



**Nexus Committee Meeting
Notice and Agenda - Open Session**
July 27, 2010; 8:30 AM – Noon PDT
Best Western Hood River Inn
1108 East Marina Way, Hood River, Oregon 97031

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1859

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 March 2010 meeting
- IV. Comments from Public
- V. Update on Nexus Schools
- VI. Presentation of Research on Voluntary Disclosure and FIN 48 (Elliott Dubin)
- VII. Nexus Director's Report
 - A. voluntary disclosure revenue, technology, membership, et cetera.
- VIII. Voluntary Disclosure Program
 - A. Report of database subcommittee (development and integration of MTC information technology with state voluntary disclosure programs).
 - B. Report of drafting subcommittee (vol. discl. guidelines)
 - C. Vote on vol. discl. guidelines (reject, amend, or refer to Exec. Committee)
- 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.

**Open Session
Nexus Director's Report**

**Nexus Committee Meeting
Hood River, Oregon
July 27, 2010**

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program with respect to fiscal year 2010 (year end June 30, 2010). The Commission prepares its reports on a fiscal year cumulative basis. This report includes information with respect to the entire fiscal year, some of which may have been presented in a prior report.

Minutes of Last Meeting

Minutes of the March 2010 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. They are also included herein.

Membership

Other than Rhode Island and Wyoming, which did not renew their Nexus memberships, we continued in fy 2010 with all member states we had in fy 2009. There were 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. The positions now unfilled formerly provided research services related to nexus discovery.

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 increased. 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 two Nexus schools in fy 2010, on December 7-8 and June 28-29. One is scheduled for October 26-27, 2010 in Helena, Montana. The Commission itself hosted the December school (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 the two Nexus schools was light, with attendance limited chiefly to students from the host state (District of Columbia in the case of the December school). No additional state has offered to host a school and there are no further Nexus schools planned at the moment. Volunteers to host a Nexus School will be most welcome. The hosting state receives 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. The income/franchise tax materials were thoroughly revamped for the June school. It is our intention to do the same to the sales/use tax materials in time for the October school.

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. It has obviated expensive and time-consuming physical mailings.

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, but interest seems to be growing. Most applicants continue to download Word or PDF forms 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 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 and will continue to do so as resources permit.

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.

Staff met with a Nexus subcommittee composed of representatives from three member states to consider how the Commission's Phase II will integrate with existing state systems. The group mostly considered broad principles regarding Phase II functionality. The group came to consensus on these points:

- Instant update between state and Commission records is desirable.
- Taxpayers should have online access to the status of their cases.
- The group recognized the difficulty of integrating disparate state systems with the Commission's system and agreed that it would be worth the effort if state personnel had to enter data twice – in their own systems and the Commission's. However, the group recognizes that it would be desirable to avoid this duplication.
- The voluntary disclosure agreement should reside on the Commission's system, where states, taxpayers, and the Commission can interact with it, e.g., review, mark up, sign and scan a PDF copy. Electronic signatures not involving images of signatures should be explored as an option.

- As many documents as possible should be stored and made available electronically on the Commission's system.
- Direct taxpayer-state communication under appropriate circumstances is desirable.
- The Commission's system can offer automatic reminders to states (as it does currently to Commission staff).

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. If you do not currently link to the Commission's voluntary disclosure page, please consider helping out your sister states by adding one to your state's voluntary disclosure page and other appropriate pages on your department's website.

Other Public Outreach

The director of the National Nexus Program made two presentations to the taxpayer community in FY 2010:

- Bureau of National Affairs webinar – discussed results of BNA's survey of state practices with respect to nexus, brief mention of voluntary disclosure. Joined on the panel by a representative of the Council on State Taxation (COST) and a representative of a trade association representing companies involved in online trade.
- Council on State Taxation (COST) educational presentation for its members, held at the headquarters of Capital One bank – presentation exclusively on voluntary disclosure.

**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.

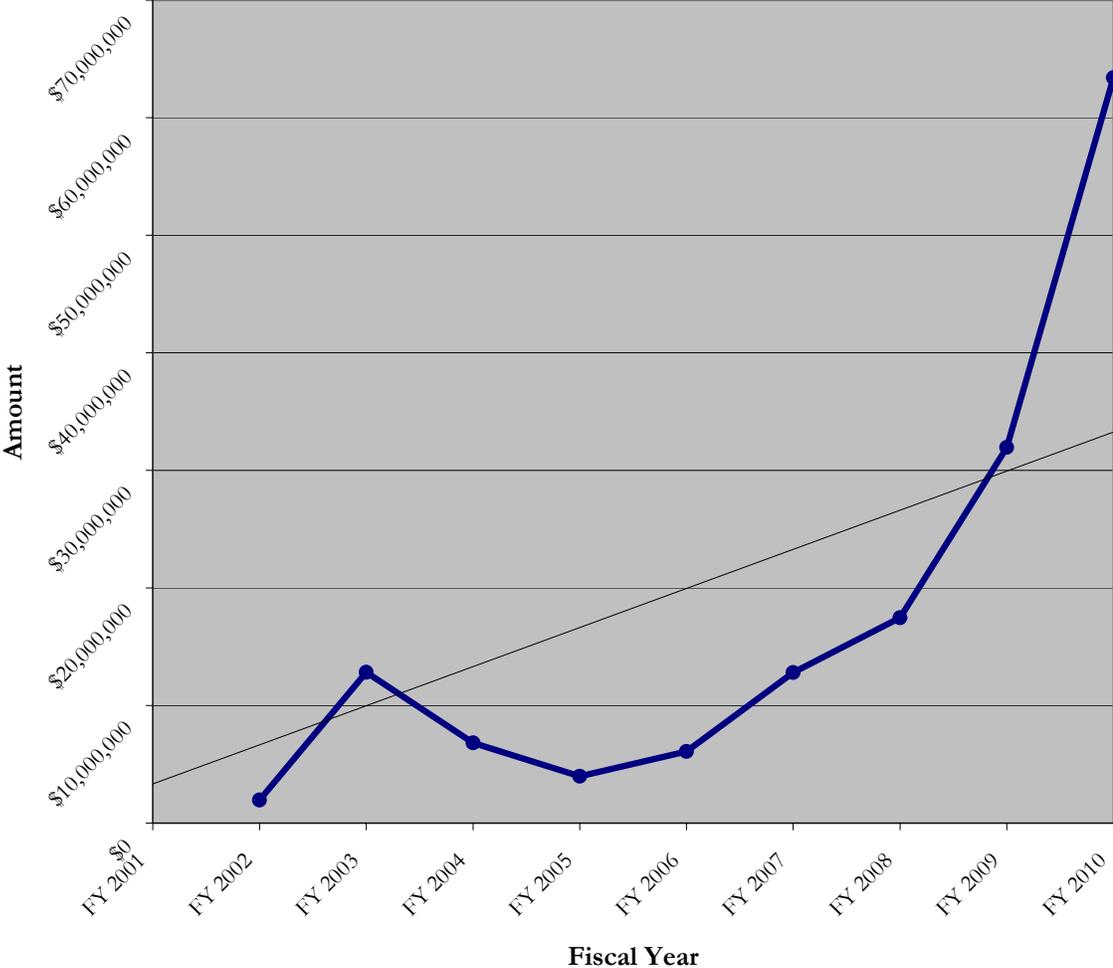
Web Page Hits by Type	July '09	Aug '09	Sept '09	Q 1	Oct '09	Nov '09	Dec '09	Q 2	Total
Nexus Program Info.	716	726	664	2,106	644	603	549	1,796	3,902
Vol. Discl. Info.	494	423	477	1,394	440	451	397	1,288	2,682
Vol. Discl. Application	119	113	102	334	132	160	107	399	733
State Amnesty Info.	-	-	241	241	282	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

