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**Open Session
Nexus Director's Report**

**Nexus Committee Meeting
Kansas City, Missouri
July 28, 2009**

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program in fiscal year 2009, which ended June 30, 2009.

Minutes of Last Meeting

Minutes of the March 2009 open session Nexus Committee meeting will be found as a hypertext link on the agenda of the July 28, 2009 Nexus Committee meeting as posted on the Commission's website, www.mtc.gov. They are also included herein.

Membership

Citing budget restraints, Rhode Island and Wyoming have declined to renew their memberships in the National Nexus Program for fiscal year 2010.

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 study of nexus law (what actions create nexus) and the second day is primarily 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.

- Schools held in FY 2009:
 - Little Rock: May 18-19, 2009
 - Baton Rouge: February 9 – 10, 2009
 - Olympia: December 16 – 17, 2008
 - Boise: October 21 – 22, 2008
 - Omaha: September 15 – 16, 2008

- Due to reduced demand overall, and availability of the Little Rock school, we postponed a school scheduled for the spring in Topeka. It may be offered in fall 2009 or winter 2009 - 2010 if there is sufficient demand.
- In a departure from the current practice in which a state sponsors a nexus school, the Commission intends to sponsor an annual nexus school itself in the Washington, DC metropolitan area. Such a school would offer states an additional training opportunity without the need for a state to host the event. The first such school is scheduled for December 7 and 8 in Loudoun County, Virginia. The venue is ten miles from Dulles International Airport and thirty-two miles from the U.S. Capitol.

Nexus staff updated and improved the exercise workbooks used in the course. They were used at the Little Rock school and will replace the old books at subsequent schools. Updating the materials will be an on-going project for some time.

Contact Mr. Antonio Soto or Mr. Ken Beier of the Commission's training staff for registration information or information about the benefits of hosting a nexus school. States that host a nexus school receive credit toward student tuition and can train staff without the expense of out-of-state travel.

Frequency of Nexus Committee Meetings

Due in part to the difficulty of travel during the present economic difficulties, the Commission will no longer have fall committee meetings other than Uniformity. Therefore, after the July meeting, the Nexus Committee will next meet during the first week of March 2010. The meeting was moved from the latter part of March to the beginning of the month in order to better space meetings chronologically.

Voluntary Disclosure Information Technology

Secure Email

The Commission's secure e-mail system is fully deployed. It allows secure e-mail communication between Commission personnel and any e-mail recipient without the recipient needing to have any special software. The system has been working well, although two people have brought to my attention troubles using the system.

Database Renovation & Online Application

The renovation of the Commission's voluntary disclosure database is complete. The new software allows staff to better manage an increased voluntary disclosure caseload more accurately and more quickly without hiring additional personnel. It produces reports better tailored to Nexus Committee members' interests, and includes some management features to permit Commission staff to better distribute and track workload.

The online voluntary application form is now posted to the Commission's web site. Although it has been ready for some time, we have delayed deployment of this last piece of software upgrade while we made some security improvements to the Commission's computer system. You may navigate to it on the voluntary disclosure page using the menu system or the search feature, or you may access it directly at: www.mtc.gov/Nexus.aspx?id=534 .

The online application will speed the application process for the taxpayer and make data collection easier for the Commission. It allows an applicant to fill out the Commission's standard application for voluntary disclosure on a web page, save partially complete work and resume at another time, and submit the application to the Commission via the internet. An applicant is given a password to allow access to his partially completed application. The application customizes itself based on the states and tax types provided by the applicant; thus, questions asked by only certain states will not appear on the application unless the applicant has selected a state that requires it. To protect the Commission's computer systems from dangerous content, applicants will do their work on a dedicated server outside the Commission's firewall and have no access behind the Commission's main firewall.

The Commission will examine now whether to proceed with the second phase of this project. This phase, if undertaken, will allow states and taxpayers to access the voluntary disclosure database directly and to perform a number of functions there without intervention from Commission staff.

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.

