

**Nexus Committee Meeting  
Notice and Agenda - Open Session**

**March 4, 2010, 8:30 AM -- Noon MST**

The Westin Tabor Center, 1672 Lawrence Street, Denver, Colorado

*- Nil Sine Numine -*  
1876

State government personnel and members of the public may attend the public session either in person or by teleconference. To participate by teleconference, please dial 1-800-264-8432 or (1) 719-457-0337 and enter participant code 149 611. Members of the public wishing to address the committee with respect to a particular agenda item are welcome to do so during Comments from Public or when the committee turns its attention to that item.

**Public Session**

- I. Welcome and Introductions
- II. Review of Agenda
- III. Review of Nexus Committee Open Session Minutes from July 2009 meeting
- IV. Comments from Public
- V. Update on Nexus Schools
- VI. Update on Business Activity Tax Simplification Act
- VII. Nexus Director's Report
  - A. voluntary disclosure revenue, technology, membership, et cetera.
- VIII. Update / Discussion re Voluntary Disclosure Program
- IX. New Business
- X. -- Closed Session --
- XI. Re-convene Public Session & Report from Closed Session
- XII. Adjourn

---

*For more information about this meeting, please contact Thomas Shimkin, Director of the National Nexus Program, Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001. Telephone (202) 508-3869. Email tshimkin@mtc.gov.*



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

**Open Session  
Nexus Director's Report**

**Nexus Committee Meeting  
Denver, Colorado  
March 4, 2010**

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program to date in fiscal year 2010 (July 1, 2009 to February 15, 2010).

**Minutes of Last Meeting**

Minutes of the July 2009 open session Nexus Committee meeting will be found as a hypertext link on the agenda of the March 4, 2010 Nexus Committee meeting as posted on the Commission's website, [www.mtc.gov](http://www.mtc.gov). They are also included herein.

**Membership**

Other than Rhode Island and Wyoming, which did not renew their Nexus memberships, we continue in fy 2010 with all member states we had in fy 2009. There may have been minor fluctuations in the fees of each state due to fluctuations in state revenue, which is a major component of each state's Nexus program fee, but the average fee overall did not increase from fy 2009 to fy 2010. Due to elimination of unfilled positions, the current level of member dues are sufficient to maintain the present profile of Nexus Program services.

**Staffing**

In accordance with a mandate from the Nexus Committee in 2007, the Nexus program has shifted its priority and resources from discovery and enforcement toward multi-state voluntary disclosure and Nexus School. In contrast to earlier years, the program produces less research on potential non-filers and no longer operates an enforcement-related database (the database was discontinued almost ten years ago). But as these activities have declined, the numbers and values of voluntary disclosures have soared. Please see the voluntary disclosure revenue results elsewhere in this report.

The program's staffing profile has shifted to accommodate its evolving mission.

Ten years ago, the program employed slightly more than six full-time employees (FTEs):

- 1 FTE director (attorney)
- 2 FTE staff attorneys
- 1 ¼ FTE researchers (discovery of non-filers)
- 1 FTE database manager (for multi-state enforcement purposes)
- 1 FTE administrative assistant
- ½ FTE administrative assistant
  - Total: 6 ¾ FTE

Today the program has

- 1 FTE director (attorney)
- 2 FTE voluntary disclosure case managers
- ½ FTE voluntary disclosure case manager
- ½ FTE researcher/management
  - Total: 4 FTE

This shift reflects the reduced emphasis on non-voluntary-disclosure activity as well as better use of technology that has streamlined voluntary disclosure, such as substantial replacement of Postal Service mail with e-mail, a more robust database system, and improved processes. Significantly, improved and more uniform processes have reduced the amount of attorney/supervisor involvement in disclosures. As the only attorney in the program, however, the director remains the day-to-day supervisor of the voluntary disclosure program and participates directly in each disclosure.

## **Nexus Schools**

The Multistate Tax Commission's Nexus School is a two day training course that teaches the basics of state tax jurisdiction (nexus) to government personnel. The first day is dedicated to study of nexus law (what actions create nexus) and the second day covers techniques to discover non-filers who have nexus. Neither day is presently open to members of the private sector, although the question has informally arisen whether it would be appropriate to open one or both days to private sector participation.

The Commission offered one Nexus School in fy 2010, on December 7 and 8. The Commission itself hosted the school this time (schools are usually hosted by a state) and held it at The National Conference Center in Loudoun County, Virginia, not far from the Commission's DC headquarters. The Commission intends to host a school there annually when demand again warrants it.

Attendance at Loudoun County Nexus School was very light and consisted exclusively of nearby District of Columbia personnel and Commission staff. No state has offered to host a school and there are no Nexus Schools planned at the moment. It is likely that there will be none until the present revenue troubles have passed.

