax Commission**

7.1. The Multistate Tax Commission shall maintain the original of this Agreement when fully executed and shall provide a certified copy to each of [Signatory State] and MTC 00-00.

7.2. The Multistate Tax Commission shall help resolve problems that may arise with respect to this Agreement if either party requests.

## **8. Confidentiality and Disclosure**

[Signatory State], MTC 00-00, and the Multistate Tax Commission agree to disclose neither the making of this Agreement nor its terms to any other party except in response to an inter-government exchange of information agreement, pursuant to a state statute, or as the other parties authorize in writing.

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

## **9. Representations**

9.1. MTC 00-00's representations of material fact in its application for multi-state voluntary disclosure are attached to this Agreement as Exhibit 2 and are incorporated into this Agreement as if they were set forth herein.

9.2. In addition, MTC 00-00 represents that:

9.2.1. It has not received notice of audit from either [Signatory State] or the Multistate Tax Commission on behalf of [Signatory State] with respect to any type of [Signatory State] tax;

9.2.2. It has not received an inquiry from [Signatory State] or the Multistate Tax Commission on behalf of the state regarding potential liability arising from any type of [Signatory State] tax;

9.2.3. It has not made itself known to [Signatory State] by filing a tax return, filing an extension request, making a tax payment, or taking any similar action with respect to [Tax Type] (requests for information and other communications with [Signatory State] or the Multistate Tax Commission in which MTC 00-00 remains anonymous are permitted); and

9.2.4. all material representations in this Agreement, including Exhibit 2, are true and not misleading.

## **10. Material Misrepresentations**

10.1. The parties acknowledge that [Signatory State] and the Multistate Tax Commission have no capacity to verify MTC 00-00's statements of material fact before entering into this Agreement, and that MTC 00-00 is therefore strictly liable to accurately represent all material facts.

10.2. If MTC 00-00 represents a material fact in this Agreement (including Exhibit 2) that [Signatory State] determines with clear and convincing evidence to be false or materially misleading, [Signatory State] may, within 90 days of the discovery thereof, in its sole discretion, void this Agreement and proceed as if it had never existed. It may

Multi-state Voluntary Disclosure Agreement

MTC 00-00 and [Signatory State]

[Tax Type]

Application Date:

retain all tax, interest, and penalty<sup>10</sup> (if any) already paid and take appropriate action to enforce its revenue laws.

10.3. A false or misleading fact rises to materiality only if it is of such importance that [Signatory State] would reasonably have not entered into this Agreement, or would have done so on terms significantly more favorable to itself had it not relied upon the false or misleading fact.

10.4. That MTC 00-00 has been notified of an audit by [Signatory State] or the Multistate Tax Commission on its behalf is *per se* a material fact.

## 11. Miscellaneous

11.1. Each party to this Agreement warrants that the person executing it is authorized to do so.

11.2. The parties shall individually execute a single copy of the Agreement, and the Multistate Tax Commission shall compile all original documents into a single Agreement to be maintained by the MTC. A certified copy of this original Agreement shall be provided to both MTC 00-00 and [Signatory State] at the conclusion of the process or otherwise upon request. A photocopy or reproduction of the original documents maintained by the MTC shall be treated for all purposes as the single executed original copy.

11.3. Without regard to any contrary conflict of law rule, the law of [Signatory State] governs this Agreement. Jurisdiction and venue of any administrative or judicial action with respect to this Agreement lies exclusively in the appropriate administrative or judicial body of [Signatory State].

11.4. This Agreement is fully executed and effective (the Effective Date) when [Signatory State], MTC 00-00, and the Multistate Tax Commission have signed it. However, failure of the Multistate Tax commission to sign the Agreement does not affect its validity with respect to the mutual obligations of [Signatory State] and MTC 00-00.

---

<sup>10</sup> With respect to **DISTRICT OF COLUMBIA** only, add "and fees".

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

**STATE SIGNATURE PAGE**

[Signatory State] enters into this Agreement:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Please note any non-waivable penalty<sup>11</sup> arising from MTC 00-00's resolution of its potential back [Tax Type] liability (see Subsection 6.1, above):

\_\_\_\_\_  
\_\_\_\_\_.

To the extent that this Agreement concerns Sales/Use Tax, may MTC 00-00 file spreadsheets in lieu of actual returns? Initial here: \_\_\_\_\_ Yes. \_\_\_\_\_ No.

To the extent that this Agreement contains Business Income or Withholding tax, may MTC 00-00 file spreadsheets in lieu of actual returns? Initial here: \_\_\_\_\_ Yes. \_\_\_\_\_ No.

<sup>11</sup> With respect to **DISTRICT OF COLUMBIA** only, add "and fees".

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

**MULTISTATE TAX COMMISSION SIGNATURE PAGE**

Multistate Tax Commission enters into this Agreement:

Multistate Tax Commission

By: \_\_\_\_\_  
Gregory S. Matson  
Executive Director  
Multistate Tax Commission

Date: \_\_\_\_\_

Multi-state Voluntary Disclosure Agreement  
MTC 00-00 and [Signatory State]  
[Tax Type]  
Application Date:

**MTC 00-00 SIGNATURE PAGE**

MTC 00-00 Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

FEIN: \_\_\_\_\_

MTC 00-00 enters into this Agreement:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ESTIMATED TAXES

**State:** [Signatory State]

MTC 00-00 *estimates* that it will pay a total of \$ [Estimate] in discharge of its [Tax Type] liability for the periods beginning after [Lookback Date].

The above amount is only a good-faith estimate of the actual tax payment that will be due. This Agreement requires payment of the actual amount of tax due under the returns, filings, or spreadsheets submitted by MTC 00-00 for periods beginning after [Lookback Date], irrespective of the estimated amount provided here.

## STATEMENT OF REPRESENTATIONS AND INDUCEMENTS

---

Comments by committee members:

Idaho:

There are a great number of opportunities for improvement of the agreement and application. Definitions can be updated to incorporate a broader meaning to the items covered under voluntary disclosure. Another alternative is having state specific end notes that would assist the taxpayer when they are looking at voluntary disclosure in specific jurisdictions. Finally, perhaps it is time to think about nexus uniformity among the states. Would the nexus committee consider delving into the world of creating model nexus statutes and rules?

Montana:

- On section 2.2, if a company is making a tax payment to a state then why would that same company have a problem acknowledging nexus?
- The separate requirements for states, especially Arizona, in section 5 make the agreement too voluminous. Maybe Arizona should have a separate addendum that can be attached to the agreement.

Minnesota:

The state has no comments and is satisfied with the documents as they are.

District of Columbia:

All footnotes referencing “fees” should be removed. These fees are no longer imposed.