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Minutes
Nexus Committee Meeting (Open Session)
April 21, 2020
Teleconference

List attendees:

Steven Alvarez	GA
Julie Anderson	OR
Tripp Baltz	Bloomberg Tax
Lee Baerlocher	MT
Chris Barber	MTC
Karolyn Bishop	WA
Keith Broussard	MT
Joan Cagle	TN
Wendy Conlin	MN
Richard Cram	MTC
Lila Disque	MTC
Christine Dowsey	AZ
Laurie McElhatton	CA
Nikki Elwood	NE
Amber Egbert	CO
Michael Fatale	MA
Cathy Felix	MTC
Antonio Ferachi	LA
Katie Frank	CA
Petra Garcia	AZ
Felicia Gillis	AZ
Stacey Greaud	LA
Layne Hadlock	ID
Michael Hale	KS
Frank Hales	UT
Brian Hamer	MTC
Amy Hamilton	Tax Analysts
Michael Hathaway	CO

Christina Heath	TX
Virgil Helton	Fast Enterprises LLC
Nathan Hoepfner	KS
Debra Houck	PA
Dorian Johnson	NM
Nicole Johnson	AZ
Rusty Johnson	TX
Harold Jones	TN
Bryan Kelly	WA
Samwel Khakame	CO
Virginia Krueger	AZ
Jayne Kulberg	WI
Christopher Lane	MTC
Todd Lard	Eversheds Sutherland
John Lewandowski	Maine
Katie Lolley	OR
Roxane Maston	AZ
Kevin Milligan	PA
Ashley McGhee	NC
Luke Morris	LA
Deanna Munds-Smith	AR
Renee Nacrelli	MD
Marcia Oakman	KY
Scott Peterson	Avalara
Matt Peyerl	ND
Nancy Prosser	
Jordan Raye	KS
Timothy Sanders	AL
Morgan Scarboro	MultiState Associates
Julie Schluter	NE
Tom Shaner	ID
Thomas Shimkin	MTC
Larry Shinder	MTC
Colin Siert	NE
Jeff Silver	MTC
Diane Simon-Queen	MTC
Kathy Smith	SD
Tiffany Southworth	UT
Scott Spilinek	NE

Marshall Stranburg	MTC
Misgana Tesfaye	CO
Matt Tidwell	CO
Audrey Tyndall-Hoyle	NJ
Christy Vandevender	AL
Mark Wachter	NM
Charla Wagner	KS
Paul Williams	Law360
Steve Yang	MTC
Diane Yetter	Yetter Tax

Christy Vandevender, Chair, AL, brought the meeting to order at 11:30 am EDT, introductions of attendees were made, and public comment was invited.

Public Comment

No public comment was offered.

Minutes

Frank Hales, UT , moved for approval of the minutes of the November 5, 2019 open session meeting of the Nexus Committee, and the motion passed unanimously by roll call vote by the following states: AL AZ AR CO GA ID KS KY LA MD MA MN MT NE NJ NM NC ND OR SD TN TX UT WA WV WI.

Nexus Director's Report and Update on Recent Nexus Law Developments since November 5, 2019

Richard Cram, Director of the National Nexus Program, referred the Committee to his written Update on Recent Nexus Law Developments since November 5, 2019 and the 3rd Q FY 2020 Nexus Program Director's Report. Back tax collections from agreements closed as of the end of the 3rd Q, FY 2020 were \$15,290,411 with 429 executed agreements. This already exceeds the back tax collections for the entire FY 2019. Richard commented that the 4th Q, FY 2020 back tax collections will likely be disappointing, given the pandemic.

Survey Results for Development of Guidance re Discretion of MTC Staff to Void Agreements when Back Tax Liability is Below \$500

Richard Cram summarized his memorandum (attached), which presented the survey results concerning the amount of discretion that MTC staff will have in voiding voluntary disclosure agreements when the taxpayer is coming forward for sales/use tax economic nexus and the back tax liability owed to the state is less than \$500. At

the November 5, 2019 Nexus Committee meeting, the Committee approved amending Paragraph 5.1.4 of the standard agreement for such taxpayers to provide that the agreement is voidable by either the state or MTC staff when the back tax liability owed to the state under the agreement is less than \$500. Richard indicated that only six states responded that they would give full discretion to MTC staff to void such agreements when the back tax liability owed was any amount less than \$500. Richard stated that MTC staff would plan to refer to the state for the state's determination as to whether to void such an agreement when the back tax liability owed is any amount below \$500.