States that host a nexus school receive credit toward student tuition and can train staff without the expense of out-of-state travel.

Staff continues its on-going project to update Nexus School materials.

## **Voluntary Disclosure Information Technology**

### **Secure Email**

Commission staff and states have been using secure email without hiccup for some time now. This system allows efficient dissemination of confidential information.

### **Database Renovation & Online Application**

The Commission's internal voluntary disclosure management software continues to work well and bring greater efficiency to the program. The online application feature (<http://www.mtc.gov/Nexus.aspx?id=538>), by which taxpayers may apply to as many states as desired via a single web-based form, has proved to be less popular than expected. Most applicants continue to download Word or PDF forms, fill out a copy for each state, and email them to the Nexus Program. Paper applications are fortunately a thing of the past. It may be that with the continued availability of the Word and PDF formats taxpayers are simply choosing the familiar. In an effort to make the voluntary disclosure process as comfortable as possible, however, staff at intends to keep the Word and PDF options available for a time and evaluate at a later date whether they should be withdrawn.

Staff continues to work with Revenue Solutions Incorporated (RSI) to make incremental improvements to the voluntary disclosure management software.

The Nexus Committee at its July 2009 meeting approved development of Phase II of this software. Although commitment of significant funds will have to wait until the present revenue troubles are gone, staff will begin preliminary work to design its features in some detail, relying on Nexus Committee members and their designees for input. Staff would like to immediately begin work with the software developer once funding again becomes available.

An outline of Phase II will be found in the Appendix.

## **Voluntary Disclosure Marketing**

Google searches produce a significant number of multi-state voluntary disclosure referrals. Disclosants can find the program either through regular search results or through the banner advertisements that the Commission purchases and that appear in response to certain search terms, such as "nexus" and "voluntary disclosure". The Commission pays for each impression and click-through; the cost is about \$200 per month.

Referrals from tax practitioners and repeat business is another large source of referrals to our program. These disclosures tend to involve significantly greater amounts of revenue.

A small but important source of referrals is from state voluntary disclosure and audit programs that recommend multi-state disclosure and distribute the Commission’s voluntary disclosure brochure at the conclusion of a voluntary disclosure or audit. Often, a taxpayer who is discovered by a state, or who voluntarily discloses a liability, will also have liability elsewhere. It is very helpful that states refer such taxpayers to the Commission. Only a few states are doing so at this time. If your state would like to begin making these referrals, please request multi-state voluntary disclosure brochures from Commission staff, which you can distribute to taxpayers.

States also refer disclosants to the Commission passively, through links on their websites to the voluntary disclosure area of the Commission’s website. A number of states are assisting the Commission’s program in this way. The more states that do this the better for the multi-state program.

**Numbers of Visits to Nexus Web Pages  
July – December 2009**

Information about the Nexus Program in general and voluntary disclosure are the most frequently visited Nexus web pages. Interestingly, a large number of visitors has sought information about state tax amnesties here. In September Nexus staff began posting information about state amnesties with links to state web sites. Please inform Nexus staff if you would like your state’s amnesty to be listed.

Web Page Hits by Type	3rd			4th				Total	
	July.	Aug.	Sept.	Qter.	Oct.	Nov.	Dec.		Qter.
Nexus Program Info.	716	726	664	2,106	644	603	549	1,796	3,902
Vol. Discl. Info.	494	423	477	1,394	440	451	397	1,288	2,682
Vol. Discl. Application	119	113	102	334	132	160	107	399	733
State Amnesty Info.	-	-	241	241	282	270	194	746	987
Nexus School Info.	216	197	225	638	196	178	155	529	1,167
Nexus Committee Description	117	112	113	342	114	118	87	319	661

## Voluntary Disclosure Revenue

Revenue collected for states through the multi-state voluntary disclosure program continues to increase at an impressive clip. Staff has said for many years now that pace of revenue increase may be unsustainable and that states should not expect such outsized results in the future. And every year staff has been wrong. Nevertheless, please know that revenue has nearly doubled each fiscal year since 2005... and this pace may be unsustainable.

