**MINUTES**

**MTC Nexus Committee Meeting**
**Minneapolis Marriott City Center**
**Minneapolis, Minnesota**
**July 31, 2007**
**9:00 a.m. – Noon CDT**

*Italicized text indicates a significant vote, committee action, or follow up item.*

## Public Session

### I. Welcome and Introductions

AL Michael Mason
AR Danny Walker
AR Tom Atchley
COST Beth Cooley
COST Steve Kranz
CT Joe Thomas
CT John Kutsukos
DC Charles Wilson
DC Willock Harding
GA Anita DeGumbia
GA Ed Many
HI Tu Pham
IA Margaret Schilling
ID Randy Tilley
ID Reva Tisdale
KS Bryan Vargas
LA Julius Cline, Jr.
LA Peggy McKinley
MN Bill Lindsay
MN Cathy Wicks
MN Keith Getschel
MN Larry Wilkie
MN Ruth Vegdahl
MT Lee Baerlocher
MT Eugene Walborn
MTC Thomas Shimkin
NC Lennie Collins
ND Blane Braunberger
ND Mary Loftsgard

NH Chuck Redfern
NJ Lee Evans
NJ Rich Schrader
NM Heidi Chowning
NM Rebecca Abbo
OK Robert Thompson
OR Eric Smith
OR Janielle Lipscomb
SC John Rogers
SC Joy Causey
SC Tim Donovan
TX Chris Heath
TX Hermi Nanez
TX Rusty Johnson
UT Frank Hales
UT Rod Marrelli
WA Mike Grundhoffer
WI Rick DeBano
WV Andrew Glancey
WV Mark Morton
WY Rick Scheer

## II. Public Comment Period

No member of the public commented.

## III. Review of Agenda

The committee approved the agenda.

## IV. Review of Nexus Committee Open Session Minutes from the March 22, 2007 meeting in San Diego, California.

Upon proper motion and second, the committee approved the minutes of the March 22, 2007 Nexus Committee meeting with the following corrections to the attendance: The spelling and affiliation of MTC employee Bruce Fort was corrected; it was noted that no representative of North Dakota attended the March 22, 2007 meeting; and that Rusty Johnson of Texas had attended the November 7, 2006 meeting in St. Louis, Missouri (this last item had been omitted from the corrections to the November 7 minutes).

## V. Nexus Staff Reports & Committee Actions

**Voluntary Disclosures**

Mr. Shimkin delivered a status report on the multi-state voluntary disclosure program. He stated that the program collected $1.7 million across all participating states in the second quarter of 2007, and $11.9 million for the fiscal year ended June 30, 2007. He

explained that due to labor market conditions there has been considerable turn-over among Commission paralegals working on voluntary disclosures.

A member of the committee raised the issue of the timeliness of voluntary disclosure processing. Mr. Shimkin said that he was familiar with the taxpayer representative who had conveyed his concern about this to several committee members and that the Commission has dedicated an unusually large amount of resources to meet this taxpayer's needs both before and after he expressed his concern to committee members. Mr. Shimkin noted that while he believed the delay with respect to this taxpayer was an isolated incident, he would nevertheless *carefully examine the Commission's voluntary disclosure records to determine whether disclosures are being timely processed and whether any improvements need to be made to the Commission's procedures.*

**Nexus School**

Antonio Soto delivered a report about the status of recent and future Nexus Schools.

**Litigation**

Mr. Mark Morton, general counsel of the West Virginia State Tax Department, updated the committee on his state's recently won *FIA Card Services* (MBNA) before the West Virginia Supreme Court of Appeals. Mr. Morton said that this was a significant win for all states because it stands for the proposition that economic presence is sufficient to establish nexus for purposes of business activity taxes. He noted that the West Virginia legislature approved a combined filing statute effective in 2009, which eliminates the nexus language litigated in the case.

Mr. Lee Evans, chief of the Office Audit Branch of the New Jersey Department of the Treasury, updated the committee on his state's win before the New Jersey Supreme Court in the *Lanco* case.

Mr. Shimkin expressed his opinion that the U.S. Supreme Court's denial of certiorari in each case was a reaffirmation of the court's assertion in *Quill* that Commerce Clause nexus is a matter for the U.S. Congress rather than the courts.

Mr. Chuck Redfern (NH) informed the committee that his state recently approved legislation to establish an economic nexus standard.

## VI. Duration of Nexus

Mr. Shimkin explained that the duration nexus issue arises from a discussion at the March Nexus Committee meeting in which Mr. Evans suggested that the committee examine the possibility of developing guidance to auditors and others with respect to how long nexus lasts after discontinuation of contact. Mr. Shimkin noted that possible development of a uniform nexus standard is among the purposes of the Nexus Committee as set forth in its organizational plan and its subsequent charter.

Members of the committee who had attended the earlier Uniformity Income/Franchise Subcommittee meeting reported that that body voted to not take up the issue. Mr. Evans said that the issue is most problematic with respect to sales/use tax. Mr. Thomas said that Connecticut has not addressed the issue. Ms. Lipscomb wondered whether the Sales/Use Tax Subcommittee might show more interest than the Income/Franchise Subcommittee.

There was general discussion about the benefits of involving the Uniformity Committee or its subcommittees in the process. It was suggested that the Nexus Committee could serve, for this purpose only, as a subcommittee of Uniformity to develop the proposal and deliver it to the Uniformity Committee to go through the regular uniformity process, e.g., public hearings.

*Mr. Thomas asked committee members to vote whether the Nexus Committee should pursue the project notwithstanding lack of interest by the Sales/Use Tax Subcommittee. Nine voted aye and six voted nay. Mr. Thomas on behalf of the committee requested that staff open discussions with the Sales/Use Tax Subcommittee and report back.*

**VII. Purposes of the National Nexus Program**

Mr. Shimkin referred committee members to the Charter of the National Nexus Program in their materials and explained that this was approved by the Executive Committee some years ago as a foundational document for the program and the committee. Mr. Shimkin described the program's present activities, which consist chiefly of voluntary disclosures, and asked committee members whether this is conformity with their expectations in light of the Charter and their states' preferences. The committee consensus was that voluntary disclosure should continue to be the priority.

**VIII. Procedures of Voluntary Disclosure**

Mr. Shimkin next referred committee members to the draft voluntary disclosure procedure in their materials. He explained the need for written procedures to govern the Commission's voluntary disclosure program, namely that they improve due process for taxpayers by giving them notice of what to expect and they guide Commission staff when confronted with questions about taxpayer eligibility, confidentiality, et cetera. He noted that there are few written guidelines in place presently. Mr. Thomas confirmed that the procedures would apply only to voluntary disclosures pursued through the Commission and would not affect each state's separate voluntary disclosure program.

The committee consensus was to table the discussion to give committee members an opportunity to *review the draft procedures and submit comments to Mr. Shimkin, who will incorporate them into a revised draft for submission to the committee in advance of the next meeting.*

**IX. New Business**

Mr. Redfern said that the water's edge compromise between states and the federal government (and foreign nations) hammered out some years ago called for use of a fifty-one state spreadsheet and that states may wish to look at whether that agreement has been fulfilled. Mr. Redfern suggested that the Commission be a repository for these reports. Mr. Walborn suggested that the Commission's model legislation on the topic might serve this purpose. Mr. Getschel said that the Commission would have no power to require submission of fifty-one state spreadsheets absent a federal authorization. The committee decided to consider the matter and possibly bring it up for discussion at a later date.

**Adjournment**

The committee adjourned.