

Application for Multi-State Voluntary Disclosure

Multistate Tax Commission

National Nexus Program

Instructions

Thank you for your interest in multi-state voluntary disclosure. To apply with respect to sales/use tax or income/franchise tax, please provide an Application for Multi-state Voluntary Disclosure in PDF format for each state to which you wish to apply. Please provide a separate Application for each state. Paper Applications will be accepted, but submission in electronic format is strongly encouraged.

You may wish to prepare a template electronic version of this PDF file, insert information common to all application states, then make copies of the template to create a separate file for each application state; insert the state-specific information in each state's file. The information you provide will be submitted to the appropriate states without alteration. It is therefore important to limit state-specific information to the applicable state only. Please do not put information regarding more than one state in the same document. Also, please do not alter the Application other than to add your information. For example, do not delete an inapplicable question or change the wording of a question.

The states will rely upon the information in this Application to evaluate the request for voluntary disclosure. This Application attempts to elicit all material information, but it is the applicant's responsibility to ensure that all material information is provided. You may add additional information or memoranda of law as you wish. Providing the state a comprehensive understanding of the applicant's factual circumstances in this Application will speed consideration by preventing time-consuming requests for additional information.

Please send the completed applications in PDF format to Nexus@mtc.gov. Alternatively, you may mail or deliver the applications on a computer diskette or CD to National Nexus Program, Multistate Tax Commission, 444 North Capitol Street, Suite 425, Washington, DC 20001. Please do not send paper documents. The telephone number for use of commercial delivery services is (202) 508-3800.

Do not make any filing or payment with respect to the type of tax intended to be disclosed to any state in which you intend to pursue voluntary disclosure. This includes filing a return, filing a request for extension, making a tax payment, and making an estimated payment. Doing so may disqualify you from voluntary disclosure. You will submit initial returns, registration form, and payment to the MTC at the conclusion of the voluntary disclosure process. All past due taxes and past due filings will be addressed within the voluntary disclosure process. Anonymous inquiries to customer service personnel of a department of revenue regarding filing requirements, how to compute tax, and similar general information issues are permitted.

State Name:

**Application for Multistate Voluntary Disclosure
Multistate Tax Commission
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The information provided in this Application for Multistate Voluntary Disclosure is materially complete and materially correct through date:

_____.

By submitting this Application, the applicant acknowledges its obligation to supplement, revise, or replace this Application in the event that before execution of the voluntary disclosure agreement by all parties its material circumstances change, or in the event that it becomes aware at any time of any material omission or material error in the information contained herein.

Please note:

- With respect to income/franchise tax, unless the context clearly indicates otherwise, questions posed in the present tense include both the present and all periods during the previous four full tax years (six full tax years in the case of the California Franchise Tax Board).
- With respect to sales/use tax, unless the context clearly indicates otherwise, questions posed in the present tense include both the present and all periods during the previous forty-eight months.
- Because this Application will be forwarded without change to the state, please do not disclose the applicant's identity. In the event the MTC otherwise comes to know the applicant's identity, be assured that it will be kept strictly confidential.

Definitions:

- "Applicant" includes the present applicant and all its predecessors in interest for the previous four years (six years in the case of the California Franchise Tax Board), e.g., prior owners of substantially all the present applicant's business assets.
- "Sales/Use Tax" means all tax administered by a state that is measured primarily by the value of retail sales, without regard to who is legally liable for the tax and without regard to interest and penalty. For example, it includes the Hawaii excise tax on sales and the Arizona transaction privilege tax, but does not include the Washington business and occupation tax.

State Name:

- “Income/Franchise Tax” means all business activity tax administered by a state, other than Sales/Use Tax, that is measured by net income, gross receipts, net worth, a flat amount for the privilege of doing business, or similar measure. For example, it includes the New Hampshire business enterprise tax, the Ohio commercial activities tax, the Washington business and occupation tax, the Michigan single business tax, the Alabama business privilege tax, and New Jersey corporate tax, and the Texas franchise tax.

Answers to the following questions will likely be the same for all states:

1. Name, telephone, address, and email of primary contact:

Name, telephone, address, and email of secondary contact (if any):

Name, telephone, address, and email of tertiary contact (if any):

The Multistate Tax Commission has strict policy to protect the identity of all applicants for voluntary disclosure. It will not disclose that identity except to a state with which the taxpayer has a signed contract or to another party at the request of the applicant. The applicant need not remain anonymous to the Commission, but may if it prefers. However, to conduct business the Commission will need at a minimum the name of a contact person and that person’s telephone number and email address. The contact person may be an employee of the taxpayer or an outside tax advisor

2. What is the applicant’s form of entity (e.g., C corp, Sub S, LLC, LLP, sole proprietorship)? If a pass-through entity (e.g., S Corp or LLP), please state number of shareholders, members, or partners. If the form of entity has changed during the four years immediately preceding the date of this Application, please state the form(s) of the predecessor entities and the approximate periods in which they existed.

