



National Nexus Program Director's Report

July 27, 2015

This report updates the Nexus Committee on activity of the National Nexus Program from July 1, 2014 until June 30, 2015. (The Commission produces reports cumulatively over each fiscal year beginning on July 1 and updates over the fiscal year until the final report of the fiscal year that is presented at the committee's July meeting the following calendar year.)

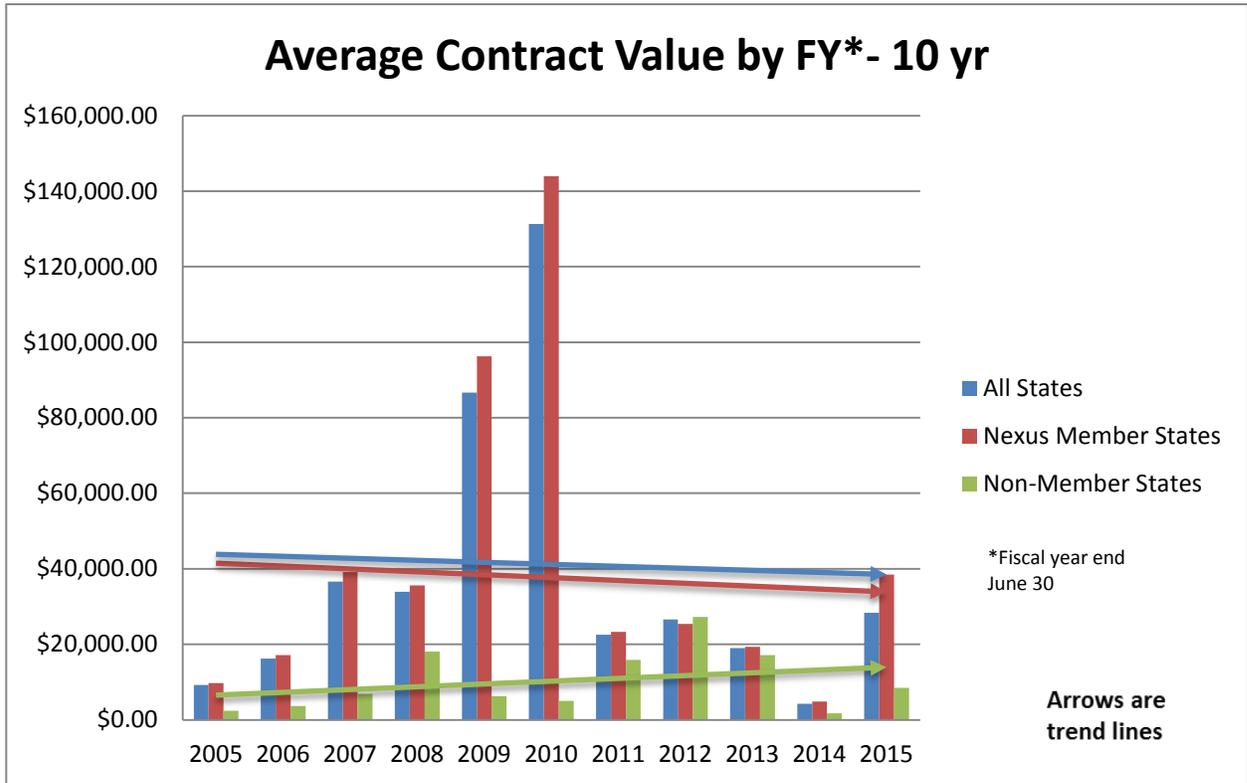
Multistate Voluntary Disclosure

Statistics for partial FY 2015 (July 1, 2014 – June 30, 2015):

