



444 North Capitol St., NW
Suite 425
Washington, DC 20001-1538
Telephone: 202.650.0300

www.mtc.gov

October 12, 2017 9:00 am EDT

ONLINE MARKETPLACE SELLER VOLUNTARY DISCLOSURE INITIATIVE

NOTICE: AT ITS OCTOBER 11, 2017 MEETING, THE NEXUS COMMITTEE EXTENDED THE APPLICATION DEADLINE TO NOVEMBER 1, 2017 AND MADE CHANGES TO THE INITIATIVE, AS SHOWN BELOW WITH STRIKE-THROUGH LINES ON DELETED LANGUAGE AND ITALICIZED ADDED LANGUAGE.

The Multistate Tax Commission National Nexus Program is offering a special limited-time voluntary disclosure initiative (described below), in which the following states are participating:

Alabama, Arkansas, Colorado¹, Connecticut, District of Columbia², Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts³, Minnesota⁴, Missouri, Nebraska⁵, New Jersey, North Carolina, Oklahoma, Rhode Island, South Dakota⁶, Tennessee⁷, Texas, Utah, Vermont, and Wisconsin⁸.

¹Colorado will not assess any back tax liability for uncollected sales/use tax. Colorado agrees not to assess income tax for the time period prior to its four-year lookback period. Income tax due for the tax years included in its four-year lookback period, plus interest, must be paid. Colorado notes that it already has a small seller income tax nexus exception for sales less than \$500,000 into the state.

²D.C.'s standard lookback period is 3 years for sales/use and income/franchise tax. D.C. will consider granting shorter or no lookback period for applications received under this initiative.

³Massachusetts requires compliance with its standard 3-year lookback period; this lookback period in a particular case may be less than 3 years, depending on when vendor nexus was created. Massachusetts also requires that vendors register, file and pay electronically through Mass Tax Connect, https://mtc.dor.state.ma.us/mtc/_/, in compliance with TIR 16-9, <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-9.html>.

⁴Minnesota's customary lookback period is 3 years for sales/use tax and 4 years (3 look-back years and 1 current year) for income/franchise tax. Minnesota will grant shorter lookback periods to the time when the marketplace seller created nexus.

⁵Nebraska will consider waiving back tax liability for uncollected sales/use tax and income tax.

⁶South Dakota imposes sales/use tax but does not impose income tax.

⁷Tennessee's business tax, as well as sales/use tax and franchise and excise tax, are included in this initiative.

⁸Wisconsin will require payment of back tax and interest for a lookback period commencing January 1, 2015 for sales/use tax, and including the prior tax years of 2015 and 2016 for income/franchise tax.

The States listed above will consider applications for voluntary disclosure received by Multistate Tax Commission (MTC) staff during the time period **August 17, 2017 through ~~November 1~~ October 17, 2017** from taxpayers meeting the following eligibility criteria:

1. The taxpayer has not yet registered with the state taxing authority, filed returns with such state for the tax type that the taxpayer is seeking voluntary disclosure relief for (sales/use tax, income/franchise tax, or both), made payments of such taxes to, or had any other prior contact with the state concerning liability or potential liability for such tax type.

Note: North Carolina will consider an application by an online marketplace seller to participate in the initiative that has received prior contact concerning tax liability or potential tax liability.

2. The taxpayer is an online marketplace seller using a marketplace provider/facilitator (such as the Amazon FBA program or similar platform or program) to facilitate retail sales into the state and represents that it does not have any nexus-creating contacts in the state, except for the online marketplace seller's inventory stored in a third-party warehouse or fulfillment center located in the state or other nexus-creating activities performed by the marketplace provider/facilitator on behalf of the online marketplace seller in the state. A "marketplace provider/facilitator" is a person who facilitates a retail sale by an online marketplace seller by (1) listing or advertising for sale by the online marketplace seller on a website, tangible personal property, services, or digital goods that are subject to sales/use tax; (2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the online marketplace seller; and provides fulfillment services (including sortation services) to the online marketplace seller.
3. The taxpayer has timely applied electronically (using either the online application provided on the MTC website at www.mtc.gov or MTC pdf application form available on the MTC website and emailed to MTC staff at email address nexus@mtc.gov) to the state for voluntary disclosure relief through the MTC Multistate Voluntary Disclosure Program (MVDP), in accordance with the process set forth at <http://www.mtc.gov/Nexus-Program/Multistate-Voluntary-Disclosure-Program>. **The taxpayer will need**

to state in the application that the taxpayer is applying for voluntary disclosure relief under this initiative and provide complete and accurate disclosure of the information requested, which will be used to establish eligibility.

