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To: The Commission
From: Lennie Collins, Nexus Committee Chair
Re: Nexus Committee Activities for FY 2017
Date: August 2, 2017

Nexus Committee Report

The FY 2017 (July 1, 2016, through March 31, 2017) results for Multistate Voluntary Disclosure Program collections provided to National Nexus Program (NNP) member states are strong—but did not exceed the FY 2016 results. The average value of disclosure contracts for FY 2017 has decreased slightly from FY 2016.

- Nexus states' collections: \$19,664,097 (\$22,317,942 in all FY 2016)
- Nexus states' executed contracts: 431 (488 in all FY 2016)
- Nexus states' average contract value: \$45,624 (FY 2016: \$46,747)

In addition, \$25,374 was collected for a non-member state, although voluntary disclosure applications for non-member states are no longer accepted. The above amounts include funds received by the Commission or paid by the taxpayer directly to the states and reported to the Commission. Interest on back tax paid and the value of a new taxpayer are not included.

The Nexus Committee met in person on July 25, 2016, in Kansas City, Missouri, December 13, 2016, in Houston, Texas, March 9, 2017, in San Diego, California, and July 31, 2017, in Louisville, Kentucky. The Nexus Committee conducted meetings by telephone on February 21, April 18, May 16, June 20, and July 18, 2017.

The Committee considered the following issues at the July 25, 2016 meeting:

The Nexus Committee work group completed review of the MTC Multistate Voluntary Disclosure materials published on the website for clarity and ease of use, and presented the work group's report. The work group consisted of

Karolyn Bishop, Washington, Chair, Michael Christensen, Utah, Rebecca Johnston, Washington, and Deborah Lee, Alabama. The report included several recommendations to improve the Nexus Program website information, many of those having already been implemented. The work group also recommended that a list of the states' lookback periods be published on the Nexus Program website, in order to provide helpful information to potential voluntary disclosure applicants. Chair Lennie Collins directed the work group to draft suitable disclaimer language to include with the list of state lookback periods, to be brought back to the Committee for its consideration.

The Committee approved proposed amendments to the Standard Voluntary Disclosure Agreement form. The proposed amendments shortened and clarified provisions, without making substantive changes.

The Committee approved proposed amendments to Paragraphs 1.2 and 15.2 of the Procedures of Multistate Voluntary Disclosure.

The Committee requested that staff research how states are treating the question of "who is the taxpayer" in the context of a unitary group, in order to consider whether that issue should be further addressed in a "frequently asked question" or in a provision added to the Standard Voluntary Disclosure Agreement form.

The Committee requested that staff conduct a survey of Nexus Program participating states as to how they treat net operating losses in voluntary disclosure agreements.

Nexus Committee Work Group November 3, 2016 Meeting and Report

The work group met by teleconference on November 3, 2016, to draft disclaimer language to add to the list of published lookback periods for NNP states. This was to clarify that a state's lookback period is a matter of state tax policy, not an entitlement, and will depend on the taxpayer's circumstances. The work group presented its report and suggested language to the Nexus Committee at its December 13, 2016 meeting.

The Committee considered the following issues at the December 13, 2016 meeting:

The Committee approved the disclaimer language recommended by the work group for the list of state lookback periods. The list will be published on the

Nexus Program website, in order to provide helpful information to potential voluntary disclosure applicants. Chair Lennie Collins directed that Richard Cram circulate to Committee members the draft state lookback period list, so that each state can confirm its accuracy. Once that is accomplished, a Nexus Committee meeting by telephone will be scheduled to approve the list for publication on the Nexus Program website prior to the March 9, 2017 in-person Nexus Committee meeting.

The Committee reviewed the survey of results on how participating states are treating the question of “who is the taxpayer” in the context of a unitary group, for purposes of a voluntary disclosure agreement. Combined reporting states generally responded that a unitary group can be listed as a party to a voluntary disclosure agreement. Separate reporting states generally responded that each member of the unitary group would need to be separately listed as a party to the voluntary disclosure agreement.

The Committee reviewed the survey of participating states on how they treat net operating losses in voluntary disclosure agreements. The responses indicated that states had a variety of different approaches. After the Committee discussed the responses, Mr. Cram indicated he would revise and recirculate the survey.

The Committee discussed whether a protocol should be developed for receiving electronic payments in voluntary disclosure situations. Mr. Cram will circulate a survey among the states on their current requirements for receiving electronic payments in a voluntary disclosure agreement.

The Committee held a meeting on February 21, 2017 by telephone and approved for publication on the Nexus Program website the list of state lookback periods.

The Committee considered the following issues at the March 9, 2017 meeting:

Dan Bucks gave a presentation on his written analysis of voluntary tax collection agreements being entered into between Airbnb, on behalf of its lodging operators, and states or local governments. Mr. Bucks raised several concerns that such agreements were unnecessarily ceding state audit authority by giving up the ability to require disclosure and audit of Airbnb’s lodging operators, undermining the voluntary compliance process, and giving Airbnb and its lodging operators unfairly favorable treatment. Joe Huddleston expressed public comment in opposition to Mr. Bucks’ analysis.

Concerning the survey of participating states on how they treat net operating losses in voluntary disclosure agreements, Mr. Cram advised that after further review of the states' responses, he did not see a need to revise and re-circulate the survey. The survey responses did contain one consistent thread: states do not allow a taxpayer to claim an NOL for a prior tax year unless the taxpayer has filed a return to establish that NOL. The Committee moved to add language to the Standard Agreement providing that NOLs are not allowed unless the taxpayer has filed a return for the tax year when the NOL is established.

Mr. Cram advised the Committee of the results of the survey among the states on their current requirements for receiving electronic payments in a voluntary disclosure agreement. Survey results showed that states require that the taxpayer be registered with the state prior to making an electronic payment.

The Committee convened meetings by telephone on April 18, May 16, June 20, and July 18, 2017, for the sole purpose of conducting closed sessions.