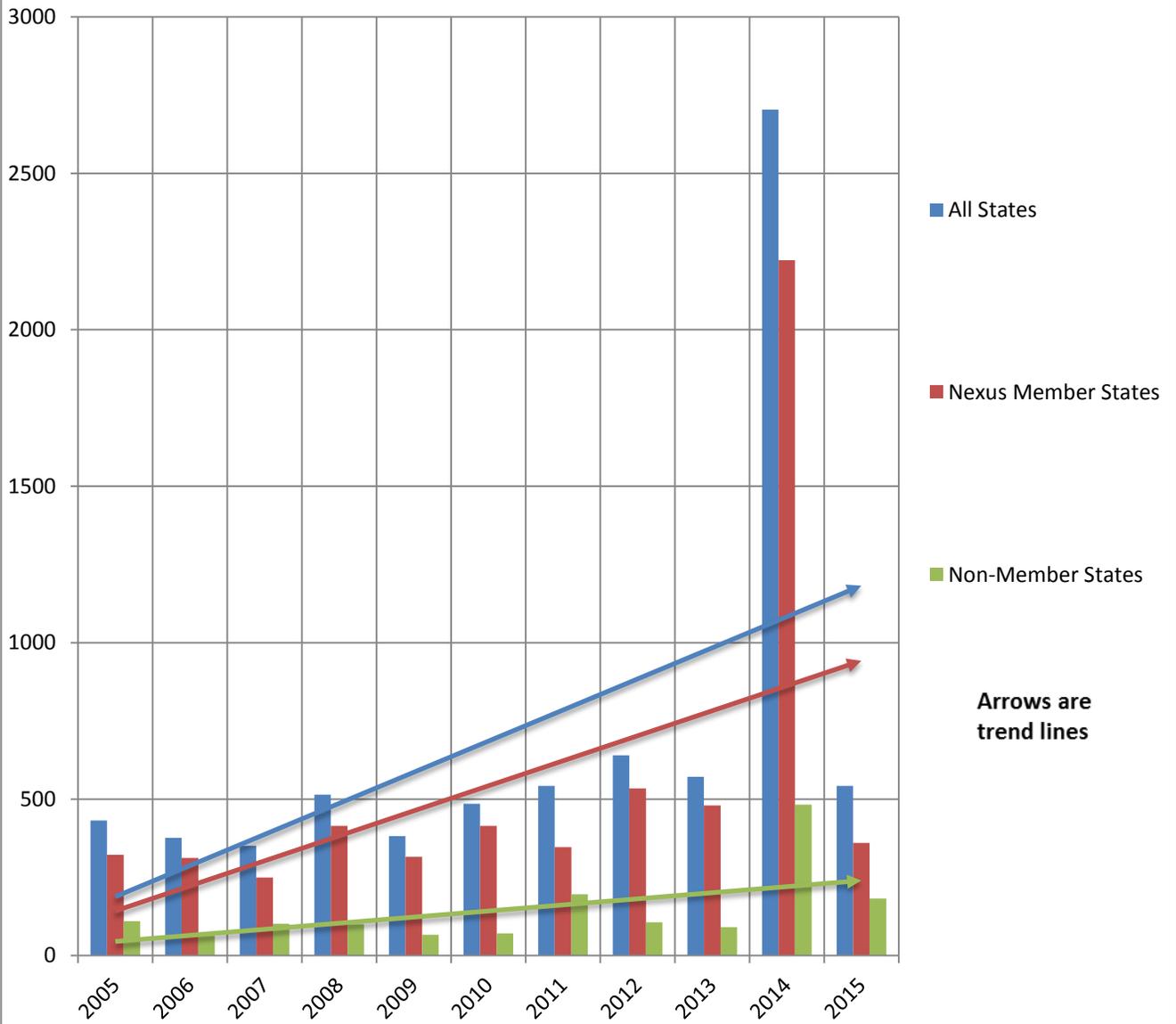
• Nexus states' collections:	\$13,838,804	(\$10,757,075 in all FY 2014)
• All states' collections:	\$15,380,979	(\$11,606,862 in all FY 2014)
• Nexus states' executed contracts:	543	(2,222 in all FY 2014)
• All states' executed contracts:	620	(2,704 in all FY 2014)
• Nexus states' average contract value:	\$38,441.12	(FY 2014: \$4,841)
• All states' average contract value:	\$28,378.19	(FY 2014: \$4,292)

N.B.: The numbers of contracts and dollars collected for non-member states will be eliminated by the end of fiscal year 2015 on account of having stopped accepting new voluntary disclosures on July 1, 2014 from non-member states. The numbers here reflect disclosures that were in process before July 1.