State Name:

3. Has the Federal Employer Identification Number (FEIN) changed during the past four years? Yes or No. Do not provide the FEIN. If yes, please briefly describe the circumstance that caused the change.

4. What is the applicant's fiscal year-end? If it has changed within the past four years, please list all fiscal year-ends and the applicable time periods.

5. What are the applicant's business activities? Example: "A manufacturer of tangible personal property that sells primarily to contractors who incorporate the material into buildings and landscape designs." Please provide as comprehensive an answer to this question as you feel is necessary to give the state the information it needs to make a decision; provide as much detail as possible without compromising anonymity.

6. Please answer the following question only if the applicant is a remote vendor (makes sales from outside the state to in-state customers by means of internet or other electronic communication, mail, or common carrier). May a customer return the applicant's product for refund, exchange, repair, or other value? If yes, please briefly describe how this is done, specifically stating whether an in-state person accepts returns on behalf of the applicant (exclude mail and common carrier).

State Name:

7. Please answer the following bulleted questions only if the applicant is a remote vendor affiliated with an in-state bricks and mortar retailer (an in-state vendor that maintains a fixed place from which it makes sales to end users):
- Please provide detail regarding the policy and practice of the in-state affiliate regarding acceptance of returns of merchandise sold by the applicant.
 - Do the affiliates share trademarks or other intellectual property?
 - Does the in-state affiliate engage in advertising or other promotion, whether active or passive, on behalf of the applicant, including but not limited to in-store displays of the applicant's web address and name?
 - Do the Applicant and the in-state affiliate operate a joint gift certificate or similar program in which a person may purchase stored value that may be credited toward a purchase from either the in-state or the remote affiliate?
 - Do the Applicant and the in-state affiliate share an awards points program or similar program, however denominated or structured, granting customers the ability to acquire goods or services for free or at discount prices based on prior purchases from Applicant or the retail affiliate? Include a description of any customer benefit program based on use of a private label credit card issued under the name of Applicant or any affiliate of Applicant.
8. Other than as disclosed above, is the applicant an owner, lessor, or lessee of property in the state? Please describe generally. Include both real property, personal property, and intellectual property (e.g., trademarks or patents used in-state).

State Name:

9. Other than as disclosed above, does the applicant have personnel in the state for any period of time, whether employees, independent contractors, or other representatives? Include all such contacts, even if transitory. Please generally describe their activities, their approximate amount of time spent in the state, and their relationship to the applicant, if not previously described.

10. In what other activities does the applicant engage that potentially give rise to substantial nexus? “Substantial nexus” means the connection between the state and the applicant that arises from the applicant’s in-state activities, whether by means of a physical presence or otherwise, whether by employee, independent contractor or other representative, that *potentially* subjects the applicant to the state’s taxing authority. See *Complete Auto Transit v. Brady*, 430 U.S. 274, 279 (1977). Please disclose here all activities not previously disclosed in this Application, no matter how slight, even if they do not involve a physical presence in the state, even if performed by others on that applicant’s behalf, that *potentially* give this state jurisdiction (substantial nexus) to tax the applicant. Disclosure in this Application of potentially nexus-creating (jurisdiction-creating) activity is not an admission that substantial nexus (taxing jurisdiction) actually exists. Applications that fail to state an activity in this Application that potentially gives rise to substantial nexus (taxing jurisdiction) may be rejected by the state because applicants who have no potential substantial nexus, and therefore no potential tax liability, do not need voluntary disclosure.

11. What facts give rise to this offer to enter into voluntary disclosure? Please include any facts relative to whether the failure to register, file or remit was due to reasonable cause and not due to negligence, intentional disregard of the law, or fraud. Examples include past reliance on erroneous professional advice, acquisition of a non-compliant entity, expansion of business activities, change in ownership, and a letter of inquiry from a state or its agent.

State Name:

12. Has the applicant contacted or been contacted by this state or by the Multistate Tax Commission on behalf of this state regarding its potential liability for the type of tax sought to be covered by this voluntary disclosure? If so, please give details. A contact includes, but is not limited to, with regard to potential liability for the type of tax in question: receipt of a nexus questionnaire, a telephone call, an audit or notice of audit, payment of tax, registration for tax, request for extension of time to file, making a payment of estimated tax, and filing of a return. Contact prior to commencement of the voluntary disclosure will generally disqualify the applicant from voluntary disclosure in the contact state.

13. Without regard to whether an agreement was reached, has the applicant applied for voluntary disclosure to this state, whether directly to this state or through the Multistate Tax Commission, during the previous ten years?

14. Please provide any information not already provided that you believe the MTC should have with respect to this application.

