MULTISTATE TAX COMMISSION

**MINUTES**
**Nexus Committee Meeting**
**Hotel Monteleone**
**New Orleans, Louisiana**
**November 7, 2007**
**9:00 a.m. – Noon CDT**

*Italicized text indicates a vote, committee action, follow up item, or request by a committee member.*

## Public Session

I. Welcome and Introductions.

The following individuals were in attendance for all or part of the meeting:

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|---|---|---|---|---|---|
| Christy Vandevender | AL | Kathy Wicks | MN | Rebecca Abbo | NM |
| Mike Mason | AL | Lee Baerlocher | MT | Janielle Lipscomb | OR |
| Danny Walker | AR | Eugene Walborn | MT | Eric Smith | OR |
| Tammy Sorenson | CO | Joe Huddleston | MTC | Denice Houlette (telephone) | SD |
| Todd Lard | COST | Thomas Shimkin | MTC | Joan Cagle (telephone) | TN |
| John Kutsukos | CT | Ted Jutras | MTC | Hermi Nañez | TX |
| Charles Wilson | DC | Cathy Felix | MTC | Rod Marrelli | UT |
| Chester C. Cook | GA | Gene Marchuk | MTC | Bruce Johnson | UT |
| Reva Tisdale | ID | Steve Yang | MTC | Frank Hales | UT |
| Randy Tilley | ID | Dave Nowak | MTC | Shelly Robinson (telephone) | UT |
| Dan Hall | Il | Ken Beier | MTC | Mike Christensen (telephone) | UT |
| Richard Cram | KS | Harold Jennings | MTC | Jan Bianchi | WA |
| Carol Ireland | KS | Jeff Silver | MTC | Karolyn Bishop | WA |
| Charla Wagner | KS | Les Koenig | MTC | Kathy Oline | WA |
| Peggy McKinley | LA | Antonio Soto (telephone) | MTC | Rick DeBano | WI |
| Raymond Jay Frost | LA | Lennie Collins | NC | Andrew Glancy | WV |
| Kurt Van Brocklin | LA | M. Loftsgard | ND | Rick Scheer | WY |
| Pam Fair | LA | Lee Evans (telephone | NJ | | |
| Dan Pavur | LA | Heidi Chowning | NM | | |
| Johnette Martin | LA | Dan Armen | NM | | |

II. Public Comment Period:

There were no comments from the public.

Mr. Huddleston gave a quick update to the committee on news related to the MTC in general. He said that FIN-48 is a profound force for change in the tax world. The voluntary disclosure program in particular is well positioned to provide states and taxpayers the services they will need as a result of FIN 48.

III. Review of Agenda

After one spelling correction, there was a motion to approve the open minutes of the July 2007 meeting. The motion was seconded, and then approved.

The committee approved the agenda.

IV. Voluntary Disclosure Program – Financial Update

Mr. Shimkin presented the committee with an update on the financial results of the voluntary disclosure program for the 3rd Quarter of 2007: one hundred contracts signed and $3.2 million revenue collected. For fiscal year 2007 (ending June 30, 2007), Mr. Shimkin told the committee that the Commission had assisted the execution of three hundred seventy-nine contracts and collected revenue of $11.9 million. Mr. Shimkin stated that the trend over the past four years is clearly upward, despite short-term volatility in the most recent quarter and year. Mr. Shimkin pointed out that the revenue numbers usually increase slightly after being reported due to late-arriving data.

*Mary Loftsgard (ND) requested that reports showing recently-opened disclosure cases reveal the names of the participating states.*

*A request was made by a member of the committee for a breakdown of revenue by tax type in reports*

*Ms. Lipscomb asked that the number of cases, rather than the percentages, be used in each column of the documents labeled, "Breakdown of Outdated Files" and "Voluntary Disclosure Case Status, 2007", in any future versions.*

V. Voluntary Disclosure Program Timeliness Report

In response to questions from committee members about the timeliness of voluntary disclosure processing, Ted Jutras (MTC) explained a study that staff conducted to measure the timeliness of MTC, taxpayer, and state processing of voluntary disclosures. The report displayed a reduction in the number of cases that were inactive for longer than thirty days. As of the time the report was completed on October 28, 2007, the MTC was up to date on all cases.

*A member of the committee asked for a breakdown of the actual number of cases on the charts provided rather than percentages.*

VI. Nexus Program Survey

Thomas Shimkin of the MTC presented a proposed to survey to be sent out to taxpayers upon completion of the voluntary disclosure process. *Committee members made the following comments:*

- Number the questions to make them easier to reference.
- Define "NNP" as "National Nexus Program".
- Change the language to refer to "company/client" rather than just "client".
- Substitute "professional" for "pleasant" in a question asking taxpayers to describe the demeanor of the staff with whom they interacted.
- Weight questions and develop a system to derive an overall score.

- Re-word to read, was a response received “when expected” rather than was a response received within an “appropriate” time.