Web Page Hits by Type	Jan '09	Feb '09	Mar '09	Q 3	Apr '09	May '09	Jun '09	Q 4	Total FY 2010	Voluntary Disclosure Revenue
Nexus Program Info.	628	667	779	2,074	598	619	606	1,823	7,889	
Vol. Discl. Info.	384	449	539	1,372	408	430	477	1,315	5,369	
Vol. Discl. Application	117	149	169	435	149	162	153	464	1,632	
State Amnesty Info.	212	234	313	759	257	203	235	695	2,441	
Nexus School Info.	183	181	197	561	141	186	174	501	2,229	

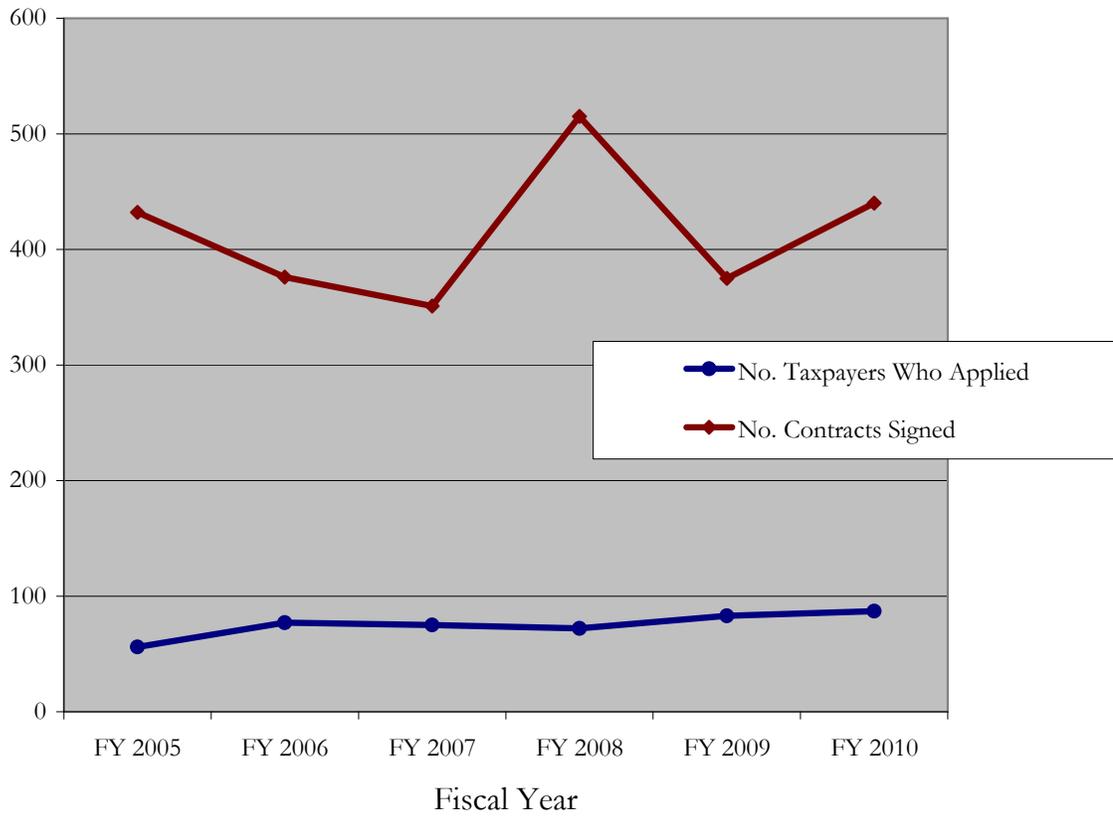
Revenue collected for states through the multi-state voluntary disclosure program continues to increase at an impressive clip. These large returns are the result of a small number of very large disclosures. Whether such returns continue into the future depends on the continued willingness of such non-filers to use the multi-state program.

The charts and graphs below are self-explanatory with respect to revenue results. They report on an aggregate basis. States have received reports regarding their particular revenue results.

**Multi-State Voluntary Disclosure
-- Back Revenue Collected --**



Multi-State Voluntary Disclosure
-- Taxpayers & Contracts --



-- Vol. Discl. Revenue & Volume --

All States	Back Taxes Collected	All States	New Taxpayers	Signed Contracts
FY 2001	\$515,516	FY 2005	56	432
FY 2002	\$1,958,122	FY 2006	77	376
FY 2003	\$12,811,593	FY 2007	75	351
FY 2004	\$6,821,834	FY 2008	72	515
FY 2005	\$3,974,733	FY 2009	83	375
FY 2006	\$6,085,684	FY 2010	87	440
FY 2007	\$12,799,098			
FY 2008	\$17,468,156			
FY 2009	\$31,964,967			
FY 2010	\$63,396,870			

All States	Back Taxes Collected
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 *	\$5,817,088

* as of July 7, 2010

Tax Types

	FY 2007	FY 2008	FY 2009	FY 2010
Income /Franchise Taxes	52.60%	43.60%	81.90%	90.21%
Sales /Use Taxes	40.00%	56.10%	19.10%	9.78%
Other Taxes	7.40%	0.00%	0.00%	0.01%
Total Back Taxes Collected	\$12,799,098	\$17,468,156	\$31,964,967	\$63,396,870

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 approved these guidelines at its July 2009 meeting and requested review by the Executive Committee. The chair of the Multistate Tax Commission declined to present them to the Executive Committee because he believed that the committee would likely reject them absent a redraft of section 12. As approved by the Nexus Committee, section 12 governs the Commission's response in the unlikely event that it has clear and convincing evidence that an applicant for voluntary disclosure has misrepresented a material fact in its application. It requires the Commission to notify states that have received, but not approved, a voluntary disclosure offer, of the taxpayer's identity and the information related to the material misrepresentation. Section 12 does not affect states that signed a voluntary disclosure agreement; the Commission remains obligated in such cases to inform these states so that they may choose whether to rescind.

Section 12 as approved by the Nexus Committee *creates a level of perceived risk that is much higher when pursuing voluntary disclosure through the Commission than when pursuing it through states individually*. To illustrate the difference in perceived risk, suppose that a taxpayer applies to ten states through the Commission, and the Commission finds clear and convincing evidence of a material misrepresentation to the ten. The Commission will have the means – because the taxpayer has entrusted it with a multi-state view of its voluntary disclosure – and will be required by this rule, to report the taxpayer's identity and misrepresentation to the ten states, with the likely result that the applicant will be barred from voluntary disclosure in all ten. If, on the other hand, the taxpayer bypasses the Commission and applies to the ten states individually, and one state discovers a material misrepresentation, that state will not have the means to report the taxpayer's identity to other states -- because it will not know to which other states, if any, the taxpayer applied and what representations it made. Without a multi-state view (only the taxpayer and the Commission have one), a state could not know to which states it should report the malfeasance, and so could report to none. Therefore, the downside risk of applying to states individually is that only one state (the one that discovered the misrepresentation) will disqualify it in the event of a material misrepresentation, compared with the downside risk of disclosure to ten states. If only one state bars the taxpayer, the taxpayer will be free to correct its records and submit an accurate representation of its circumstances to the remaining nine states.