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

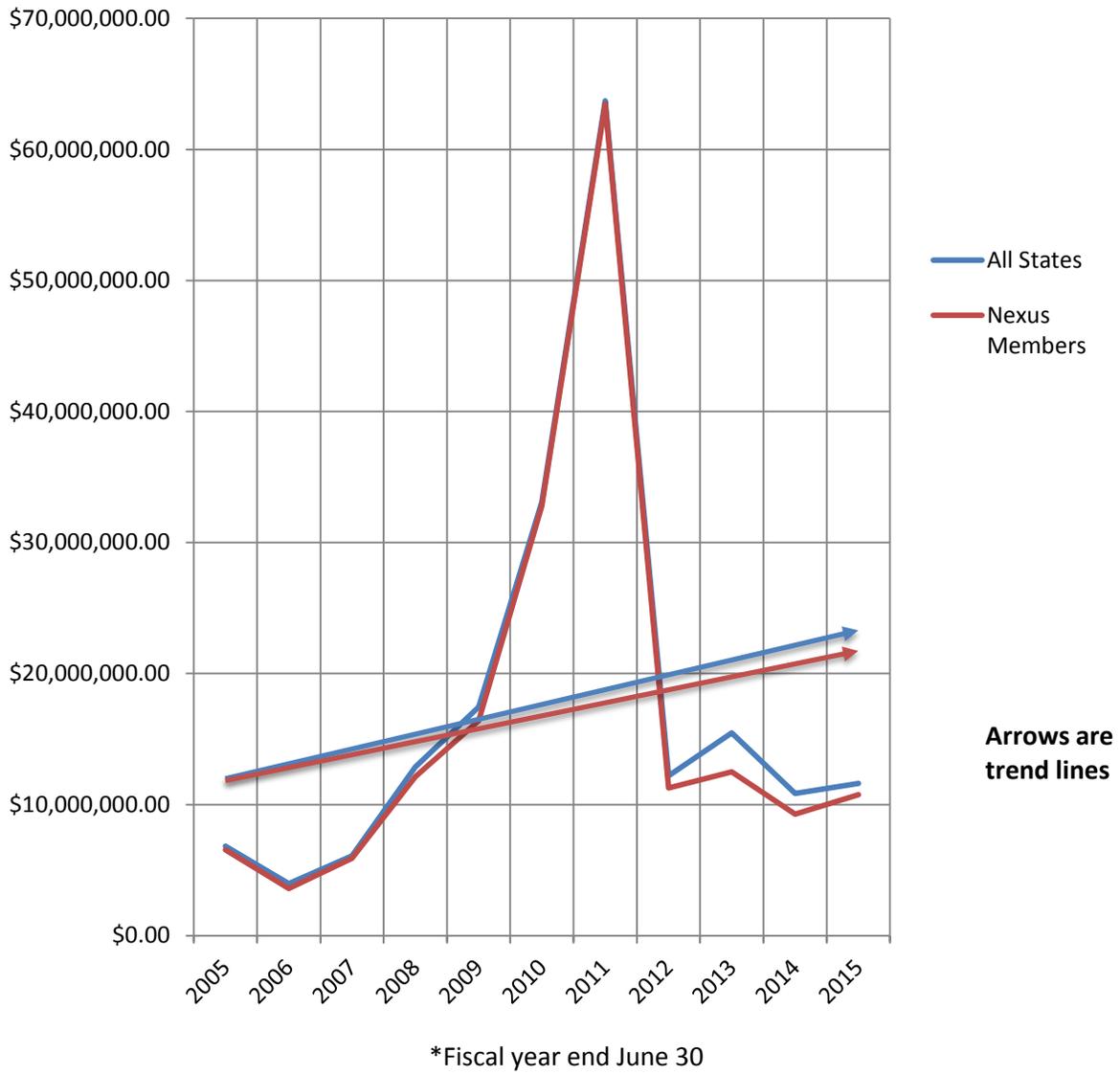


Executed Contracts by FY*- 10 yr



*Fiscal year end June 30

Back Tax Collected by FY* - 10 year



Strategic Planning

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 three years. With the assistance of consultant Elizabeth Harchenko, the Nexus Committee has:

1. Approved its Environmental Scan (identifies SWOT – current strengths, weaknesses, opportunities, and threats (see appendix);
2. Approved its Mission, Vision, and Goals (MVG) (see appendix); and
3. Approved two projects to further the MVG. Each project furthers the vitality and reputation of the Commission.

The two projects are:

1. Increase membership by identifying barriers to membership; explore avenues to give member states a fuller appreciation of the benefits of membership; and
2. Identify improvements to the NNP's multistate voluntary disclosure process.

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

Status of Membership Project

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

Background:

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 posed to the committee participants certain questions designed to elicit 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 Nexus meeting to discuss the responses. The committee discussed the information at that meeting.

Teleconferences of the project team took place through July 2015, with a final report to be submitted at the MTC's Annual Conference in Spokane in July 2015.

Status of Improve MVD Project

Please see the report in the Appendix. The project team has been meeting regularly and continues its review of the NNP's Multistate Voluntary Disclosure process to identify areas for potential improvement. Team members have contacted practitioners to get feedback, and have asked the states for their comments on how the process works for them. An in-person meeting of the project team took place on March 12, 2015 in Kansas City, Missouri. The project team will present an update report to the Nexus Committee at its July 27, 2015 meeting in Spokane, Washington.

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.

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. 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 recently removed the option to submit an application in Word from the Commission's website. The options are now either the online application feature or to submit a fill-in PDF for each state.