Note: The application form requests that the applicant provide an estimate of back tax liability to the state for the prior 4 years and contains the statement: “National Nexus Program staff will not process an application when the good-faith estimate for all tax-types for the look-back period is less than \$500 in this state.” Please be advised that applications received under this special time-limited online marketplace seller voluntary disclosure initiative will be processed, even when estimated back tax liability is less than \$500. Also, response times permitted in this initiative may be shorter than those provided in the MTC Procedures for Voluntary Disclosure, in order to ensure that the taxpayer timely complies with Paragraph 4 below.

4. The taxpayer is seeking relief from any past due sales/use tax, including interest and penalties, and if applicable, income/franchise tax liability, including interest and penalties, in connection with its online retail sales activity in the state, except for sales/use tax collected but not remitted, with the taxpayer agreeing to register as a seller or retailer with the state and timely collect, report and remit sales/use tax and file returns on all taxable retail sales to customers in the state prospectively as of the effective date (~~not later than December 1, 2017, or not later than 30 days after the taxpayer has received notice that the state has signed the voluntary disclosure agreement, whichever date is later~~ *taxpayers are encouraged to commence collection and remittance of sales/use tax prior to that date*) of the voluntary disclosure agreement. *Taxpayers are encouraged to register with the state and commence collection and remittance of sales/use tax as soon as possible after the state has signed the voluntary disclosure agreement and prior to December 1, 2017.* If subject to income/franchise tax, the taxpayer further agrees to timely file income/franchise returns and pay such taxes due, commencing with the tax year including the effective date (~~not later than December 1, 2017, or not later than 30 days after the taxpayer has received notice that the state has signed the voluntary disclosure agreement, whichever date is later~~) of the voluntary disclosure agreement. If

the taxpayer has any collected but unremitted sales/use tax, then the taxpayer agrees to remit such tax to the state, including penalties and interest.

Note: States will not waive tax, penalties or interest on collected but unremitted taxes.

As provided in the MTC Procedures of Multistate Voluntary Disclosure, a taxpayer can apply to a state for voluntary disclosure anonymously and will not be required to disclose its identity to the state until the taxpayer registers with the state and the voluntary disclosure agreement is executed. The taxpayer may choose which state and which tax type (sales/use tax, income/franchise tax or both) to seek voluntary disclosure relief for. The taxpayer can also withdraw the application for voluntary disclosure with any state at any time prior to execution of the voluntary disclosure agreement.

Normally, when a taxpayer applies for voluntary disclosure relief with states through the MTC MVDP, the taxpayer will be required to file returns and pay back tax liability, plus interest, for the lookback period that the state uses, which is generally the prior three to four years or more, depending on the state's law or policy. The state will then waive tax liability, interest and penalties for the time period prior to the lookback period. Under the special time-limited initiative described above, for taxpayers meeting the above criteria, the states identified above (unless otherwise indicated) will agree to waive sales/use and income/franchise back tax liability, including penalties and interest, for prior tax periods, without regard to any lookback period, provided the taxpayer registers as a seller or retailer to collect, report and remit sales/use tax and commences to file sales/use tax returns and remit sales/use tax as of the effective date (~~not later than~~ **December 1, 2017, or not later than 30 days after the taxpayer has received notice that the state has signed the voluntary disclosure agreement, whichever date is later**) set forth in the voluntary disclosure agreement, and if the taxpayer is subject to income/franchise tax, the taxpayer commences filing income/franchise tax returns and paying tax due, commencing with the tax year that includes the effective date of the voluntary disclosure agreement (~~not later than~~ **December 1, 2017, or not later than 30 days after the taxpayer has received notice that the state has signed the voluntary disclosure agreement, whichever date is later**).

Note: See footnotes for Colorado, D.C., Massachusetts, Minnesota, and Wisconsin. Colorado will provide back tax liability relief for sales/use tax, but will require payment of back tax liability and interest for a 4-year lookback period for income/franchise tax. D.C. will consider granting

shorter or no lookback period for applications received under this initiative on a case by case basis. Massachusetts requires compliance with its standard 3-year lookback period; this lookback period in a particular case may be less than 3 years, depending on when vendor nexus was created. Minnesota's customary lookback period is 3 years for sales/use tax and 4 years (3 look-back years and 1 current year) for income/franchise tax. Minnesota will grant shorter lookback periods to the time when the marketplace seller created nexus. Wisconsin will require payment of back tax liability and interest for the following lookback periods: for sale/use tax, commencing January 1, 2015; for income/franchise tax, including tax years 2015 and 2016. The Wisconsin lookback period will be limited to prior years during which the marketplace seller had nexus.

The States participating in this special time-limited voluntary disclosure initiative have agreed not to disclose to other taxing jurisdictions the identity of any taxpayer entering into a voluntary disclosure agreement under this special time-limited initiative, except as required by law, pursuant to a court order, or in response to an inter-government exchange of information agreement in which the requesting entity provides the taxpayer's name and taxpayer identification number. Blanket requests from other jurisdictions for the identity of such taxpayers will not be honored.