Voluntary Disclosure Revenue

Revenue from the National Nexus Program's voluntary disclosure program continues to zig and zag its way upward. All amounts below include only payments for back liability that the Commission received and forwarded to the states. Insignificant amounts of incidental fees, interest or penalty may be included if received at the end of the voluntary disclosure process. They include

absolutely no revenue resulting from anticipated future filings. In fiscal year 2009 (June 30, 2009 year end) the National Nexus Program:

- Executed contracts with 69 taxpayers (69 Files), which resulted in **345 separate contracts** with states (345 Cases)
- Opened 83 new voluntary disclosure Files, representing 815 Cases ¹
- **Collected back tax: \$33.85 million** (likely to rise due to late-arriving data).²
- **Return On Investment: > 38:1** ³

It is important to also note that most of this year's revenue came from a single group of affiliated taxpayers. Because this taxpayer chose to disclose through the Commission to only some member states, this year's revenue is concentrated in those states. This affiliated group of taxpayers continues to negotiate with other states through the Commission, so there will likely be similar revenue in other states in fy 2010.

¹ Please note that some opened Files are closed without an executed contract or are closed with less than the initially estimated number of contracts executed. In other words, if history is a guide, roughly half the 815 opened Cases will result in executed contracts.

² This is the amount of voluntary disclosure back tax actually received at the MTC office with respect to all states (and DC) during the time range July 1, 2008 through June 30, 2009. The figure is computed on a cash basis, i.e., money is counted in this report only when actually received, and without regard to when the money was due and without regard to when the contracts associated with the money were executed or finalized.

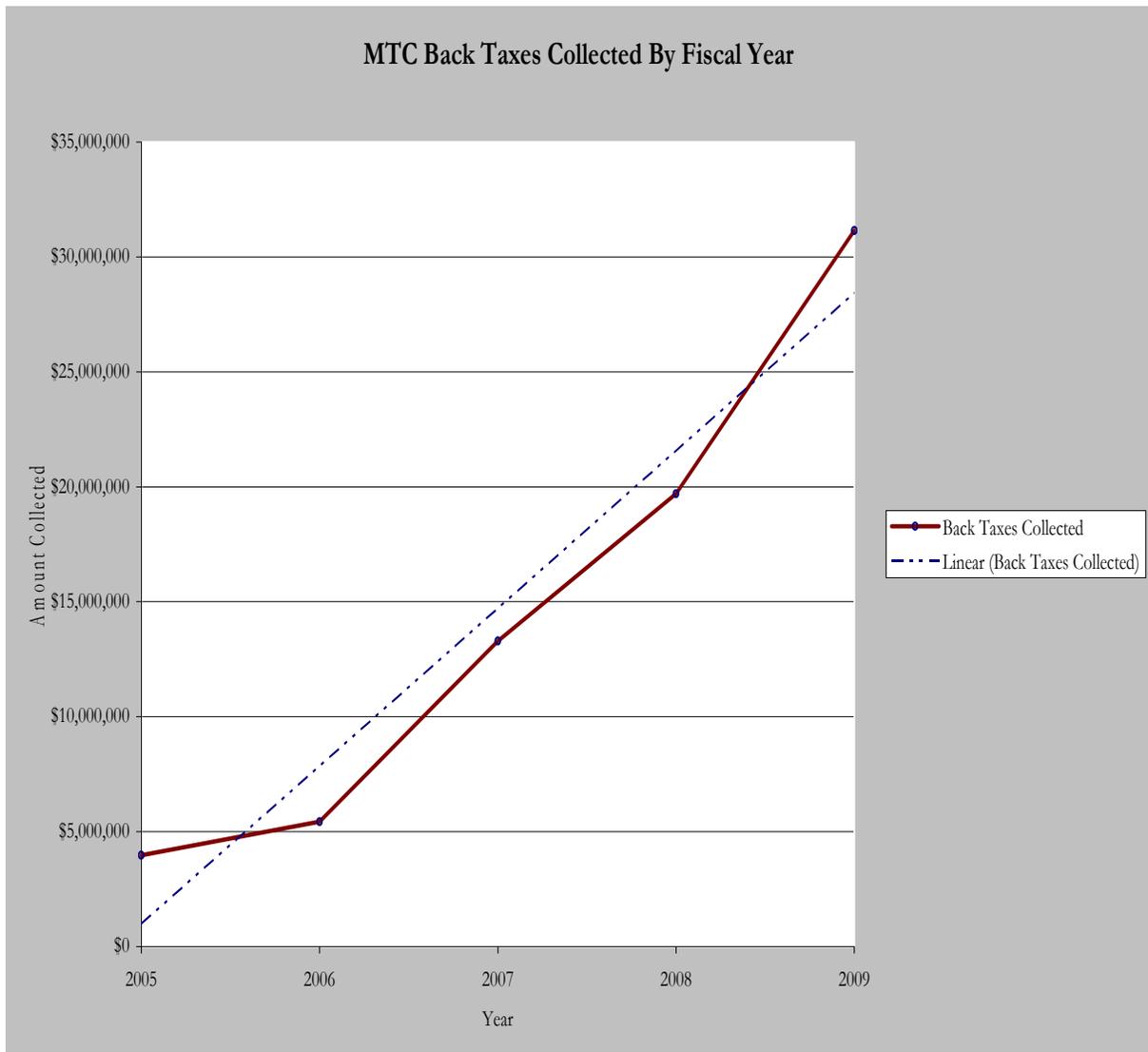
³ Methodology: $\$33,854,883 \text{ revenue} / \text{nexus fees } \$881,691 = 38.3976$, then round to nearest whole number. Please note that nexus fees represent the total of all state dues actually paid to the Commission for membership in the National Nexus Program with respect to fy 2009; some states did not contribute. Some of these states, nevertheless, received services and the revenue they realized are included in the \$33.85 million. This produces an ROI slightly higher than would have been the case had revenue from non-members been excluded. Excluding tax revenue with respect to states that are not members of the National Nexus Program yields total revenue of \$32,557,318 and an ROI of 37:1 ($\$32,557,318 / \$881,691 = 36.9259$, rounded to nearest whole number).