Staffing

The National Nexus Program employed slightly more than four FTEs (full-time employee equivalents) for most of the fiscal year. Staff includes voluntary-disclosure processors (paralegals) Diane Simon-Queen and Michelle Lewis; associate director Ben Abalos; and director Thomas Shimkin. The NNP began last fall to hire a temporary worker for up to

eighty hours thrice annually to do paper filing and data entry. This spring we hired Ellyn Conn on an indefinite basis to work about 240 hours per year. She is a rising junior at Catholic University. Her work is chiefly to support the voluntary disclosure service by filing papers, data entry, and preparation of mailings. Hiring an employee directly is far less expensive than hiring a temp agency to supply someone. Her assumption of some administrative activities has freed time for full-time staff to focus on the more complicated aspects of multistate voluntary disclosures.

Diane and Michelle work almost exclusively on the administrative processing of disclosures. Ben 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 Thomas generally with management of the NNP. Thomas has 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.

Regrettably, Ben moved away from Washington, DC for personal reasons and therefore resigned his position on June 5, 2015. I thank Ben for a job very well done. His departure is a loss to me and to the Commission.

The Commission is looking for a replacement to work in the its headquarters office in Washington, D.C. Job duties are not yet settled and may differ from those Ben had. We prefer an attorney, but this is not required. Interested persons with state tax experience and either management experience or management potential are invited to contact Thomas Shimkin at (202) 695-8139.

Meeting Schedule

The next meeting of the Nexus Committee will be on December 9, 2015 at the Doubletree by Hilton Hotel, 181 Church Street, Charleston, South Carolina.

Nexus School

Nexus staff taught schools in:

- Little Rock on September 15 -16, 2014,

- Trenton on November 13 - 14, 2014,
- Prattville (near Montgomery) on February 2 - 3, 2015.

No Nexus Schools are currently scheduled. Please contact Director of Training Ken Beier at (202) 650-1983 if your state is interested in hosting a school.

Outreach Speaking Engagements

Staff member Ben Abalos made a presentation at a Vertex conference in New Orleans on October 27, 2014. He gave an overview of the Multistate Tax Commission's activities with a focus on the National Nexus Program.

Nexus Director Shimkin co-presented a webinar with Fred Nicely of the Committee on State Taxation (COST) on a Bloomberg BNA survey of state nexus policies on May 1, 2015.

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 or Nexus@mtc.gov or (202) 695-8140."

Updates on Nexus Law

This section discusses some of the major events in nexus in FY 2015, but with additional information through late July 2015 due to major events just after the close of FY 2015.

U.S. Supreme Court

Direct Marketing Association v. Brohl, 135 S. Ct. 1124, 191 L.Ed.2d 97 (2015)

Details:

The U.S. Supreme Court unanimously held that Colorado’s law respecting vendor reporting of sales made to Colorado residents for the purpose of enforcing use tax collection was not barred from litigation in federal courts merely on account of the U.S. Tax Injunction Act.

Significance:

This case concerned jurisdiction of the federal courts under the Tax Injunction Act. Nexus is not at issue. However, Justice Kennedy wrote a strongly worded concurrence in *DMA* stating that it was time to revisit *National Bellas Hess* and *Quill* due to “dramatic technological and social changes” since they were decided. He pointed out that *Quill* was decided in part because of stare decisis, which should not prevent review when circumstances dramatically change. He also pointed out that *Complete Auto Transit*, which preceded *Quill* by five years, has a four-prong test to validate taxes on interstate commerce. He concluded, “The legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*”.

Justice Kennedy’s concurrence is dicta (binding on nothing because it does not address the case at hand), but it is very important because it may encourage a challenge to *National Bellas Hess* and *Quill*. It certainly indicates that an overturning of *Quill* will likely have at least one vote on the Court. The fact that no other justice addressed Justice Kennedy’s concurrence may indicate an open-mindedness about the issue.

Challenging *NBH* and *Quill*

There has been discussion in the state-tax community about the prospects of a state accepting Justice Kennedy’s invitation to bring a case to test *NBH* and *Quill*. There are many issues that such a state should address before doing so, including:

1. Legislation would be needed that specifically exceeds the nexus limit of *NBH* and *Quill*. Regulation would be insufficient. Currently there

is not a state statute that authorizes a department of revenue to issue a regulation that violates the *NBH/Quill* rule. A court considering a challenge to a regulation that does violate this rule would likely resolve the matter on statutory grounds and not get to the constitutional issue. In other words, the court would simply hold that the regulation is not authorized by statute and strike it for that reason alone. Courts usually avoid getting to a constitutional issue when a simpler way to resolve the case exists. A statute directly violative of *NBH/Quill* is necessary. It must clearly exceed the constitutional limit of *NBH/Quill*.