Taxpayers and their representatives who understand the perceived risk differential will find it hard to justify working through the Commission. Taxpayers represented by the most experienced counsel are both the greatest contributors to voluntary disclosure revenue and the most likely to perceive this risk. Losing this participation would defeat one of the primary purposes of the states' National Nexus Program. States may recoup some of the revenue through direct applications, but applying directly to multiple states is considerably more expensive for taxpayers. Increasing the cost of voluntary disclosure makes taxpayers less inclined to do voluntary disclosure, particularly to states in which they have low exposure

(often smaller states). And this result is precisely that which the states sought to cure by establishing the National Nexus Program. Section 12 as approved would in a short time decimate the states' multi-state voluntary disclosure program.

It is important to note that honesty in a taxpayer's application does not inoculate against this rule. This is because most taxpayers, although meticulously honest in the presentation of the facts in voluntary disclosure, fear that information may surface of which they were unaware, and trigger the consequences of this rule. This is particularly true when a taxpayer does voluntary disclosure as a result of a corporate acquisition – records and personnel of the acquired company are often inadequate or wholly missing.

A further consideration is that some taxpayers view the Commission with suspicion. They will worry that the Commission will exaggerate a minor inaccuracy into a material misrepresentation requiring disclosure. Lacking a clear rule to protect them from abuse of discretion (real or imagined), they will avoid the multi-state voluntary disclosure program to the detriment of state revenues.

The Nexus Committee appointed a subcommittee to study the matter and bring suggested language back to the full committee. A representative of Alabama, Texas, and Arizona served on the subcommittee, met once, and suggest the following language to substitute for the present section 12. Immediately below please find the substitute language recommended by the drafting subcommittee. The full text of the guidelines as approved by the Nexus Committee, with the unchanged Section 12, will be found in the appendix.

Suggested Substitute, Section 12:

1. Material Misrepresentation

1.1. A *material misrepresentation* is a false or misleading statement by a taxpayer (or its representative), made in good faith or otherwise, about a fact, which successfully induces a state to take a position to its substantial detriment with respect to acceptance of a voluntary disclosure contract (or significant terms in it) with that taxpayer.

1.2. If the *Commission* has clear and convincing evidence that a taxpayer has made a material misrepresentation, the Commission shall present the evidence thereof to the taxpayer and invite it to show good cause why the *Commission* should not take action pursuant to this section 12.

1.3. If the taxpayer cannot otherwise be contacted after a good faith effort, the *Commission* shall send a certified letter to the contact person and address of record of both the taxpayer and its tax practitioner, if any.

1.4. If 10 days after the later of presenting the evidence to the taxpayer and mailing a certified letter the taxpayer has not shown good cause, the *Commission* shall:

1.4.1. With respect to states that have executed a contract with the taxpayer based on the *material misrepresentation*, the *Commission* shall identify the taxpayer and inform each state of the evidence regarding the material misrepresentation.

1.4.1.1. The state may in this case void the voluntary disclosure contract, or any part of it that was the result of the material misrepresentation, within ninety calendar days of receiving notice regarding the material misrepresentation. In such case, it will be as if the contract (or excised terms) never existed; the state may keep all revenue paid to it as a result of the voluntary disclosure and may pursue additional remedies as permitted by law.

1.4.2. With respect to states that received an offer from the taxpayer containing a material misrepresentation but have not accepted it, the *Commission* shall withdraw without comment the pending voluntary disclosure offer. An offer is considered pending until it has been either rejected, withdrawn or signed by both state and taxpayer (accepted and fully executed). The *Commission* shall not disclose the existence of the material misrepresentation or the identity of the taxpayer to these states.

1.4.3. With respect to states that did not receive a voluntary disclosure offer containing a *material misrepresentation* from this taxpayer, the *Commission* shall not disclose the existence of the *material misrepresentation* and shall not disclose the identity of the taxpayer to these states.

APPENDIX

**Nexus Committee Meeting
Public Session Minutes
March 4, 2010, 8:30 AM -- Noon MST**
The Westin Tabor Center, 1672 Lawrence Street, Denver, Colorado

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Public Session

The following persons attended in whole or in part:

NAME	AFFILIATION	E-MAIL
Christy Vandevender*	AL	christy.vandevender@revenue.alabama.gov
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Michael Christensen *	UT	mchristensen@utah.gov
Kevin Lanham	WV	kevin.l.lanham@wv.gov

* attended by telephone

Chairman Lennie Collins called the meeting to order at 8:30 a.m. Committee members in physical attendance and on the telephone identified themselves.

Review of Agenda

There were no objections to the agenda.

Review of July 2009 Minutes

The Committee reviewed the minutes of its July 2009 meeting. The backup briefing books available at the meeting did not contain the minutes, but as these had been distributed prior to the meeting by email and posted on the Commission's website such that committee members were able to review them in advance, the committee proceeded to their consideration nevertheless. Ms. Janielle Lipscomb (Oregon) moved to strike the word "by" on page 13. The committee approved her motion and approved the minutes as amended, subject to subsequent correction if a member had not reviewed the minutes and later discovered an error.

Public Comment

The chair invited members of the public to comment on any matter relevant to the committee. No one commented.

Nexus School

Mr. Antonio Soto of the Commission reviewed the status of Nexus School. He said that the District of Columbia had sponsored a school in the DC metropolitan area that was lightly attended, and attended exclusively by DC personnel and one Commission staff member. He said that there are no schools on the calendar presently and that the Commission will welcome any state that wants to sponsor a school. Sponsoring states assist with site selection, help out at the school as needed, and agree to send a minimum number of students. In return, the state receives a three thousand dollar tuition credit.

BATSA

Mr. Shimkin reviewed the status of the federal Business Activity Tax Simplification Act. He explained that it is perennial legislation that has never advanced significantly in the legislative process and that the prospects for a hearing or other action in the near-term are very low. Mr. Matson said that the bill is being watched carefully by state government organizations in addition to the Commission, including National Governors Association, National Conference of State Legislatures, and Federation of Tax Administrators.

Nexus Director's Report

Mr. Shimkin gave a detailed report on the status of the states' National Nexus Program --

- **Membership.** Other than Rhode Island and Wyoming, which did not renew their Nexus memberships, the program continues in fy 2010 with all member states that it had in fy 2009.