For comparison purposes, the program collected the following amounts for these fiscal years.

- FY 2008: \$17.45 million
- FY 2007: \$12.80 million
- FY 2006: \$6.08 million
- FY 2005: \$4.08 million
- FY 2004: \$6.82 million
- FY 2003: \$12.82 million
- FY 2002: \$1.96 million
- FY 2001: \$0.51 million

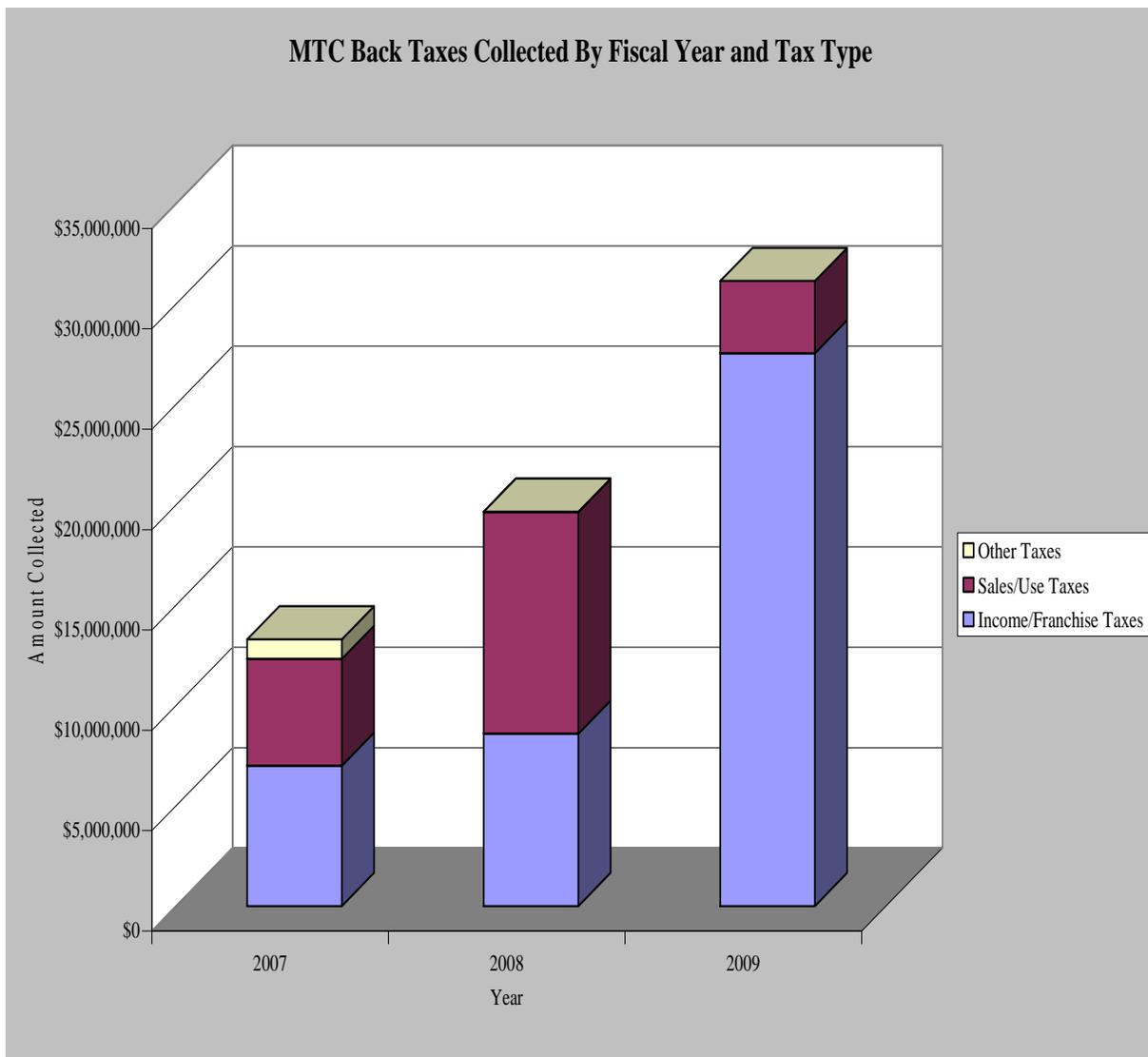
The chart below shows revenue collected with respect to fiscal years 2005 - 2009. No portion is an estimate, although the 2009 amount may rise slightly due to late-arriving data. Only back tax* actually collected is included. Interest on back tax collected is billed by the state directly to the taxpayer at the conclusion of the disclosure and is not included here. The revenue reflected in these charts takes no account of future amounts collected as the result of having a new taxpayer.