15. It is sometimes appropriate to include special terms in the voluntary disclosure contract to address an applicant's unusual circumstances. What special terms, if any, does the applicant request? Most applicants have no need of special terms and skip this question.

State Name:

16. To assist the MTC in making its voluntary disclosure services available to as many potential taxpayers as possible, please tell us how you came to know of the Multistate Tax Commission's voluntary disclosure program. *Please answer this question from the perspective of the person handling this disclosure, i.e., the applicant itself if it is unrepresented, and the lawyer or tax advisor if the applicant is represented.* For example, rather than checking "Other source, please specify: the applicant learned of the MTC program from its tax advisor", please check the appropriate line or write how *the tax advisor* came to know of the MTC program. Select all that apply. Thank you!

- Previous Disclosure
- Another Practitioner
- Internet search, which search engine: _____
- MTC advertisement on the Internet, appeared where: _____ which search terms:

- Link from a state's web site, which state: _____
- Referral from state, letter or brochure, which state: _____
- Referral from state, verbal, which state: _____
- Individual State Audit or Voluntary Disclosure Program, which state: _____
- Publication, please specify: _____
- Seminar or presentation, please specify: _____
- MTC Brochure
- Other MTC contact
- Other source, please specify: _____

17. The MTC would like to send you a brief survey at the conclusion of this voluntary disclosure. It will ask how well MTC served you and what suggestions for improvement you may have. You will have the option to complete it anonymously. Your decision to participate or not will have no effect on voluntary disclosure services offered to you. May we count on you to complete and return this survey?

YES _____

NO _____

State Name:

STATE NAME:

Answers to the following 8 questions will likely vary state:

- A. Which type(s) of tax would the applicant like to disclose? The Multistate Tax Commission assists with disclosures for sales/use and income/franchise taxes. See definitions above.
- B. If the applicant does not propose to settle both sales/use and income/franchise tax obligations, what is the reason that a type of tax is excluded? Possible reasons include application of Public Law 86-272 and making only sales exempt from sales/use tax.
- C. What is the *estimated* amount of tax, by tax type and tax year, to be paid to this state under the applicable voluntary disclosure agreement? How much, if any, of this amount represents sales/use tax collected but not remitted? These amounts need only be *approximate*.
- D. Is the applicant organized under the laws of this state? If the applicant is a natural person, is the applicant a resident of this state?
- E. If this Application concerns sales/use tax, with respect to sales/use tax, has the applicant ever registered, filed a return, paid interest or penalty, or paid any tax to this state, other than in the capacity of a consumer paying sales/use tax to a vendor? If this Application concerns income/franchise tax or a similar business activity tax, including payroll withholding tax, with respect to that tax, has the applicant ever filed a return, filed a request for extension to file, paid any tax, or made any estimated payment?

State Name:

- F. For Iowa, Minnesota, and Utah: please state in which fiscal year business activities began in the states to which a voluntary disclosure offer is to be made.¹ [Question F applies only to applications made to Iowa, Minnesota, and Utah]
- G. For Louisiana: please describe all business activities in the state after December 31, 1997; if there were none for any portion of this period please so state explicitly. This information is requested to comply with state constitutional and statutory requirements related to voluntary disclosure; it does not mean that back tax must be paid from this date.² [Question G applies only to applications made to Louisiana]
- H. With respect to Utah and Minnesota only, if the applicant makes sales to customers in the state, please indicate the *approximate* number of sales per year for the last three years and the *approximate* average value of each sale. It is not necessary to provide more than a general approximation. For purposes of this question, you may use a calendar year, a tax year, a fiscal year, a year based on the look-back date of this Agreement, or any other year so long as you identify the period that you choose to use. [Question G Applies only to Utah and Minnesota]
- I. With respect to Utah only, please provide an estimate of the amount of potential tax liability prior to the look-back period that the state would waive. Assume that the look-back period is three years from the date of this Application. For example, if the date of this Application were January 1, 2008, the lookback period would be the three years from December 31, 2007 back to January 1, 2005. The potential tax liability prior to the lookback period that the state would waive would be all potential liability of the type of tax at issue from December 31, 2005 back to the commencement of potentially taxable business activity in Utah. The amount may be approximate. [Question H applies only to Utah.]

¹ The answer to this question will not be construed to be an admission of substantial nexus.

² The answer to this question will not be construed to be an admission of substantial nexus. This information is requested because Louisiana can only waive liability with respect to periods after this date to the extent that activities in the state during these periods is disclosed. This question and the answer to it do not mean that the applicant's tax obligation under this voluntary disclosure (the look-back period) begins on this date. The look-back date is stated in the voluntary disclosure agreement.

State Name:

Please feel free to bring any questions or concerns regarding this application to the attention of the National Nexus Program at (202) 508-3800 or nexus@mtc.gov