- **Staffing.** The program has shifted focus toward voluntary disclosure at the committee's direction, and reduced its staff level from 6 3/4 FTE to 4 FTE, with the largest reduction in the area of enforcement and compliance. Increased efficiency, primarily through automation, have allowed the program to process significantly greater numbers of disclosures with a reduced staff.
- **Secure E-mail.** The Tumbleweed secure email system is fully operational and users are rarely experiencing trouble using it.
- **State-specific revenue.** A member asked about voluntary disclosure revenue results specific to each state. Mr. Shimkin said that he has those numbers for most states attending the meeting and he invited them to retrieve their report at a break or at the conclusion of the meeting. He said that all member states would receive their numbers by email shortly.
- **Voluntary Disclosure Information Management.** In response to a question from the chair, Mr. Shimkin explained that hiring of a contractor and substantial work to develop Phase II of the voluntary disclosure software project is unlikely to be funded during the present period of sharply reduced state revenues. Mr. Matson also addressed the Phase II project, saying among other things that it is linked to a similar project contemplated for the Commission's Audit division. Mr. Collins suggested that the Nexus Committee and staff should get a good idea of the desired features of Phase II and then states might volunteer the time of some of their information technology staff to help with implementation. Mr. Shimkin said that he would welcome volunteers to help give greater detail to the features that states want in such a system. *The following volunteered: Melissa Kopp (MT) (courtesy of Mr. Walborn); Christy Vandevender (AL); Tamra Fucci (AZ).*

Continuing the discussion regarding information technology, Mr. Shimkin explained that the Commission's online voluntary disclosure application has been less utilized than anticipated, but efficiencies are still achieved because applications are sent electronically, using either Word or PDF format.

Mr. Shimkin said that staff continues to work with the contractor to make marginal improvements to the voluntary disclosure management software.

Turning to the marketing of voluntary disclosure, Mr. Shimkin explained that a number of applicants find the program via a search on Google, where the Commission buys banner advertisements that appear in response to certain key words, such as "nexus" and "voluntary disclosure". He said that a small number of applicants come to the program after being referred by a state at the end of its audit process. The Commission has a brochure for this purpose. Mr. Shimkin noted that only two states are making these referrals or handing out the brochures to taxpayers at the end of a state's audit process, based on the number of brochures the Commission has given to states to hand out. People also come to the program after seeing a link on a state's website. Mr. Shimkin encouraged states to distribute the Commission's voluntary disclosure brochures to auditees at the conclusion of the audit and to maintain a link to the voluntary disclosure section of the Commission's website.

- Voluntary Disclosure Revenue. Mr. Shimkin said that voluntary disclosure revenue continues to increase substantially year over year. He said that in fiscal years 2007 through 2010 (partial year), revenues were \$13 m, \$17.5 m, \$32 m, and \$58.1 m respectively. He said that collections of income/franchise tax revenue far surpassed that of sales/use tax in the two most recent years due to the participation of a mega-taxpayer. Continuing, he said that despite the constant increase in revenue, the number of concluded voluntary disclosure cases – individual contracts between a state and a taxpayer – have remained constant in the range of 351 to 515 contracts.

Voluntary Disclosure Guidelines

Mr. Collins informed the committee that he had presented to Stephen Cordi, chair of the Multistate Tax Commission, the voluntary disclosure guidelines that the Nexus Committee approved at its July 2009 meeting, and that Mr. Cordi had declined to present them to the Executive Committee for consideration because he believed the Executive Committee would reject them due to Section 12, which requires Commission staff to disclose the identity of a voluntary disclosant to states that have not accepted that disclosant's offer when Commission staff believes that the disclosant has made a material misrepresentation. Mr. Cordi explained in a letter to Mr. Collins that this rule would be a powerful disincentive to participate in the Commission's multi-state voluntary disclosure program because many disclosants would avoid the risk by approaching states individually. To the extent disclosants do this, he said, states and the tax-paying community will lose out on the efficiency of their multi-state program. He further noted that disclosants will reasonably fear making a good faith mistake, particularly when a disclosure arises from the common situation of a corporate acquisition in which the acquiring company has incomplete information about the acquired company.

Mr. Shimkin distributed alternate Section 12 language for the committee's consideration, which he had prepared in advance of the meeting at Mr. Collins' request. *The committee approved a drafting subcommittee to look at the Section 12 language in advance of a full Nexus Committee meeting. Shelley Robinson (UT); Hermi Nanez (TX); and Christy Vandevender (AL) volunteered to serve.*

New Business

There was no new business.

Closed Session

The committee adjourned and re-convened in closed session.

The committee convened in public session & reported on the closed session

Adjournment

The committee adjourned.

Mark-Up Version of Section 12

This section shows the changes that the drafting subcommittee made to the version of the guidelines that the Nexus Committee approved in July 2009.

2. Material Misrepresentation

2.1. A material misrepresentation is a false or misleading statement by a taxpayer (or its representative), made in good faith or otherwise, about a fact, which successfully induces a state to take a position to its substantial detriment with respect to acceptance of a voluntary disclosure contract (or significant terms in it) with that taxpayer.

2.2. If the Commission has clear and convincing evidence that a taxpayer has made a material misrepresentation, the Commission shall present the evidence thereof to the taxpayer and invite it to show good cause why the Commission should not take action pursuant to this section 12.

2.3. If the taxpayer cannot otherwise be contacted after a good faith effort, the Commission shall send a certified letter to the contact person and address of record of both the taxpayer and its tax practitioner, if any.

2.4. If 10 days after the later of presenting the evidence to the taxpayer and mailing a certified letter the taxpayer has not shown good cause, the Commission shall:

2.4.1. With respect to states that have executed a contract with the taxpayer based on the material misrepresentation, the Commission shall identify the taxpayer and inform each state of the evidence regarding the material misrepresentation.

2.4.1.1. The state may in this case void the voluntary disclosure contract, or any part of it that was the result of the material misrepresentation, within ninety calendar days of receiving notice regarding the material misrepresentation. In such case, it will be as if the contract (or excised terms) never existed; the state may keep all revenue paid to it as a result of the voluntary disclosure and may pursue additional remedies as permitted by law.

2.4.2. With respect to states that received an offer from the taxpayer containing a material misrepresentation but have not accepted

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it, the Commission shall withdraw without comment the pending voluntary disclosure offer. An offer is considered pending until it has been either rejected, withdrawn or signed by both state and taxpayer (accepted and fully executed). The Commission shall not disclose the existence of the material misrepresentation or the identity of the taxpayer to these states.

With respect to states that did not receive a voluntary disclosure offer containing a material misrepresentation from this taxpayer, the Commission shall not disclose the existence of the material misrepresentation and shall not disclose the identity of the taxpayer to these states.

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Multistate Tax Commission
Procedures of Multi-state Voluntary Disclosure

1. Definition and Purpose of Multi-state Voluntary Disclosure

- 1.1. The Multistate Tax Commission National Nexus Program (NNP) is a state instrumentality to which member states delegate enumerated, limited powers to act on their behalf. The NNP's multi-state voluntary disclosure program (MVD) is one such limited delegation.
- 1.2. MVD is the process whereby a taxpayer that has not filed a return of sales/use or business activity tax in one or more *states* may come into compliance through a single point of contact and substantially uniform procedure. Business activity taxes include taxes such as income, franchise, business and occupation, commercial activity, and net worth tax. In exchange for compliance in a state, the taxpayer receives a benefit from that state, usually relief of all penalty and, except with respect to the *lookback period*, waiver of all back tax and all back interest. The *lookback period* is the range of past tax filing periods with respect to which the taxpayer must file returns as part of the MVD. *Lookback periods* vary. However, sales and use tax collected from others must be surrendered in its entirety, without regard to the *lookback period*, and may in some *states* involve a small, non-waivable penalty. In most *states* interest is not waived.
- 1.3. Because a taxpayer's obligation to file tax returns outside its state of domicile is sometimes unclear, it is appropriate for *states* and taxpayers to compromise by means of MVD. Taxpayers are relieved of the financial uncertainty of potential tax obligations while *states* protect the public interest and promote compliance with their tax laws.
- 1.4. MVD furthers the purposes of the *Commission* and its *National Nexus Program* by:
 - 1.4.1. Fostering increased state tax compliance by businesses engaged in multi-jurisdictional commerce;
 - 1.4.2. Establishing national cooperation in the administration of state tax issues arising in the nexus area, including the identification of businesses involved in multi-jurisdictional commerce which are not now in compliance with applicable state tax laws;
 - 1.4.3. Educating taxpayers as to their state tax reporting responsibility when they become involved in the systematic development of a market in a specific state; and
 - 1.4.4. Promoting fair and consistent state tax enforcement in the nexus area.