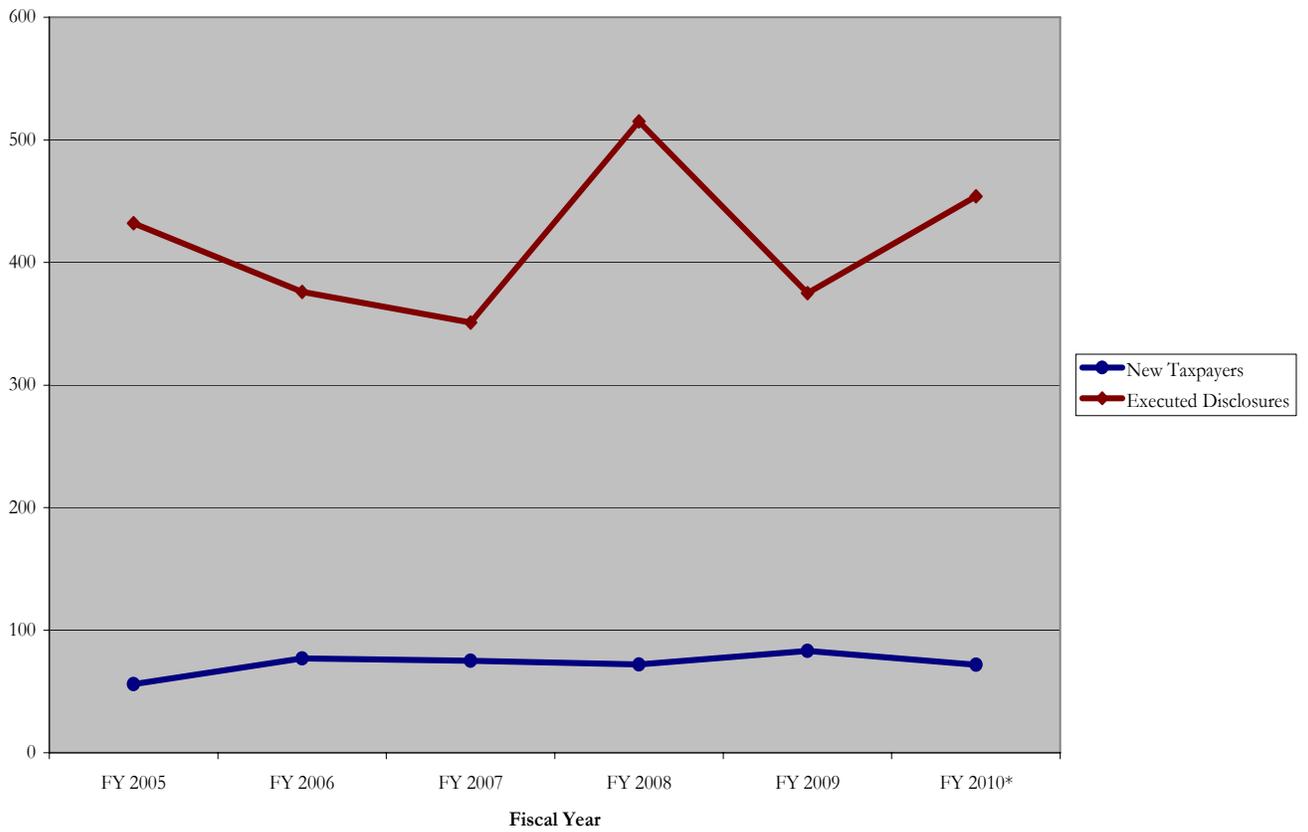
The charts and graphs below are self-explanatory with respect to revenue results. They report on an aggregate basis. A state may request a report of its particular results from Commission staff at any time.

<b>ALL STATES</b>	<b>BACK TAXES COLLECTED -- CALENDAR YEAR --</b>
CY 2001	\$893,646
CY 2002	\$8,309,496
CY 2003	\$9,389,233
CY 2004	\$4,208,292
CY 2005	\$3,546,838
CY 2006	\$14,043,180
CY 2007	\$10,018,864
CY 2008	\$14,184,472
CY 2009	\$86,741,077
CY 2010*	\$557,558

\* CY 2010 is a partial year, July 1, 2009 – January 1, 2010

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010*</b>
<b>Income/Franchise Taxes</b>	<b>52.6%</b>	<b>43.6%</b>	<b>81.9%</b>	<b>92.0%</b>
<b>Sales/Use Taxes</b>	<b>40.0%</b>	<b>56.1%</b>	<b>11.1%</b>	<b>3.9%</b>
<b>Other Taxes</b>	<b>7.4%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>
<b>Total Back Taxes Collected</b>	<b>\$12,799,098</b>	<b>\$17,468,156</b>	<b>\$31,964,967</b>	<b>\$58,105,225</b>