2. A second reason that a statute is necessary is that it allows a party that would be affected by the statute to bring a facial challenge – the party would have sufficient standing based on the statute to challenge it without the revenue department having to go through the audit, assessment, administrative appeal procedure first. Unlike a facial challenge to a statute, the audit, assessment, administrative appeal procedure requires that the department choose a specific taxpayer to audit and put through the process. That taxpayer would bear the entire burden of litigating the *NBH/Quill* rule, likely up to the U.S. Supreme Court. A facial challenge to a statute would allow an affected party, such as a trade association, to bring the suit and so spread the costs. DMA served that function in the Colorado case concerning the statute that required out of state vendors to either collect tax or report sales to the department.

ConAgra Brands Inc. v. Comptroller of the Treasury, 09-IN-OO-0150 (Md. Tax Ct., Feb. 24, 2015).

Significance:

This is the first case since *Gore Enterprise Holdings, Inc. v. Comptroller of the Treasury*, 87 A.3d 1263 (Md. 2014) that tests Gore's holding that an intangible holding company that licenses intellectual property for use in Maryland has nexus there when it lacks economic substance apart from its in-state parents.

The Tax Court used unitary-business factors (e.g., centralized management and flow of value), as one of its standards to measure whether the holding company had nexus through the in-state activities of its parent. This would be a contradiction or expansion of the *Gore* rule that unitary business factors may be considered to determine whether a company has economic substance, but may not be considered with respect to establishing nexus. This element of the case has disturbed some multistate practitioners.

There has been no appeal or additional activity regarding this case.

Details:

ConAgra Brands was an intangible holding company located outside Maryland that licensed intangibles to various operating companies that did business in Maryland. The Tax Court ruled that the holding company lacked economic substance as an entity separate from its in-state parent. The Court pointed out that the holding company uses the parent's legal services, information services, and treasury services; that there was a circular flow of funds between them; and that some of the parent's corporate executives also worked for the IP holding company. The Court concluded that the IP holding company could not have conducted business without the parent's centralized services.

Federal Legislation

The U.S. House Judiciary Committee continues to fibrillate with versions of the **Online Sales Simplification Act of 2015**, which is being floated about by Judiciary Committee Chairman Goodlatte, but not introduced. The National Conference of State Legislatures (NCSL) wrote a sternly-worded letter on January 26, 2015 to Speaker John Boehner arguing against the draft Online Simplification Act. The letter complained the potential Act would use a hybrid origin-sourcing method to tax remote sales, which would unfairly source sales to the state of the seller and pave a highway to tax avoidance. The letter also stated that Chairman Goodlatte was

ignoring input from states and not working in good faith. The principal problem with Chairman Goodlatte's test-balloon bill is that it would source sales to the state of the vendor. The vendor would be required to collect the sales/use tax only of its own state, not the state of the buyer. Chairman Goodlatte has been quoted to say that he opposes on federalism grounds a state extending its jurisdiction to another state through a use-tax collection requirement. The chairman's arrangement would encourage vendors to locate in one of the five states that do not have general state sales/use taxes (Oregon, Delaware, Alaska, Montana, and New Hampshire) and thereby deprive all the other states of taxes from sales made to their residents.

Judiciary Committee member Jason Chaffetz, who also chairs the House Oversight & Government Reform Committee, introduced H.R. 2775, the **Remote Transactions Parity Act of 2015**, on June 15, 2015. He intends it to be a compromise that will garner more support than Chairman Goodlatte's draft bill. The bill was assigned to the Judiciary Committee, where Chairman Goodlatte has duct-taped the doors, windows, and vents to prevent its escape. It would authorize states that are members of the Streamlined Sales and Use Tax Agreement to institute a phased-in requirement that remote vendors collect their use taxes. The bill allows non-members of SSUTA to also require remote vendors to collect if the state simplifies its use tax law per the requirements of the bill. All remote vendors, regardless of gross receipts, would be required to collect and remit if they "utilize an electronic marketplace for the purpose of making products or services available for sale to the public." After full phase-in in the year third calendar year after following the effective date, remote vendors would be exempt only if they have one million or fewer dollars of gross annual receipts in the immediately preceding year. There is talk that Representative Chaffetz may seek to bring the bill to the House floor without Judiciary Committee approval.

Senators Enzi, Durbin, Alexander, and Heitkamp, the core group of U.S. senators who introduced the **Marketplace Fairness Act of 2013** (MFA), along with a number of other senators, praised Representative Chaffetz' bill in separate statements. There is no Senate companion to the Chaffetz bill.