- 1.5. *State* as used in these procedures includes only the fifty United States and the District of Columbia. It includes political subdivisions only to the extent their taxes are administered and collected by the *state*.

2. Role of the *Commission*

The National Nexus Program is a program of the Multistate Tax Commission available to *states* by subscription independent of membership in the Multistate Tax Commission itself. To encourage participation in MVD, the *Commission* seeks to play the role of a fair broker between *states* and taxpayers as they seek to settle their nexus issues.

3. Purpose of Multi-state Voluntary Disclosure Procedures

- 3.1. The purpose of this document is to set forth guidelines with respect to multi-state voluntary disclosure in order to ensure fair and consistent treatment of all taxpayers. This in turn allows taxpayers to better order their affairs with respect to these procedures, and to reduce the burden on state and taxpayer personnel by reducing the need to address policy issues on a case by case basis.
- 3.2. Participating *states* believe that established guidelines will encourage greater participation in multi-state voluntary disclosure by taxpayers and *states*, and thereby increase compliance with *state* tax laws, to the benefit of the citizens of the participating *states* and of taxpayers wishing assistance to come into compliance.

4. Adoption of Procedures

- 4.1. All member states of the NNP accept these procedures as the state's procedure with respect to multi-state voluntary disclosure except:
 - 4.1.1. The following *states* accept no part of these procedures: _____; and
 - 4.1.2. A *state* may opt out of a particular section, which is noted by footnote where it occurs in the text.
- 4.2. These procedures do not apply to a *state's* single-state voluntary disclosure program.
- 4.3. Except as a *state* may exempt itself per § 4.1.1 or 4.1.2, NNP member *states* adopt these procedures as an expression of current policy based on discretionary administrative authority; they shall not be construed to be promulgation of regulations.

- 4.4. Participating *states* acknowledge that taxpayers entering into multi-state voluntary disclosure do so in reliance on these procedures; therefore, participating *states* agree to apply to a taxpayer with an Open MVD case the procedures as they existed when that taxpayer opened that MVD case.

5. Eligibility

- 5.1. Generally, a taxpayer may participate in MVD unless it is ineligible. However, a state is not required to accept a taxpayer's MVD offer even if it is otherwise eligible.
- 5.2. A taxpayer is generally ineligible to participate in MVD with respect to a tax type and a *state* if it has at any time in the past filed a tax return or similar filing or made a payment with respect to that tax type and that *state*, or if it has been *contacted* by that *state* (or the *Commission* on behalf of that state) with respect to the taxpayer's potential or actual obligation to file a return or make a payment with respect to that tax type and that *state*. However, if a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax. ¹ Each state may make its independent decision with respect to eligibility, taking into consideration extenuating circumstances, such as passage of time See §15 for the definition of *state contact*.² .
- 5.3. A taxpayer who would generally be ineligible for MVD but nevertheless wishes to pursue it, should so advise *Commission* staff, who will inquire of the affected *states* and inform the taxpayer which, if any, care to receive an application.

6. Anonymity and Disclosure

- 6.1. A taxpayer may, but need not, be anonymous to the *Commission* during the MVD process. Because the *Commission* needs to easily communicate with a taxpayer (directly or through its attorney or tax advisor) in order to conduct its business, taxpayers wishing to remain anonymous to the *Commission* will find it most convenient to approach through a representative such as an attorney or tax advisor who has a fixed place of business that may be used for communication purposes. A taxpayer choosing to remain anonymous while approaching the *Commission* directly should make arrangements to ensure timely communication by telephone, e-mail, US Postal Service, and private overnight delivery

¹ A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the *contact*. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

² Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted*. Such persons will ordinarily not know of their ineligibility before they apply.

service, which will prevent delay in processing the application. The *Commission* must know a taxpayer's identity after an MVD contract is executed in order to ensure proper processing.

6.2. In the event the *Commission* knows the taxpayer's identity, it shall not knowingly release it to any other party under any circumstance except:

6.2.1. To a *state* after an MVD contract has come into effect with respect to that *state*;

6.2.2. To any other party with the taxpayer's written consent;

6.2.3. By order of a court of competent jurisdiction; or

6.2.4. In accordance with § 12.1.2 or § 12.2.1.

6.3. Participating *states* agree to not require, whether by court order or otherwise, that the *Commission* release a taxpayer's identity except:

6.3.1. To a *state* after an MVD contract has come into effect with respect to that *state*; or

6.3.2. To any other party with the taxpayer's written consent; or

6.3.3. In accordance with § 12.1.2 or § 12.2.1.

7. Disclosure of Taxpayer's Identity

7.1. The Commission shall take reasonable care to review a taxpayer's application and other communications intended to be sent to a state to ensure that nothing therein identifies the applicant (except to the extent the taxpayer has given its written consent to that disclosure). However, under no circumstance shall the Commission be liable for failure to detect such information or for having made such application or communication available to a *state*. Ensuring that communications intended to be forwarded to a *state* be in a form appropriate for that *state* to see is primarily the taxpayer's responsibility.

7.2. Neither the *Commission* nor a *state* shall attempt to learn the identity of a taxpayer in MVD except:

7.2.1. When the taxpayer voluntarily discloses it as a result of completing an MVD contract or otherwise;

7.2.2. In the course of governmental activity that does not use any information acquired as a result of the taxpayer's participation in MVD; or

7.2.3. In accordance with § 12.1.2 or § 12.2.1.

7.3. Neither the *state* nor the Multistate Tax Commission shall use information acquired as a result of a taxpayer's participation in MVD to develop independent sources of information about the taxpayer for the purpose of discovering its identity.

7.4. Unless the taxpayer consents otherwise in writing, or in accordance with § 12.1.2 or § 12.2.1, if a *state* learns the identity of a taxpayer before the MVD contract is in effect with respect to that *state*, the *state* shall:

7.4.1. Make no use of the identity; and

7.4.2. Conduct itself as if the identity had never been disclosed.

8. Opening A Voluntary Disclosure Case

(see also § 19 for definitions of Case and File)

8.1. A taxpayer opens a voluntary disclosure case with respect to a *state* and a tax type when the *Commission* receives a writing that:

8.1.1. States that the taxpayer "applies for voluntary disclosure" (or other words to that effect);

8.1.2. Lists the *state(s)* to which the taxpayer wishes to voluntarily disclose;

8.1.3. Lists the type(s) of tax sought to be voluntarily disclosed; and

8.1.4. Provides the last digit of the taxpayer's federal employer identification number (FEIN) or last digit of its taxpayer identification number (TIN).

