

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 penalty¹ 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).

¹ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees*.

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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 or by request from the staff of the National Nexus Program.

5. Duties of MTC 00-00²

² 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 Subsection 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 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 **GEORGIA SALES and USE (AND WITHHOLDING) TAX** only, add new Subsection 5.1.3.1. that reads:

- 5.1.3.1. *the Georgia sales and use tax (withholding tax) registration number, after [MTC XX-XXX] has registered online, effective the first day of the month following [MTC XX-XXX]'s acceptance of this Agreement; and*

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.*

- 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 penalty³, 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. Penalty⁴ is not due unless required per the State Signature Page.
- 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 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

For **MISSOURI INCOME/FRANCHISE TAX** only, 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.*

³ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees.*

⁴ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees.*

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,⁵ [Signatory State] waives all penalty⁶ 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 penalty⁷ 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:

6.3.1. To not assess [Tax Type] and interest thereon attributable to any time period prior to [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

⁵ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees*.

⁶ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees*.

⁷ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees*.

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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.

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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

retain all tax, interest, and penalty⁸ (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.

⁸ With respect to **DISTRICT OF COLUMBIA** only, add: *and fees*.

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STATE SIGNATURE PAGE

[Signatory State] enters into this Agreement:

By: _____

Name: _____

Title: _____

Date: _____

Please note any non-waivable penalty⁹ 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.

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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: _____

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MTC 00-00 SIGNATURE PAGE

MTC 00-00 Name: _____

Mailing Address: _____

FEIN: _____

MTC 00-00 enters into this Agreement:

By: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT 1

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.

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EXHIBIT 2

STATEMENT OF REPRESENTATIONS AND INDUCEMENTS