**New Taxpayers and Executed Contracts**

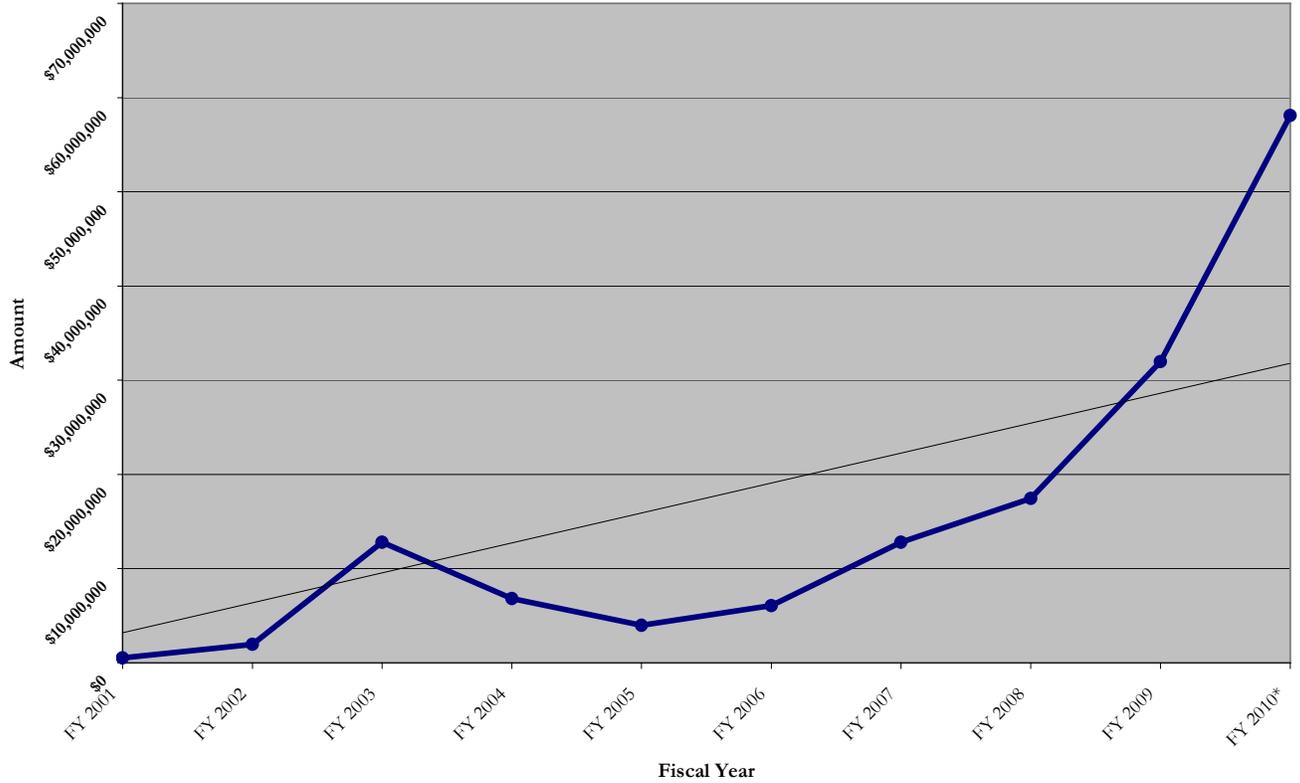


\* FY 2010 is a partial year. Data are July 1, 2009 to February 19, 2010.

<b>All States</b>	<b>New Taxpayers</b>	<b>Executed Disclosures</b>
FY 2005	56	432
FY 2006	77	376
FY 2007	75	351
FY 2008	72	515
FY 2009	83	375
FY 2010*	72	454

\* FY 2010 is a partial year. Data are July 1, 2009 to February 19, 2010.

**MTC Back Taxes Collected  
through Voluntary Disclosure**



\* FY 2010 is a partial year. Data are July 1, 2009 to February 19, 2010.

All States	Back Taxes Collected
FY 2001	\$515,516
FY 2002	\$1,958,122
FY 2003	\$12,811,593
FY 2004	\$6,821,834
FY 2005	\$3,974,733
FY 2006	\$6,085,684
FY 2007	\$12,799,098
FY 2008	\$17,468,156
FY 2009	\$31,964,967
FY 2010*	\$58,105,225

\* FY 2010 is a partial year. Data are July 1, 2009 to February 19, 2010.

## **Voluntary Disclosure Guidelines**

The voluntary disclosure guidelines project is an effort of states and Commission staff to develop a set of written guidelines to govern the voluntary disclosure process. The goal is to make the voluntary disclosure process more transparent to taxpayers and to guide Commission staff in the course of their work assisting taxpayers to come into compliance with state tax laws. It is hoped that states will adopt these guidelines as their own with respect to multi-state voluntary disclosures (they would not affect a state's own voluntary disclosure program, i.e., the one a taxpayer encounters when he approaches a state directly and not through the Commission).

The Nexus Committee gave final approval to these guidelines at its July 2009 meeting and requested review by the Executive Committee. The Executive Committee has offered guidance, which the committee may consider at its March 2010 meeting.