8.2. Providing the FEIN or TIN information allows the *Commission* to positively distinguish the applicant from other taxpayers without compromising its anonymity.

8.3. A writing may be presented in any way, including Postal Service, fax, and e-mail. It need not be signed.

- 8.4. Having an open case means that the taxpayer is *protected from discovery* in the listed states beginning 12:01 AM on the calendar day following the *Commission's* receipt of the writing and ending on the calendar day following expiration of a time limit (deadline) as set forth in §16. Unless the case is closed, *protection from discovery* in that case's state resumes at 12:01 AM on the calendar day after the taxpayer takes the required action. See § 14.1 for the definition of *protected from discovery*.

9. Mistaken Filing or Payment to *State*

- 9.1. If a *state* receives notice or otherwise becomes aware that it mistakenly received a return, filing, or payment, the *state* shall:
 - 9.1.1. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received; and
 - 9.1.2. Apply a mistaken payment (or payments) to the tax owed, apply any remainder to interest, and refund any further remainder to the taxpayer.
- 9.2. The *state* shall not be required to refund a mistaken payment except to the extent it exceeds a taxpayer's total tax liability at the end of the MVD process.
- 9.3. Notwithstanding §9.1.1, the *state* may process a mistakenly received registration or filing.

10. Mistaken Filing or Payment to *Commission*

- 10.1. If the *Commission* receives notice that it mistakenly received a return, filing, or payment other than of a collected fiduciary tax, the *Commission* shall:
 - 10.1.1. At the applicant's option, either return, destroy, or retain for future use the mistaken return, filing or payment;
 - 10.1.2. Make no use of mistakenly received information except as the taxpayer permits; and
 - 10.1.3. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received.
- 10.2. However, without regard to the applicant's preference, the *Commission* shall forward to the *state* a mistakenly received collected fiduciary tax payment and shall not return, destroy, or retain it for future use. A collected fiduciary tax is sales tax, use tax, excise tax, withholding tax, or any other tax or funds collected or received from another on behalf of the state under color of state authority.

11. Premature or Incomplete Filing or Payment to the *Commission*

- 11.1. A signed MVD contract, returns, registration forms (sales/use tax only) and payment are generally due to the *Commission* from the applicant at the end of the MVD process (the MVD contract governs this).
- 11.2. If the *Commission* receives one or more, but not all, required items, the *Commission* shall hold the received items pending receipt of the rest. However, if the *Commission* has not received all items within 60 days of their due date (see §16 for time limits on taxpayer), The *Commission* may return the received items to the sender.
- 11.3. Standard deadline procedures apply, as indicated in § 16, including the deadline to close an inactive *case* or *file*.

12. Gross Misrepresentation

- 12.1. If a taxpayer's *case* is *open* in any *state* and the *Commission* obtains clear and convincing evidence of gross misrepresentation of a material fact that the taxpayer provided as part of, or in support of, its application for MVD to a *state*, such as would likely have affected that *state's* decision whether to accept, reject, or counter-offer the proposal, the *Commission* shall present the evidence to the taxpayer and invite it to show good cause why its *file* (with respect to all *states*) should not be closed, and its identity and the evidence of gross misrepresentation reported to the *states* that have received the taxpayer's application. If after 10 days good cause has not been shown, the *Commission* shall close the *file* (with respect to all *states*) and:
 - 12.1.1. Not disclose the taxpayer's identity or evidence of gross misrepresentation to *states* that did not receive the taxpayer's application; and
 - 12.1.2. Inform *states* that did receive the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*); and
 - 12.1.3. Decline to knowingly assist this taxpayer with MVD again.
- 12.2. If a taxpayer's *file* is closed (with respect to all *state cases*) when the *Commission* obtains clear and convincing evidence of gross misrepresentation of a material fact that the taxpayer provided as part of, or in support of, its application for MVD to any *state*, such as would likely have affected that *state's* decision whether to accept, reject, or counter-offer the proposal, The *Commission* shall present the evidence to the taxpayer and invite it to show good cause why its identity and the evidence of gross misrepresentation should not be reported to the *states* that have entered into an MVD contract with it. If the taxpayer

cannot otherwise be contacted after a good faith effort, this requirement will be met by sending a certified letter to the contact person and address of record with the *Commission* of both the taxpayer and its tax practitioner, if any. If after 10 days good cause has not been shown, the *Commission* shall:

- 12.2.1. Inform *states* that have received the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*);
 - 12.2.2. Not disclose the taxpayer's identity or evidence of gross misrepresentation to *states* that did not receive an application; and
 - 12.2.3. Decline to knowingly assist this taxpayer with MVD again.
- 12.3. If a taxpayer whose *file* is closed for misrepresentation is represented by a tax practitioner and there is clear and convincing evidence that the tax practitioner knowingly participated in the gross misrepresentation, or was aware of it and remained silent, then the *Commission* shall present the evidence to the tax practitioner and invite him or her to show good cause why his or her identity and the evidence of gross misrepresentation should not be reported to the *states* that have received the taxpayer's application. If after 10 days good cause has not been shown, the *Commission* may at its option:
- 12.3.1. Decline to knowingly assist this tax practitioner with MVD again (this prohibition shall be limited to the particular person in question and shall not extend to his or her partner or firm unless they were involved in their own right); and shall
 - 12.3.2. Inform the *states* that have received the taxpayer's application of the tax practitioner's identity and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*).

13. Withdrawal

- 13.1. A taxpayer may withdraw from a *state* *without prejudice* at any time before *the Commission* sends the signed contract, return, or payment to that *state*. *Without prejudice* means the taxpayer may apply again by submitting all new materials.
- 13.2. A withdrawal requested by a taxpayer shall be in writing and shall enumerate the *states* from which withdrawal is sought. Absent a contrary written statement, a withdrawal with respect to a *state* shall be presumed to include all tax types and shall be presumed to be effective upon receipt by *the Commission*.

13.3. *Protection from Discovery* per §14 ceases at 12:01 AM on the calendar day immediately following withdrawal.

14. Protection from Discovery

14.1. *Protection from Discovery* means that, upon receipt of notice per §15.2, the Commission and participating *states* shall suspend with respect to an eligible taxpayer (see § 5.2) so protected, all inquiry and other enforcement activity (except criminal enforcement activity), with respect to that taxpayer's non-filer status and the type of tax it seeks to voluntarily disclose, pending that taxpayer's completion of its MVD in accordance with the time limits set forth in §16.

14.2. Provided that the *state* (or the *Commission* on behalf of the *state*) has not *contacted* (see §15.1 for definition) the taxpayer, it is *protected from discovery* in a state with respect to a type of tax beginning at 12:01 AM on the calendar day following the day that *the Commission* receives its request for MVD that meets the requirements of § 8

14.3. *Protection from discovery* ends at 12:01 AM on the day following the last day available to a taxpayer to meet a deadline as set forth in these procedures. For example, given a seven day deadline and time period beginning on July 1, *protection from discovery* ceases at 12:01 AM on July 9. *Protection from discovery* resumes at 12:01 AM on the calendar day after the taxpayer takes the required action.