* Insignificant amounts of penalty, interest, registration fee, etc. may be included if actually collected with respect to back periods.



The chart below shows revenue collected fiscal year 2007 – 2009, broken out by type of tax. No portion is an estimate, although the 2009 amount may rise slightly due to late-arriving data. Only back tax ⁴ actually received is included. Interest on back tax collected is billed by the state directly to the taxpayer at the conclusion of the disclosure and is not included. The revenue reflected in these charts takes no account of future amounts collected as the result of having a new taxpayer.

Sales/use tax usually represents the majority of tax collected, but not so in fy 2009 because most of the tax collected in that year was due to a single affiliated group of taxpayers whose disclosures concerned business activity tax (BAT) only. This favor toward BAT will likely repeat itself in fy 2010 as this taxpayer has more disclosure business to conclude through the Commission.



⁴ Insignificant amounts of penalty, interest, registration fee, etc. may be included if actually collected with respect to back periods.

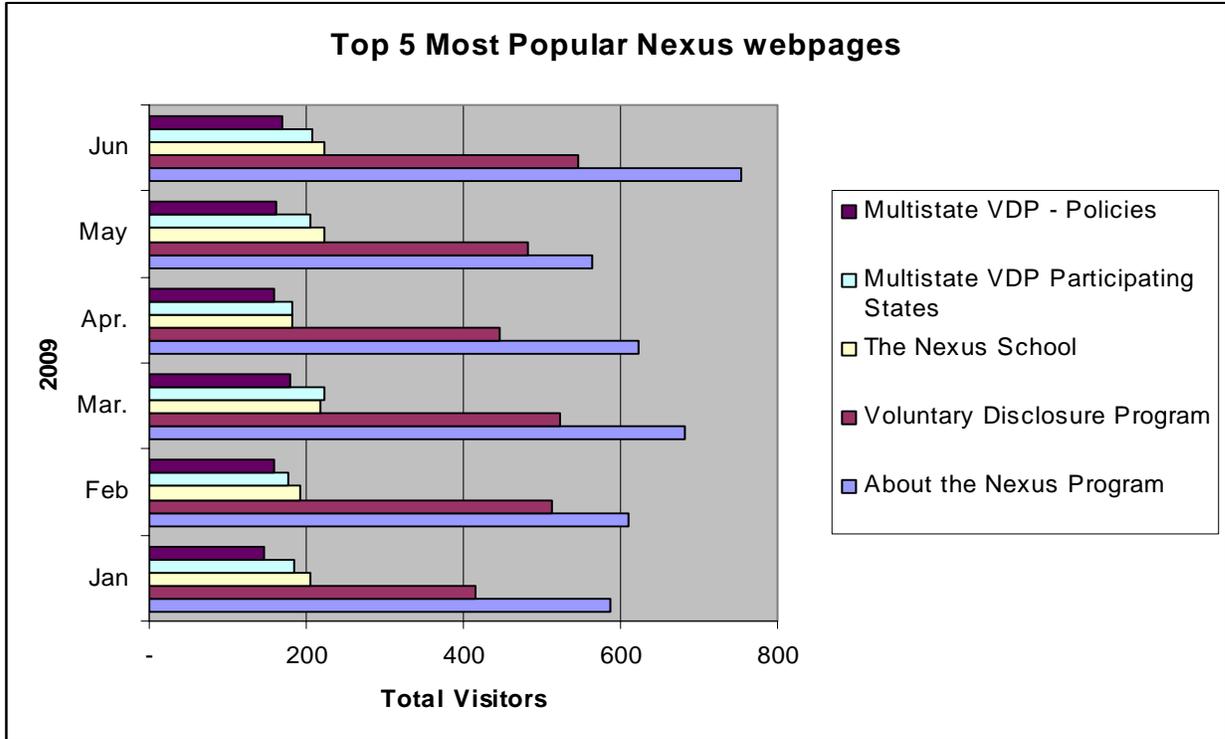
Voluntary Disclosure on Commission's website

The Commission's web site continues to be an important source of information for taxpayers about the multi-state voluntary disclosure program and the most common way applicants acquire an application form. One can now apply for voluntary disclosure through an online application on the website. To my knowledge, the Commission is second behind only New York in rolling out such technology.

As the Commission becomes aware of state amnesty programs these are posted on its website, generally on the main page and again within the voluntary disclosure sections. We recently posted information about amnesties offered by Connecticut and New Jersey, the latter receiving 196 visits to our posting during June 2009. Vermont's is currently the only amnesty posted. Please feel free to send Nexus staff information about your amnesty if you would like it advertised.