## **Business Activity Tax Legislation**

U.S. Representative Rick Boucher, a Democrat from Southwest Virginia, introduced HR 1083, the Business Activity Tax Simplification Act (BATSA) on February 13, 2009. This is a perennial bill that has reliably threatened to limit state taxing jurisdiction but has never progressed far in the legislative process. It has twenty-one co-sponsors and it is assigned to the House Judiciary Committee, Subcommittee on Administrative Law. There is no Senate companion, although one will likely be introduced after the bill has a hearing in the House. The bill and its predecessors have not had a hearing in the House for some years and the prospect of one is slight for the time being. Leadership has indicated that it wants to address the Main Street Fairness Act (the streamlined sales tax bill) before it takes up BATSA, and there is no visible movement of Main Street Fairness at the moment. Members of Congress have generally been receptive to the argument that it would be inappropriate to reduce state revenue sources when state revenue has been so reduced already by the recession.

## **APPENDIX**



**NEXUS COMMITTEE MINUTES**

**July 28, 2009**

Marriott Country Club Plaza  
4445 Main Street, Kansas City, Missouri

-- *Salus populi suprema lex esto* --

**-- Public Session --**

The following persons attended in whole or in part:

NAME	AFFILIATION	E-MAIL
Michael Mason	AL	Mike.mason@revenue.alabama.gov
Danny Walker	AR	Danny.walker@dfa.arkansas.gov
Tom Atchley	AR	Tom.atchley@rev.state.ar.us
Tamra Fucci *	AZ	<a href="mailto:Tfucci@azdor.gov">Tfucci@azdor.gov</a>
Anita DeGumbia	GA	Anita.degumbia@dor.ga.gov
Pat Verschelden *	KS	Pat_Verschelden@kdor.state.ks.us
Tina Folse	LA (St. Charles Parish Sch. Bd.)	tfolse@stcharles.k12.la.us
Diane Luebbering	MO	Diane.luebbering@dor.mo.gov
Dave Garro	MO	David.garro@dor.mo.gov
Lee Baerlocher	MT	Lbaerlocher@mt.gov
Ted Jutras *	MTC	tjutras@mtc.gov
Antonio Soto *	MTC	asoto@mtc.gov
Thomas Shimkin	MTC	tshimkin@mtc.gov
Ken Beier	MTC	kbeier@mtc.gov
Rebecca Abbo *	NM	<a href="mailto:rebecca.abbo@state.nm.us">rebecca.abbo@state.nm.us</a>
Lennie Collins	NC	Lennie.collins@dornc.com
Ryan Rauschenberger	ND	rarauschenberger@nd.gov
Myles Vosberg	ND	msvosberg@nd.gov
Mary Loftsgard	ND	mloftsgard@nd.gov
Gary Helman	NE	Gary.helman@nebraska.gov

Nexus Committee **Open Session**

Eric Smith	OR	Eric.h.smith@state.or.us
Janielle Lipscomb	OR	Janielle.d.lipscomb@state.or.us
Brandin Seibel *	SD	Brandin.seibel@state.sd.us
Stacy Gibson	TN	Stacy.gibson@tn.gov
Joan Cagle *	TN	Joan.Cagle@tn.gov
Hermi Nanez	TX	Hermi.nanez@cpa.state.tx.us
Gary Johnson	TX	Gary.johnson@cpa.state.tx.us
Frank Hales	UT	fhales@utah.gov
Michael Christensen *	UT	Mchristensen@utah.gov
Michael Grundhoffer *	WA	MichaelG@dor.wa.gov
Roy Davis	WI	Roy.davis@revenue.wi.gov
Craig Griffith	WV	cgriffith@tax.state.wv.us

\* attended by telephone

Substantive committee votes and actions requiring follow up are italicized for easier reference.

March Minutes

*The committee approved the minutes of the March 2009 meeting.*

Nexus Schools

Mr. Soto reported the status of the Nexus School program. He said that there had been five schools in fiscal year 2009 and that there were opportunities for states to sponsor schools in the future. He reminded committee members that the Commission will itself host a Nexus School on December 7 and 8 in the Washington, DC area. Mr. Beier distributed to committee members a revised promotional brochure with information about all Commission trainings. He said that there is as yet no course on pass-throughs.

Commission Website

In response to a question, Mr. Shimkin and Mr. Matson explained how to access the voluntary disclosure section of the Commission's website – three popular ways are to search for "disclosure" in the search box, to click on the "Multi-State Voluntary Disclosure" button on the Commission's main page, and to click the Multi-State Voluntary Disclosure button on the Nexus program's page.

Voluntary Disclosure Database

Mr. Shimkin reviewed the status of Phase I of the voluntary disclosure database revision. He said that the software is installed and running. He then explained the general idea of Phase II, which would allow states and taxpayers to have direct access to appropriate portions of the Commission's voluntary disclosure records and would allow states and taxpayers to communicate directly with each other in a secure environment through the Commission's software. He said that Phase was only a set of goals and principles at the moment.

