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 may approach through a representative such as an attorney or tax advisor. A taxpayer choosing to remain anonymous while approaching the Commission

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.
directly should make arrangements to ensure timely communication by telephone, e-mail, US Postal Service, and private overnight delivery 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.

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.

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 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 except in accordance with § 12. 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.

7.3. Except to the extent that the taxpayer consents otherwise in writing or the state is acting pursuant to §12, if a state learns the identity of a taxpayer before the MVD contract is in effect with respect to that state, the state shall:

7.3.1. make no use of the identity; and

7.3.2. conduct itself as if the identity had never been disclosed.

7.4. A state may, however, disclose the taxpayer’s identity and related information if required to do so pursuant to an inter-government exchange of information agreement or by state statute.

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 (Washington, D.C. time) 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 (Washington, D.C. time) 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. Material Misrepresentation

12.1. 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.

12.2. 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.

12.3. 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.
12.4. 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:

12.4.1. 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.

12.4.1.1. 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.

12.4.2. 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.

12.4.3. 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.

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 (Washington, D.C. time) 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 (Washington, D.C. time) 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 (Washington, D.C. time) 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
Protection from discovery resumes at 12:01 AM (Washington, D.C. time) 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

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

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.
15.3.2. 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. Except to the extent that the Commission or state grants a written extension, 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: 60 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 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.


19.9. *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.