VII. Duration of Nexus Project

Both subcommittees of the Uniformity Committee having declined to join the Nexus Committee in development of guidance regarding the duration of nexus (how long it lasts after contact ceases), *the Nexus Committee voted 15 yea and none nay to table the project* after Mr. Evans, who had proposed the project, spoke in favor of tabling.

VIII. Voluntary Compliance Program

Thomas Shimkin (MTC) presented information about the Voluntary Compliance Program. The program involved 23 states and produced over $21 million in combined tax revenue for the states. Thirty-six of the approximately 7,200 individuals and entities that the Commission contacted came forward.

IX. Written Voluntary Disclosure Procedures

Thomas Shimkin presented a draft of written procedures for the voluntary disclosure program. Mr. Thomas proposed that the committee either put together a drafting committee or allow the MTC to proceed with the drafting process. A member of the committee suggested that the written procedures avoid any language that would serve as a deterrent to the taxpayers, such as overly detailed rules that could be viewed as a snare to the unwary. Several members expressed support for having written guidelines. A committee member was concerned about language suspending audit during voluntary disclosure; Mr. Shimkin explained that he would *review the wording to ensure that voluntary disclosure does not interfere with an audit commenced before commencement of the voluntary disclosure process.* Mr. Hall noted that his state revenue department shares some audit responsibility with the another state agency, which may limit the revenue department’s ability to affect an audit of a voluntary disclosant.
*By a seconded motion on a 19 to 0 vote, the committee approved the development of written guidelines for voluntary disclosure and directed staff to continue work on it.*

The consensus of the committee was that Commission staff should work with a drafting committee to help develop the guidelines. Mr. Thomas called for volunteers and *the following made themselves available*: Rod Marrelli (UT); Christy Vandevender (AL); Danny Walker (AR); Keith Getschel (MN); Deborah Underwood (LA); Reva Tisdale (ID).

*Committee members offered the following suggestions regarding language throughout section 12 of the draft agreement*:

- §13.1 of the guidelines should distinguish among tax types (a contact disqualifies from participation only with respect to the type of tax the communication addresses).

- §§5.1 and 13.1 define “contact” duplicatively, so one should be deleted.

The committee decided by consensus to postpone further consideration pending a report from the drafting committee.

X. New Business

A committee member suggested that the Commission organize a forum in which states may discuss issues related to economic nexus. The committee did not request follow up action.

Mr. Shimkin followed up on a suggestion from Ms. Lipscomb (OR) at the July 2007 meeting that the Commission organize a forum for states to discuss how to prioritize nexus leads, stating that it is his intention to have such a forum in conjunction with the March 2008 meeting. *The consensus of the committee was that staff should organize such a meeting in conjunction with the March 2008 Nexus Committee meeting.*

The consensus of the committee was that emailing meeting materials in lieu of the prior practice of mailing a binder of printed materials was acceptable.

*Chairman Thomas (CT) asked committee members to volunteer candidates to succeed him as chair of the Nexus Committee*, as it is his intention to resign the chairmanship before the March 2008 meeting. He noted that the chair of the Commission, presently Secretary Goodwin of New Mexico, will make the appointment.

XI. Closed Session

The committee entered closed session.

XI. Adjournment

The committee returned to open session and upon a seconded and approved motion adjourned.

MULTISTATE TAX COMMISSION

*Working together since 1967 to preserve federalism and tax fairness*

# Open Session
# Nexus Director's Report

## Voluntary Disclosure

The National Nexus Program continues to process voluntary disclosures apace. The dollar volume of back taxes collected varies substantially from year to year, but the trend line continues on a pleasing upward slope. We executed 437 contracts among 83 taxpayers in calendar year 2007. The average taxpayer applied to just over five states.

Total tax collections for calendar year 2007 were approximately $10 million, with just under $3 million collected in the fourth quarter. This compares to more than $14.2 million for calendar year 2006 and $4.7 million in calendar year 2005. These amounts include only payments for back liability that the Commission received and forwarded to the states. They generally do not include back interest or penalty and never include revenue resulting from anticipated future filings.

The list of newly opened voluntary disclosure files does not indicate which state the taxpayer applied to. It is not possible to disclose that information consistent with taxpayers' expectation of confidentiality.

Please see the reports in the Supplementary Information Section for additional detail.

## Multi-state Tax Shelter Voluntary Compliance Program

The public portion of the Multi-state Tax Shelter Voluntary Compliance Program (VCP) has concluded and was the subject of a report to the committee at its November 2007 meeting. Although not technically a Nexus program project, twenty-two of the twenty-three participating states are Nexus program members. The remaining steps concern enforcement and are addressed in the closed session Nexus Director's Report.