**January – June 2009
Numbers of Visits to Nexus Web Pages**

Page Title		Jan	Feb	Mar.	1st Quarter	Apr.	May	Jun.	2nd Quarter
1	About the Nexus Program	586	610	683	1,879	623	563	754	1,940
2	Voluntary Disclosure Program	415	513	522	1,450	446	483	545	1,474
3	The Nexus School	206	192	219	617	182	223	224	629
4	Multistate VDP Participating States	184	178	224	586	181	206	207	594
5	Multistate VDP - Policies	146	158	180	484	158	161	168	487
6	Multistate VDP Member States	91	132	131	354	121	117	119	357
7	Multistate VDP- Application Process	103	100	130	333	92	117	108	317
8	Application	122	87	103	312	113	116	118	347



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).

At its July 2008 meeting the Nexus Committee referred the guidelines to a drafting group for further consideration. The drafting group met once and produced a draft, which the full Nexus Committee considered and amended at its November 2008 meeting. The committee met again in March 2008 and made further amendments. The draft appended hereto reflects the document as amended by the committee through the March 2008 meeting. Only changes made as a result of the March 2008 meeting are shown as changes. The marked up guidelines will be found as a hypertext link on the agenda of the July 28, 2009 Nexus Committee meeting as posted on the Commission's website.

It is very important that committee members study the draft guidelines in advance of the meeting and arrive prepared for further mark up or to recommend this document to the Executive Committee for review. I anticipate that we may be able to dispose of the final issues and move toward final approval. To ensure maximum productivity, please know your department's position on issues raised in the document and arrive with authority to make decisions at the meeting. The discussion may include consideration whether states will adopt these guidelines as binding on their voluntary disclosure cases that originate with the Commission, and if so, how that may be arranged. The committee may be in a position to hold an up or down vote on the guidelines.