15. *State Contact While Protected from discovery*

15.1. *State contact* means any communication with respect to a type of tax from *state* personnel to a *person* with respect to that *person's* actual or potential tax obligation in that *state* with respect to that type of tax. Examples of *state contact* include but are not limited to: a telephone call or correspondence from a *state* revenue official, a nexus questionnaire mailed to the taxpayer, and a notice of audit or assessment.³ A *state contact* is deemed received when mailed or sent. If a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax.⁴

³ Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted*. Such persons will ordinarily not know of their ineligibility before they apply.

⁴ A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the Contact. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

15.2. For purposes of §15, a *person* means either a natural or a juristic person. With regard to a *state* whose laws allow for unitary, combined, or consolidated filing of returns, all constituent entities of a unitary or combined group, of a group filing on a consolidated basis, or of a group otherwise affiliated, are a single *person* for purposes of §15 without regard to whether the *state* was aware of the existence of such entity or of its relationship to its constituent entities.

15.3. A taxpayer *contacted* by a *state* with respect to which the taxpayer is *protected from discovery* may assert its *protection from discovery* by doing all of the following:

15.3.1. Inform the *Commission* of the *state contact*, including if possible the name and contact information of the *state* person who made the *state contact* and a copy of any writing that was part of the *state contact*; and

15.3.2. Provide the *Commission* this, or a similar, written statement: "MTC Anonymous YY-XXX gives *the Commission* permission to disclose its identity to the *state* of [*state* name] for the purpose of *protection from discovery* as described by the Multistate Tax Commission Procedures of Multi-state Voluntary Disclosure." YY-XXX stands for the taxpayer's voluntary disclosure identification number.

15.4. Upon proper notice, the *Commission* shall timely inform the *state* in question that the taxpayer is involved in MVD with respect to that *state* and the type(s) of tax and the *state* shall suspend its inquiry or other compliance-related activity pending the taxpayer's completion under the normal and usual terms of the MVD with respect to that *state* and that (those) type(s) of tax.

15.5. If a taxpayer fails to meet a time deadline of the MVD process after *contact* by the *state*, then *protection from discovery* shall thereupon cease and the *state* may, at its option, continue its *state contact*, inquiry, or compliance-related action. The *Commission* shall not grant an extension of time after *state* contact. The *state* should at this time advise the *Commission* whether it is willing to further consider the MVD application and the taxpayer should advise the *Commission* whether it wishes to continue the MVD application. If both taxpayer and *state* choose to continue, The *Commission* shall continue to process the MVD. If either the taxpayer or the *state* chooses to not continue, The *Commission* shall close its *case* on the taxpayer with respect to that *state*.

16. Time Limits: Taxpayer

16.1. The following time limits (deadlines) apply to the taxpayer for the purpose of determining whether the taxpayer is *protected from discovery*. Failure to meet a time limit shall suspend the taxpayer's *protection from discovery* until the action in question is completed and, in some cases as noted, result in closure of the *file*.

- 16.1.1. The *Commission* opens a *file* (see § 8) until the *Commission* receives a properly prepared Application: 14 days.
- 16.1.2. Taxpayer receives draft contract until taxpayer responds to draft contract by either accepting or requesting changes: 28 days. The draft contract is the text the *Commission* will send to the indicated *states* as part of the taxpayer's MVD proposal.
- 16.1.3. Taxpayer responds to state counter-offer to draft contract: 28 days. Taxpayer has 28 days to respond to each subsequent counter-offer.
- 16.1.4. Taxpayer responds to request for information from *state* or the *Commission*: 14 days. Taxpayer has 14 days to respond to each subsequent request for information from the *state* or the *Commission*.
- 16.1.5. From taxpayer receipt of a state-signed contract (or other expression of intention to enter into the voluntary disclosure agreement) until the *Commission* receives it back from the taxpayer together with all required filings, returns and payment: 28 days.
- 16.1.6. Notwithstanding the requirement of § 16.1.5, an MVD draft contract signed by a *state* shall remain a valid offer to the taxpayer for the period of time stated in the contract the state signed or, if no period is stated, 90 days from the day it was mailed or sent to the taxpayer or its representative (protection from discovery is lost 28 days after it was mailed or sent). It may be returned signed at any time within that period together with all required returns and payment, after which time it shall be void, unless the *Commission* or the *state* issues an extension in writing.
- 16.2. The *Commission* may at its option close the *file* of a taxpayer at any time 90 days or more after the taxpayer loses and fails to regain *protection from discovery*. *Closing the file* means that the taxpayer must apply from the beginning if it wishes to pursue MVD.
- 16.3. Except when the *Commission* closes a taxpayer's *file* due to inactivity for 90 or more days after loss of *protection from discovery*, the taxpayer is free to miss any deadline it chooses without consequence other than temporary loss of *protection from discovery*. Therefore, the *Commission* may, without specific *state* authorization, grant one or more short extensions of time to a taxpayer, but only upon demonstration of extreme hardship that the taxpayer could not have reasonably prevented.

17. Time Limits: *State*

17.1. The *state* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

17.2. The following time limits apply:

17.3. From *state* receipt of draft contract until it sends its response to the *Commission*: 42 days (6 weeks);

17.4. *State* responds to counter-offer: 42 days (6 weeks);

17.5. *State* sends bill for interest to taxpayer: 42 days (6 weeks)

18. Time Limits: *Commission*

18.1. The *Commission* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

18.2. The following time limits apply to the *Commission*:

18.3. From *Commission* receipt of application for voluntary disclosure to sending draft contract to taxpayer: 7 days;

18.4. From *Commission* receipt of taxpayer's approval of draft contract to sending draft contract to *state*: 7 days;

18.5. Forwards requests for information, counter offers, and other communications: 2 business days;

18.6. Forwards *state*-signed contract to taxpayer: 7 days;

18.7. Forwards taxpayer signed contract, returns and payment to *state*: 7 days.

19. Definitions and Miscellaneous Time Procedures

- 19.1. *Days* are calendar days unless the text clearly states otherwise.
- 19.2. A time limit (deadline) falling on a federal holiday or a weekend shall be extended to the next business day.
- 19.3. *Days* are counted thus: the first day is the calendar day immediately after the day in which the initiating action took place.
- 19.4. A filing or document mailed or sent by a taxpayer shall be construed to have been received by a state or by the *Commission* on the date of actual receipt, without regard to its postmark and the date it was mailed or sent.
- 19.5. No return, filing, or payment that was accidentally or prematurely made and returned to the sender for that reason shall count with respect to any time deadline of these procedures.
- 19.6. *File* means the total number of state cases existing with respect to an applicant. It is assigned a *file* number in the format MTC YY-XX, such as MTC 09-40 or MTC 09-99.
- 19.7. *Case* means that subset of a *file* that applies to only one state and one taxpayer, e.g., MTC 09-40 ND or MTC 09-99 MA
- 19.8. *Commission* means the Multistate Tax Commission.
- 19.9. *NNP* means the National Nexus Program, a division of the Multistate Tax Commission. *States* may subscribe to NNP independently of their membership in the *Commission* itself and any other program of the Commission.
- 19.10. The MVD process ends with respect to a *state* when:
 - 19.10.1. that *state* and the taxpayer have each signed the MVD contract; and
 - 19.10.2. the *state* has received all tax returns, payment and other material due, including but not limited to any interest and non-discretionary fees that the state billed in accordance with the MVD contract after receipt of the tax returns.