Senator Enzi introduced the **Marketplace Fairness Act** (S. 698) on March 10, 2015. Leadership referred it to the Committee on Finance, where it has lain listless since. The focus of action is on Representative Chaffetz' bill.

The House Judiciary Committee approved the **Mobile Workforce Sales Tax Simplification Act of 2015** (H.R. 2315) on June 17, 2015. This bill would prohibit a state from taxing the income of a person who spends

fewer than thirty days in a state. Introduced first in 2006, the House passed the bill in 2012 by voice vote.

The Judiciary Committee also approved the **Business Activity Tax Simplification Act of 2015** (BATSA) (H.R. 2315) on June 17, 2015. A perennial of the House since 2003 in one version or another, it has never been approved, although it did make it to the House floor in 2006. The bill's supporters state that it would update P.L. 86-272 to apply to services and intangibles, and create a bright-line physical presence rule for nexus. It would abruptly stop the sprightly march of states toward economic nexus rules for business activity taxes. In addition, it has numerous exceptions to the bright-line physical presence rule, which many state observers believe will add to taxpayers' ability to reduce BAT liability through planning. The bill is unlikely to reach the floor as a stand-alone, but it might be attached to another bill, such as the Remote Transactions Parity Act.

MTC Model-Statute Action

Sales and Use Tax Model Nexus Statute.

The model gives guidance about what creates nexus and contains a New York style click-through nexus provision. It is currently before the Uniformity Committee for further consideration.

Background:

This project began in 2011. The initial goal was to draft a model "click-through" nexus provision patterned after New York's 2009 law. In 2012, the project was expanded to cover nexus generally. The draft has gone through substantial changes in the last four years. Two drafts have previously been presented to the Uniformity Committee. This year the drafting group addressed changes recommended by the Committee, conformed the style and wording to the Uniform Law Commission drafting rules, and considered the results of the BNA nexus survey of the states, including the issue of "trailing nexus". The draft still contains the original click-through nexus provision.

State Legislative & Administrative Action

Connecticut Governor Dan Malloy signed S.B. 1502 into law on June 30, 2015. Among other things, it delays implementation of combined reporting in the state for one year.

The **Florida** Supreme Court scheduled oral argument for November 5, 2015 in *American Business USA Corp. v. Dep't of Revenue*. American Business is unarguably physically present in Florida and conducts in Florida all its activities related to drop-shipped sales to buyers in other states. It also unarguably does not have physical presence in the states in which the buyers

at issue are located. Normally, the state of the buyer would require use tax from the buyer and wish that the Florida company would collect it; and normally the Florida company would not be required to collect it when it has no physical presence there. In a noteworthy twist, here the department asserts that sales made by American Business to customers in these other states are subject to Florida's sales tax, taking the uncommon stance that the sale takes place in Florida. Should this view prevail, a buyer in another state to which American Business has no nexus may be subject to both Florida's sales tax (the sale takes place in Florida) and the use tax of his or her home state (the use takes place in that state).

Louisiana Governor Jindal vetoed HB 555, which would have created the rebuttable presumption that any person referring more than \$50,000 in sales to an out-of-state vendor creates nexus for the out-of-state vendor. The bill contained other nexus provisions as well.

Louisiana Dep't of Revenue promulgated LAC 61:III.2103 based on authorizing legislation enacted in 2014. The rule sets forth the legal authorization to enter into voluntary disclosure agreements and provides rules governing the process. The rule was drafted to mesh well with the Commission's multistate voluntary disclosure service. For example, tax returns, signed contracts, and payments are due in accordance with the policies of the Commission when the disclosure came through the Commission.

Michigan S.B. 0658 (Public Act 553 of 2014) and S.B. 0659 collectively amend the state's sales and use tax laws to establish activities which create nexus for an out of state entity when performed by an in-state representative. The Acts become effective on October 1, 2015.

New York State Guidance on Nexus for Use Tax: Tax Bulletin ST-913 (TB-ST-913) (January 26, 2015) gives exhaustive guidance on when use tax is owed. It has examples of use-tax nexus, explains how to file, treats related issues, and has links to related documents.

Ohio enacted S.B. 30, the state budget, that included New York style click-through nexus legislation with a \$10,000 de minimis threshold. Interestingly, Governor Kasich line-item vetoed similar legislation from the state budget two years ago.