In response to a question Mr. Shimkin said that the voluntary disclosure software project was funded with available Nexus Program funds and would not affect member dues. Ms. Nanez (TX) explained some features of her state's voluntary disclosure

management software. *The consensus of the committee was that the Nexus Program should continue to develop Phase II.*

#### Voluntary Disclosure Guidelines

*After four members of the committee objected to section 5.4, the committee approved by unanimous vote a motion by to delete the section (an entity is not disqualified from voluntary disclosure based only on its membership in a unitary or combined group). This deletion leaves the guidelines silent on the matter.*

A member of the public who represents taxpayers commented on section 12 (when it has clear and convincing evidence that a voluntary disclosant has grossly misrepresented a material fact in its application, the Commission must inform all states that received the application of the disclosant's identity and the evidence of gross misrepresentation). She pointed out that the rule would require disclosure of the applicant's identity even to states that received the voluntary disclosure offer but did not (or had not yet) accepted it. Because these states would not yet have been harmed, the Commission could simply withdraw the application without explaining the reason for doing so [this is the Commission's present unwritten policy]. She said that it is very common for a taxpayer to use voluntary disclosure to clean up potential liability of an acquired entity and that the acquiring taxpayer often cannot be entirely sure of facts arising from activities that took place before the taxpayer made the acquisition. She emphasized that employees of an acquired business with knowledge of material events are sometimes dismissed or otherwise leave that company's employment and that records of the acquired entity cannot be relied on to always reveal material information.

She continued, saying that it would be unwise for a taxpayer to pursue voluntary disclosure through the Commission given this rule. She said that a taxpayer could achieve the same voluntary disclosure result with less risk by approaching each state independently – if a state that has not yet signed the voluntary disclosure contract (and therefore does not know its identity) discovers an unintentional misrepresentation it would be unable to inform its sister states of the applicant's identity, unlike the Commission, which knows the taxpayer's identity after the first state enters into an agreement.

Mr. Shimkin also addressed the section 12 issue. He cautioned the committee that the National Nexus Program, because of its unique access to multi-state taxpayer data, has operated from its inception based on absolute respect for taxpayer confidentiality, which taxpayers have come to expect and trust, and which has allowed the program to increase its revenue substantially as time goes on. He said that only a bright-line rule of confidentiality, applicable even to the malfeasant, is the only way to assure the great majority of truthful disclosants that it is safe to do business with the Commission. He noted that the Nexus Program has worked successfully to overcome taxpayer concerns that the Commission's focus on involuntary compliance, e.g., the Audit Program, should dissuade a taxpayer from using the multi-state voluntary disclosure program.

Mr. Shimkin said that he believes the rule of section 12 would decimate voluntary disclosure revenue, the heart of the National Nexus Program.

Mr. Shimkin suggested that the rule should be that when the Commission has clear and convincing evidence of a material misrepresentation it must inform only those states that have concluded a voluntary disclosure agreement with that taxpayer. This would allow those states to decide whether to void the agreement. The Commission's voluntary disclosure agreements have always allowed a signatory

state to void the agreement in the event of material misrepresentation. He explained that non-signatory states – to which section 12 requires the Commission to disclose the taxpayer’s identity and alleged misrepresentation -- would not have detrimentally relied on the representation and therefore would not have been harmed. He encouraged the committee to retain the Commission’s current unwritten policy, which is to withdraw the voluntary disclosure offer from those states without comment.

Mr. Shimkin acknowledged the view that even non-signatory states should be informed of a gross misrepresentation so that they can identify the misrepresentation should that taxpayer approach the state directly. He said that in his experience this consideration is outweighed by the necessity to ensure taxpayers of confidentiality and to not create a disincentive to use the Commission’s services by making it more risky to do so than approaching states directly.

Mr. Shimkin emphasized the point previously made by the member of the public that taxpayers frequently do not know all the facts attendant to their disclosure offer, especially when dealing with a recently acquired company, and that they may therefore make an honest mistake that would taint their position in every state. Also, taxpayers may reasonably believe that the Commission and states will interpret “gross misrepresentation” more amply than they would.

*The committee voted to retain section 12 unamended.*

*The committee voted unanimously to approve the guidelines as amended. Mr. Collins (NC) explained that he would submit the guidelines to the Executive Committee for review and possible amendment, and if that body approves, they will be published as rules of the Commission’s voluntary disclosure program.*

#### New Business

There was no new business.

#### Closed Session

The committee resolved into closed session. It later returned to open session and reported on its closed session activities (there were no members of the public present at this time).

#### Adjournment

The committee adjourned.

## **Summary, Status, and Text of HR 1083 (BATSA):**

111th CONGRESS

1st Session

**H. R. 1083**

To regulate certain State taxation of interstate commerce, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**February 13, 2009**

Mr. BOUCHER (for himself, Mr. GOODLATTE, Mr. DAVIS of Alabama, Mrs. BACHMANN, Ms. HERSETH SANDLIN, Mr. JONES, Mr. SCOTT of Virginia, Mr. JORDAN of Ohio, Mr. WEINER, Mr. PENCE, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

---

**HR 1083**

**A BILL**

To regulate certain State taxation of interstate commerce, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the `Business Activity Tax Simplification Act of 2009'.