20. Electronic Communications

- 20.1. Unless the text clearly states otherwise, communications by fax machine, electronic mail (e-mail), and similar technological means shall count as written communications for purposes of these procedures.

- 20.2. MVD contracts shall be signed with ink on paper unless the state and taxpayer each agrees to substitute one or more facsimile signatures. A facsimile signature for purposes of these procedures is a signature created or transferred by fax machine, over the internet as an image, or by similar technology, which the sender intends to be used to indicate and memorialize the sender's acceptance of an MVD contract.
- 20.3. The *Commission* may communicate with *states* and taxpayers through the internet, including its world wide web and electronic mail features. However, unless authorized in writing by the taxpayer or adequate encryption or reasonable safeguards are used, neither the *Commission* nor a *state* shall transfer over the internet in a manner susceptible of interception by an unauthorized person any confidential taxpayer information, such as a taxpayer's name, taxpayer identification number, telephone number, address, amount owed, factual circumstances, et cetera.

21. Non-Member States

- 21.1. If sufficient resources are available, the *Commission* may offer voluntary disclosure services to *states* that are not members of the National Nexus Program as a convenience to a taxpayer requesting such services and as a way for the state to become familiar with the *Commission's* voluntary disclosure services.
- 21.2. A *state* that participates in the multi-state voluntary disclosure process as a non-member *state* of the National Nexus Program shall not be required to take any action or refrain from taking any action as a result of these Procedures of Multi-state Voluntary Disclosure, but it is encouraged to abide by them voluntarily.

Voluntary Disclosure Information Technology: Phase II

Staff requests input from the committee regarding the desirability of pursuing Phase II of the Commission's voluntary disclosure technology update project and if so, what features are desirable. It is important to note that Phase II contemplates a high degree of interactivity between state users and the commission's Phase II technology, thus input from the committee is important. This is a theoretical discussion at this point because Phase II is at present unapproved and unfunded, and will certainly remain that way until the present budget difficulties are behind us. It is therefore the perfect time to plan.

Here is the general outline of Phase II. Please note that the committee's July 28 agenda includes a discussion of Phase II – whether it is desirable, what features might be included, and the like.

Of course there are many things that a taxpayer may take into account when deciding whether to do multistate voluntary disclosure, but chief among them are:

1. Speedy processing;
2. Convenience (low cost); and
3. Ability to be a zealous advocate

For states, chief concerns are:

1. Convenience (efficient to administer);
2. Speedy processing; and
3. Increasing taxpayer participation

Phase II seeks to address these goals through a computer system that is the technological focus point of all communication among states, taxpayers, and the Commission about voluntary disclosure. The idea is basically the same as that behind electronic banking, and all other web-based systems that allow customer access to their electronic account information and to perform transactions. Perhaps a closer parallel would be to E-bay, which allows multiple parties to interact in a secure and anonymous environment.

Specifically, Phase II would do the following:

1. **Allow both state and taxpayer to log in via the web to appropriate records** of the Commission's voluntary disclosure program to view, add, delete, and change information as appropriate.
 - a. A taxpayer might care to see the status of a taxpayer's voluntary disclosure offer in each of the states to which he applied. The database currently produces a report called the Status Sheet – Phase II would give access to the taxpayer. Information presented would concern only that taxpayer, of course. Confidentiality and security will be paramount.
 - b. A state may wish to see a report showing the status of a particular voluntary disclosure. Has the Commission sent a counter offer to the taxpayer yet? Check the Status Sheet to see. State access would, of course, be limited to information about that state only, with appropriate safeguards to prevent unauthorized disclosures.

This improves speed and convenience. And it encourages taxpayer participation by making the process more convenient (less costly) to use.

2. **Serve as the central repository of documents:** the taxpayer's application (which is now submitted electronically via the web), the state's response to the application, an image of the signed contract, etc. would be stored electronically and made available to authorized parties. The Commission would continue to affirmatively *push* documents out to states and taxpayers, usually by email, but Phase II would add the ability for states and taxpayers to also *pull* information from the Commission at any time. The Commission keeps most documents electronically in its database already; Phase II would open this information up to state and taxpayer for convenient access any time.

This improves speed and convenience, and thereby encourages taxpayer participation.

3. Serve as the medium of communication, **allowing state and taxpayer to communicate directly.** Presently, when state and taxpayer cannot agree to voluntary disclosure terms the parties communicate through Commission staff – either verbally or by forwarding written communications. This process adds a certain amount of delay and occasionally allows misunderstanding to arise when information is not relayed perfectly. Phase II would allow state and taxpayer, through the electronic system, to send written notes *directly to each other* while retaining anonymity when desired. This increases convenience and speed, and avoids misunderstandings.

Most importantly, it allows the taxpayer's representative to communicate directly with the state decision maker, providing the opportunity for the representative to be his client's zealous advocate. Communicating directly with the state decision maker assures the representative that his arguments have been well presented and that there is no confusion about the content of the state's response. If the state declines the taxpayer's request, the representative can go to his client and explain that he made his arguments and the denial came directly from the state. The involvement of the Commission in a voluntary disclosure adds value to the extent that it creates a multi-state uniform process, but it detracts value to the extent that it prevents a tax representative from having the assurance that he secured the best possible deal for his client. Having the ability to zealously advocate directly to the state will encourage taxpayer participation in multistate voluntary disclosure.

Commission staff would continue to add value-added services to transactions as appropriate. Phase II would not remove personal assistance to states and taxpayers. It would add a self-service *option* for information and improve communication between states and taxpayers.

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If a taxpayer's case is *open* in any *state* and the *Commission* obtains clear and convincing evidence of gross misrepresentation of a material fact that the taxpayer provided as part of, or in support of, its application for MVD to a *state*, such as would likely have affected that *state's* decision whether to accept, reject, or counter-offer the proposal, the *Commission* shall present the evidence to the taxpayer and invite it to show good cause why its *file* (with respect to all *states*) should not be closed, and its identity and the evidence of gross misrepresentation reported to the *states* that have received the taxpayer's application. If after 10 days good cause has not been shown, the *Commission* shall close the *file* (with respect to all *states*) and:

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Not disclose the taxpayer's identity or evidence of gross misrepresentation to *states* that did not receive the taxpayer's application; and

Inform *states* that did receive the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*); and

Decline to knowingly assist this taxpayer with MVD again.

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a taxpayer's *file* is closed (with respect to all state cases) when

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of gross misrepresentation of

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fact that the taxpayer provided as part of, or in support of, its application for MVD to any state, such as would likely have affected that state's decision whether to accept, reject, or counter-offer the proposal, The

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its identity and the evidence of gross misrepresentation

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be reported to the *states* that have entered into an MVD contract with it.

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that have received the taxpayer's application. If after 10 days good cause has not been shown, the the *Commission* may at its option:

Decline to knowingly assist this tax practitioner with MVD again (this prohibition shall be limited to the particular person in question and shall not extend to his or her partner or firm unless they were involved in their own right); and shall

Inform the *states* that have received the taxpayer's application of the tax practitioner's identity and present to them the evidence of gross misrepresentation (evidence affecting one state but not another shall be disclosed only to the affected state).