The **Ohio** Supreme Court ordered back to its docket the Board of Tax Appeals decision in *Mason Cos. Inc. v. Testa*. Mason Companies contended (correctly – it sold shoes remotely from Wisconsin) that it had no physical presence in Ohio and that therefore the Commerce Clause and Due Process Clause prohibited the state from applying its commercial activity tax (CAT), which is a gross receipts tax. Ohio applied the MTC's Factor Presence Nexus Standard to its CAT. Many states have adopted the Factor Presence Nexus Standard for income/franchise tax use. Mason exceeded the \$500,000 de minimis threshold for sales (no physical presence required). The Board ruled for the

state on statutory grounds alone. The Board declined to consider the constitutional arguments because it did not believe it had authority to do so. The Ohio Supreme Court ordered the parties to submit briefs. This case could be a vehicle to challenge *Quill*. It may not be the best vehicle because, while the CAT is close to a use tax, it is not one, and so may be distinguished from the use tax at issue in *Quill*.

Tennessee Notice 15-12, authorized by S. 603 and H.B. 644, Public Chapter 514, explains the click-through nexus portion of the statute:

A dealer that makes sales of tangible personal property or services in Tennessee is presumed to have a substantial nexus with this state, and it is required to collect and remit sales and use tax on all of its taxable sales in Tennessee if both of the following conditions are met:

- The dealer enters into an agreement or contract with one or more people located in Tennessee under which, for consideration, the person refers potential customers to the dealer, by link on an Internet Web site or other means.
- The cumulative gross receipts from retail sales by the dealer to customers in Tennessee as a result of referrals to the dealer by all of the dealer's resident representatives under the type of agreement or contract described above total more than \$10,000 during the preceding 12 months.

Public chapter 514 also:

- Asserts nexus to the full extent of the U.S. Constitution
- creates rule establishing click-through nexus with a rebuttable presumption (sect. 27),
- adopts the Commission's Factor Presence Nexus Standard,
- triple-weights the sales factor,
- establishes market-based sourcing of sales of intangibles.
- SB 603 by Norris/ HB 644 by McCormick - Revenue Modernization Act

Nevada – the governor signed into law AB 336 as Chapter 219 (2015) on May 27, 2015. It is a click-through nexus law based on the New York model. Remote vendors with sales during the previous four quarterly periods that do not exceed \$10,000 are exempt. It also copies a Colorado law whereby any affiliate status between a remote retailer and a Nevada company that "engages in certain activities in [the state] that relate to the ability of the retailer to make retail sales to residents" creates physical presence for use-tax collection purposes.

Texas amended Rule 3.286 to end trailing nexus. The amended rule states that an out-of-state seller ceases to have nexus with Texas when the seller no longer engages, and no longer intends to engage, in activities that would create nexus with the. For example, annual sales at a trade show is sufficient to retain nexus for the year between trade shows. But sales at three annual trade

shows and then stopping for several years, or otherwise demonstrating the intent to not return, instantaneously ceases nexus. The Comptroller relied on his interpretation of *Quill*.

Washington Dep't of Revenue, Appeals Division, upheld nexus on out-of-state web-hosting company under RCW 82.04.067. The Division held that an out-of-state web hosting company that had more than \$250,000 in total service-taxable receipts in Washington had substantial nexus with Washington.

Washington's legislature failed to pass click-through nexus legislation a la New York style. At the request of the Dep't of Revenue, legislators introduced S.B. 5541 and H.B. 1678, companion bills to establish click-through nexus. Each bill received a committee hearing and never again saw daylight. The legislature adjourned sine die on July 10, 2015.

APPENDIX

Report from Nexus Membership Project Team

July 8, 2015

To

MTC Nexus Committee

and

MTC Strategic Planning Steering Committee

Background

At the recommendation of the Nexus Committee, the MTC Strategic Planning Steering Committee approved a project to identify the barriers to state membership in the National Nexus Program and propose solutions to remove those barriers. The project included identifying the program characteristics that attract states to become members. The project team started its work in fall 2014 and concluded in May 2015. This report describes our findings and conclusions, and makes recommendations concerning possible next steps to be taken.

Project Description

Problem: There are currently 14 states that are not members of the National Nexus Program*. The National Nexus Program has goals related to the vitality and reputation of the program and engagement of the states. These goals can be achieved by attracting as many of these states as possible to join the program.

Risks: When a significant number of states are not members of the National Nexus Program, member and non-member states alike lose the opportunity to work together to address nexus issues; and there is a higher risk of inconsistent administration of nexus standards. In addition, the program cannot provide voluntary disclosure services to taxpayers with respect to non-member states, which interferes with the Commission's vision to be the leading resource for ensuring equitable tax compliance.

Expected outcomes: The project goals were -

- List the specific barriers to state membership in the National Nexus Program.
- List the specific benefits of membership in the National Nexus Program.
- Recommend steps that can be taken to overcome barriers.
- Recommend enhancements to current benefits or services to make the program more attractive to states.
- Recommend steps for marketing the National Nexus Program to non-member states.