### **SEC. 2. MODERNIZATION OF PUBLIC LAW 86-272.**

(a) Solicitations With Respect to Sales and Transactions of Other Than Tangible Personal Property- Section 101 of the Act entitled `An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto', approved September 14, 1959 (15 U.S.C. 381 et seq.), is amended--

(1) in section (a), by striking `either, or both,' and inserting `any one or more';

(2) in subsection (a)(1), by striking `by such person' and all that follows and inserting `(which are sent outside the State for approval or rejection) or customers by such person, or his representative, in such State for sales or transactions, which are--

- ˆ (A) in the case of tangible personal property, filled by shipment or delivery from a point outside the State; and
- ˆ (B) in the case of all other forms of property, services, and other transactions, fulfilled or distributed from a point outside the State;';

(3) in subsection (a)(2), by striking the period at the end and inserting a semicolon;

(4) in subsection (a), by adding at the end the following new paragraphs:

ˆ (3) the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State by such person, or his representative, which information is used or disseminated from a point outside the State; and

ˆ (4) those business activities directly related to such person's potential or actual purchase of goods or services within the State if the final decision to purchase is made outside the State.';

(5) by striking subsection (c) and inserting the following new subsection:

ˆ (c) For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely--

ˆ (1) by reason of sales or transactions in such State, the solicitation of orders for sales or transactions in such State, the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State, on behalf of such person by one or more independent contractors;

ˆ (2) by reason of the maintenance of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales or fulfilling transactions, soliciting order for sales or transactions, the furnishing of information to customers or affiliates, or the coverage of events or other gathering of information; or

ˆ (3) by reason of the furnishing of information to an independent contractor by such person ancillary to the solicitation of orders or transactions by the independent contractor on behalf of such person.'; and

(6) in subsection (d)(1)--

(A) by inserting 'or fulfilling transactions,' after 'selling'; and

(B) by striking 'the sale of, tangible personal property' and inserting 'a sale or transaction, furnishing information, or covering events, or otherwise gathering information'.

(b) Application of Prohibitions to Other Business Activity Taxes- Title I of the Act entitled 'An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto', approved September 14, 1959 (15 U.S.C. 381 et seq.), is amended by adding at the end the following:

ˆ Sec. 105. For taxable periods beginning on or after January 1, 2010, the prohibitions of section 101 that apply with respect to net income taxes

shall also apply with respect to each other business activity tax, as defined in section 3(g) of the Business Activity Tax Simplification Act of 2009. A State or political subdivision thereof may not assess or collect any tax which by reason of this section the State or political subdivision may not impose.'.

(c) Effective Date- The amendments made by this section shall apply with respect to the imposition, assessment, and collection of taxes for taxable periods beginning on or after January 1, 2010.

*[Editorial Comment -- For the convenience of the reader, the following shows in markup format the changes that HR 1083 Sec. 2 would make to PL 86-272, 15 USC 381.]*

*(a) Minimum standards*

*No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are ~~either, or both~~ any one or more, of the following:*

*(1) the solicitation of orders ~~by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and (which are sent outside the State for approval or rejection) or customers by such person, or his representative, in such State for sales or transactions, which are –~~*  
*(A) in the case of tangible personal property, filled by shipment or delivery from a point outside the State; and*  
*(B) in the case of all other forms of property, services, and other transactions, fulfilled or distributed from a point outside the State;*

*(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1);*

*(3) the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State by such person, or his representative, which information is used or disseminated from a point outside the State; and*

*(4) those business activities directly related to such person's potential or actual purchase of goods or services within the State if the final decision to purchase is made outside the State.*

*(b) Domestic corporations; persons domiciled in or residents of a State*

*The provisions of subsection (a) of this section shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to -*

*(1) any corporation which is incorporated under the laws of such State; or*

*(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.*

~~*(c) Sales or solicitation of orders for sales by independent contractors*~~

~~*For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, or tangible personal property.*~~

*(c) For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely--*

*(1) by reason of sales or transactions in such State, the solicitation of orders for sales or transactions in such State, the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State, on behalf of such person by one or more independent contractors;*

*(2) by reason of the maintenance of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales or fulfilling transactions, soliciting order for sales or transactions, the furnishing of information to customers or affiliates, or the coverage of events or other gathering of information; or*

*(3) by reason of the furnishing of information to an independent contractor by such person ancillary to the solicitation of orders or transactions by the independent contractor on behalf of such person.; and*