## Nexus Schools

The Multistate Tax Commission's Nexus School is a two day training event where students are taught state tax jurisdictional issues, or "nexus." Nexus Schools scheduled for 2008:

- Baltimore, Maryland - April 8-9, 2008
- Omaha, Nebraska - September 15-16, 2008 (tentative)
- Boise, Idaho - October 21-22, 2008

Hotel Registration Deadline: hotel information and rates to be posted soon

## Secure Communications Plan

The Commission-wide Secure Communications Plan is an effort to improve the communications security of the Commission. It envisions secure electronic communication between the states and the Commission. It is the province of the Technology Committee, however it will affect all Commission programs and functions. In

particular, it is a necessary component of the second phase of the Nexus program's database renovation project, addressed below. Chris Lane of the Commission's information technology staff will brief the committee in person.

**Voluntary Disclosure Database**

The attached Request for Proposals (RFP) contains more information than you probably care to know about the program's plans to update and improve its electronic systems. I recommend that you read section IV. 4. and that you move your eyes lightly over the rest. There is no need for you to thoroughly read the entire document. I offer it here so that you may see what we have communicated to software vendors.

Here is an extremely brief summary of the database renovation project.

It is divided into two phases.

The first phase is driven entirely by technical requirements. We will simply re-write the software code of our current database to duplicate its current functionality with a few tweaks here and there, but in a technically improved fashion and using improved software tools. This will ensure that the database maintains its stability and can be repaired as necessary. This phase is all back office work that does not require Nexus Committee involvement, although it is welcome in the event you are interested. Staff is working closely with the Commission's Technology Committee on this.

The second phase involves a fundamental re-thinking of how Nexus staff, taxpayers, and states interact. The multi-state voluntary disclosure program is limited only by its ability to provide timely services to taxpayers such that the taxpayer (or representative) feels in control of the process and has assured himself that he got the best possible voluntary disclosure deal. If we build it, they will come. Little promotion will be necessary if we have an outstanding service.

Timeliness: Speed of processing is important to taxpayers. This is a shortcoming of our current service; there are more steps to each disclosure compared to working with a state directly. And Nexus staff is not likely to be increased, which is one possible solution. The other solution, and probably most cost effective, is to use better technology. This will allow the program to process more disclosures, and do so faster and more accurately, without increasing staff. Phase two will automate many functions, streamline communications, and allow states and taxpayers to directly access their voluntary disclosure accounts without Commission staff being in the middle. This is faster and more efficient. Think how much easier it is to access your bank account via the web rather than phone during business hours or visit in person, as we all had to do less than a decade ago. Note, however, that personal service will still be available when needed or requested!

Taxpayer Control: Taxpayers almost always (probably always) receive identical substantive terms from a state whether they work through the Commission or directly with the states. The lookback is set by state policy and does not vary, for example. Taxpayers, however, and particularly taxpayer representatives, who are ethically required to *zealously* represent their client's interests, do not trust that this is so. Even if they know that it is so, they may nevertheless need to demonstrate to their client that they have explored every avenue to get the best possible deal. We can only offer this assurance if taxpayers can communicate *directly* with the states, without the intermediation of Commission staff. Taxpayers must hear the deal directly from the horse's mouth. Phase two will allow taxpayers and states to communicate directly and *anonymously* with each other by secure email via an account maintained by the Commission: the taxpayer will be anonymous to the state and the state staff person

may, if he chooses, be anonymous to the taxpayer. Nexus staff will, of course, be able to participate in communications and will provide value-added assistance as appropriate.

Please see the RFP in the Appendix for a more detailed discussion, particularly section IV. 4.

**Voluntary Disclosure Guidelines**

The voluntary disclosure guidelines project is an effort to states, taxpayers, and Commission staff a set of written guidelines to govern the voluntary disclosure process. It is hoped that states will adopt these guidelines as their own with respect to multi-state voluntary disclosures (not necessarily to a state's own voluntary disclosure program).

At its November 2007 meeting the Nexus Committee referred the guidelines to a drafting committee for further consideration. The drafting committee met three times and produced the document attached in the appendix. The drafting group wrestled with the following fundamental issues, among others:

- Should all Nexus member states approve the guidelines as their own with respect to multi-state voluntary disclosures unless they opt out?
- Should states be permitted to opt out of specific sections or must they approve or reject the guidelines in their entirety?
- A taxpayer is protected from a nexus inquiry from the moment it begins voluntary disclosure with the Commission. Is there an exception with respect to a taxpayer who is the subject of an investigation but has not yet been contacted by the state?
- What should a state do if it accidentally learns a disclosant's identity before the disclosure is complete?

<u>I recommend that you read the draft guidelines carefully</u> in preparation for our meeting on March 13. Please bring your questions, comments, objections, and compliments to the meeting.

**Taxpayer Survey**

In an effort to systematically measure taxpayer satisfaction with services received, program staff sent a satisfaction survey to the twenty-five most recently closed files. From now on we will routinely request that taxpayers complete these at the end of the disclosure. A graphic with responses to selected questions is in the appendix. You will also find the actual survey questions. The Nexus Committee offered improvements to the text during its November 2007 meeting.