*The non-participating states are:

Alaska, California SBE, California FTB, Wyoming, Maine, Rhode Island and Ohio, all of which participated in the past.

Delaware, Illinois, Indiana, Mississippi, Nevada, New York, Pennsylvania and Virginia, which have never participated.

Process

We gathered information through surveys of states that are not currently participating in the National Nexus Program. We were able to complete surveys for five non-participating states. Three of those had participated in the National Nexus Program in the past, two had never participated.

We also gathered information through an e-mail survey and general discussion with states that are currently members of the National Nexus Program. We got feedback from about a dozen member states on the benefits they receive from their membership and the aspects of the program that they value the most.

Results

Barriers to Participation

We drew the following conclusions from our conversations with states that are not currently participating in the National Nexus Program:

- Those states are more familiar with the multistate voluntary disclosure program than with other activities of the National Nexus Program.
- State budget priorities are often a primary driver in the decision whether to participate
- Persistent lack of significant revenue from the multistate voluntary disclosure program by some states is also a significant driver in the decision whether or not to participate.
- If a state has only one major tax (sales or income), information sharing is likely to be perceived as being less useful.
- Two states have inquired about participating while we were conducting this project. One has already committed to join the National Nexus Program.

From these surveys, we conclude that the barriers to participation are primarily related to financial considerations. States that do not participate do not see a sufficient benefit to justify their cost. Since we were unable to make contact with a majority of the non-participating states, we cannot draw any conclusions about other reasons for their failure to participate.

Benefits of Participation

In our conversations with states that currently participate in the National Nexus Program we learned that those states place the highest value on the multistate voluntary disclosure program and the nexus training program. States that are currently participating also would like to see more outreach to taxpayers and practitioners about the multistate voluntary disclosure program; and more information sharing among the states about legal developments, audit results, and best practices for taxpayer discovery and developing leads.

Recommendations

The project team offers the following recommendations, based on the information available from the states we heard from:

- The National Nexus Program would benefit from additional marketing activity. We specifically suggest that:
 - The MTC Strategic Planning Steering Committee consider extending the MTC outreach program to states that do not currently participate in the commission and highlight the benefits of the National Nexus Program when contacting those states.
 - The National Nexus Program Director identify non-participating states that have taken advantage of the nexus schools in recent years, and follow up with those states about possible membership in the National Nexus Program.
 - The National Nexus Program Director and the chair of the Nexus Committee look for opportunities to partner with FTA and regional state tax associations to share information about National Nexus Program activities.
- We recommend that the MTC Executive Committee consider developing a phased-in fee structure for states joining National Nexus Program, similar to the approach used in the Multistate Joint Audit Program.
- We defer making any recommendations about the Multistate Voluntary Disclosure Program to the project team that is looking at that program area.
- We recommend that the Nexus training program be expanded. We recognize that additional training activity would require additional resources or a shifting of existing resources.
- We recommend that the National Nexus Program Director provide regular updates on legal developments to the states at Nexus Committee meetings. (Note: just before the development of this recommendation, the National Nexus Program Director had initiated this activity.)
- We recommend that the Nexus Committee consider sponsoring a project to develop better tools for information sharing among the states on taxpayer discovery, audit results and developing leads.

Respectfully submitted,

Nexus Membership Project Team

Christy Vandevender, Alabama
 Deanna Munds-Smith, Arkansas
 Janice McGee, New Mexico
 Gene Walborn, Montana
 Thomas Shimkin, MTC
 Lennie Collins, ex officio

Multistate Voluntary Disclosure Improvement Team
Progress Report to
Nexus Committee and Strategic Planning Steering Committee
July 27, 2015

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 progress to date, and recommends that the project team continue to work on the project until the December Nexus Committee meeting.

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 three 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. We were looking for stages in the process where significant amounts of time elapsed between steps, causing the overall process to be delayed.

Initial Findings

The Multistate Voluntary Disclosure process involves eight 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.

The stages at which delays are most likely to occur are those in which the taxpayer or the states must take some action. The team has not had time to do further research on the causes for these delays. The team cannot make recommendations for process improvement without further work. Also, further review of the entire process may reveal other opportunities to shorten the overall time for the process to be completed.

Recommendation to Continue Project

This project was scheduled to be concluded by July 1. The project team recommends that the project completion date be extended until the December meeting of the Nexus Committee. This extension will give the project team sufficient time to do further research and develop effective recommendations.

Respectfully submitted,

Multistate Voluntary Disclosure Improvement Team

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