*(d) Definitions*

*For purposes of this section -*

- (1) *the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling or fulfilling transactions, or soliciting orders for ~~the sale of, tangible personal property a sale or transaction, furnishing information, or covering events, or otherwise gathering information~~ for more than one principal and who holds himself out as such in the regular course of his business activities; and*
- (2) *the term "representative" does not include an independent contractor.*

*.... For taxable periods beginning on or after January 1, 2010, the prohibitions of section [381] that apply with respect to net income taxes shall also apply with respect to each other business activity tax, as defined in section 3(g) of the Business Activity Tax Simplification Act of 2009. A State or political subdivision thereof may not assess or collect any tax which by reason of this section the State or political subdivision may not impose.' ..... ]*

### **SEC. 3. MINIMUM JURISDICTIONAL STANDARD FOR STATE AND LOCAL NET INCOME TAXES AND OTHER BUSINESS ACTIVITY TAXES.**

(a) In General- No taxing authority of a State shall have power to impose, assess, or collect a net income tax or other business activity tax on any person relating to such person's activities in interstate commerce unless such person has a physical presence in the State during the taxable period with respect to which the tax is imposed.

(b) Requirements for Physical Presence-

(1) IN GENERAL- For purposes of subsection (a), a person has a physical presence in a State only if such person's business activities in the State include any of the following during such person's taxable year:

(A) Being an individual physically in the State, or assigning one or more employees to be in the State.

(B) Using the services of an agent (excluding an employee) to establish or maintain the market in the State, if such agent does not perform business services in the State for any other person during such taxable year.

(C) The leasing or owning of tangible personal property or of real property in the State.

(2) DE MINIMIS PHYSICAL PRESENCE- For purposes of this section, the term 'physical presence' shall not include--

(A) presence in a State for less than 15 days in a taxable year (or a greater number of days if provided by State law); or

(B) presence in a State to conduct limited or transient business activity.

(c) Taxable Periods Not Consisting of a Year- If the taxable period for which the tax is imposed is not a year, then any requirements expressed in days for establishing physical presence under this Act shall be adjusted pro rata accordingly.

(d) Minimum Jurisdictional Standard- This section provides for minimum jurisdictional standards and shall not be construed to modify, affect, or supersede the authority of a State or any other provision of Federal law allowing persons to conduct greater activities without the imposition of tax jurisdiction.

(e) Exceptions-

(1) DOMESTIC BUSINESS ENTITIES AND INDIVIDUALS DOMICILED IN, OR RESIDENTS OF, THE STATE- Subsection (a) does not apply with respect to--

(A) a person (other than an individual) that is incorporated or formed under the laws of the State (or domiciled in the State) in which the tax is imposed; or

(B) an individual who is domiciled in, or a resident of, the State in which the tax is imposed.

(2) TAXATION OF PARTNERS AND SIMILAR PERSONS- This section shall not be construed to modify or affect any State business activity tax liability of an owner or beneficiary of an entity that is a partnership, an S corporation (as defined in section 1361 of the Internal Revenue Code of 1986), a limited liability company (classified as a partnership for Federal income tax purposes), a trust, an estate, or any other similar entity, if the entity has a physical presence in the State in which the tax is imposed.

(3) PRESERVATION OF AUTHORITY- This section shall not be construed to modify, affect, or supersede the authority of a State to bring an enforcement action against a person or entity that may be engaged in an illegal activity, a sham transaction, or any perceived or actual abuse in its business activities if such enforcement action does not modify, affect, or supersede the operation of any provision of this section or of any other Federal law.

(f) Rule of Construction- This section shall not be construed to modify, affect, or supersede the operation of title I of the Act entitled `An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto', approved September 14, 1959 (15 U.S.C. 381 et seq.).

(g) Definitions, etc- For purposes of this section:

(1) NET INCOME TAX- The term `net income tax' has the meaning given that term for the purposes of the Act entitled `An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto', approved September 14, 1959 (15 U.S.C. 381 et seq.).

(2) OTHER BUSINESS ACTIVITY TAX-

(A) IN GENERAL- The term `other business activity tax' means any tax in the nature of a net income tax or tax

measured by the amount of, or economic results of, business or related activity conducted in the State.

(B) EXCLUSION- The term `other business activity tax' does not include a sales tax, a use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a tax imposed on the privilege of doing business.

(3) PERSON- The term `person' has the meaning given such term by section 1 of title 1 of the United States Code.

(4) STATE- The term `State' means any of the several States, the District of Columbia, or any territory or possession of the United States, or any political subdivision of any of the foregoing.

(5) TANGIBLE PERSONAL PROPERTY- For purposes of subsection (b)(1)(C), the leasing or owning of tangible personal property does not include the leasing or licensing of computer software.

(h) Effective Date- This section shall apply with respect to taxable periods beginning on or after January 1, 2009.