Survey Results re Payment Plans

Richard Cram summarized his memorandum (attached) presenting the results of the survey of participating states concerning whether states would consider payment plan requests from taxpayers in conjunction with voluntary disclosure agreements during the COVID-19 pandemic period. Under current policy, payment plans are not considered as part of voluntary disclosure agreements under the MTC Multistate Voluntary Disclosure Program (MVDP). Seven states responded that they currently have adopted the policy allowing payment plans to be included in or entered into in conjunction with voluntary disclosure agreements. Fourteen states responded that they have not adopted such a policy. However, some of those states indicated that they would entertain considering payment plan requests during the COVID-19 pandemic period. Comments that states included with their survey responses were included in the memorandum.

Richard summarized those comments, indicating that: (1) if a state were to receive a payment plan request, the taxpayer should include that request upfront in the application for voluntary disclosure; (2) payment plan requests are typically handled by another area of the tax agency, separate from the voluntary disclosure staff, so may involve a separate application process requiring the taxpayer to identify themselves and provide additional information in order to be considered; (3) the voluntary disclosure agreement should be considered void if the taxpayer breaches the payment plan.

Richard suggested that language could be added to the application instructions on MTC website notifying taxpayers that during the COVID-19 pandemic period, they could request payment plans in their applications for voluntary disclosure, and MTC staff could then refer those requests to the state for determination pursuant to whatever policy the state may have concerning such requests. The determination of whether to consider or grant a taxpayer's request for a payment plan would be the

state's, and would be subject to the state's own separate processes for handling such requests.

Christy Vandevender opened the matter for discussion and expressed her approval of the idea of adding such language to the MTC website.

Steven Alvarez, GA, suggested that a state could indicate its response to the taxpayer's request for a payment plan in its counteroffer to the application.

Matt Peyerl, ND, asked if this policy of advising taxpayers they could request payments in their applications for voluntary disclosure would be permanent. Richard stated that it would be limited to the COVID-19 pandemic period, but the Committee could later make it permanent, if desired.

Diane Yetter, Yetter Tax, commented that states' failure to consider payment plan requests when the taxpayer applies for voluntary disclosure can be a significant obstacle for small businesses, discouraging them from coming forward. They will simply take the risk that they will not be discovered.

Todd Lard, Eversheds Sutherland, commented that he is aware of larger businesses blindsided by the *Wayfair* decision that have been struggling with timely compliance with sales/use tax registration requirements on their remote sales, and due to cash flow problems—especially now—have stopped the voluntary disclosure application process. If payment plans were available, this would encourage those businesses to apply for voluntary disclosure.

No states raising concerns, Christy Vandevender stated that Richard should proceed with revising the language on the MTC website advising taxpayers that they could request payment plans in their applications for voluntary disclosure during the COVID-19 pandemic period, and that the state would make the determination whether to consider or grant such requests, pursuant to such state's own policies.

New Business

No new business was brought before the Committee.

Closed Session

The committee entered closed session to discuss matters protected from disclosure.

Open Session

Christy Vandevender adjourned the open session following conclusion of the closed session, with nothing to report from the closed session.

Memorandum

To: Christy Vandevender, Nexus Committee Chair

From: Richard Cram, Director, National Nexus Program

Re: Results of Survey of on Revision to Paragraph 5.1.4 of Agreement for Sales/Use Tax Economic Nexus Taxpayers

April 21, 2020

Provided below is the text of the survey emailed on 2/27/2020 to participating states in the National Nexus Program, along with responses received:

To Nexus Committee:

At the Committee's last meeting in San Antonio, TX on November 5, 2019, the Committee voted to add the following language to the end of Paragraph 5.1.4 of the voluntary disclosure agreement form (attached) used when the taxpayer seeks sales/use tax voluntary disclosure and claims only economic nexus in the state: "If the total amount due under such [back tax] returns or spreadsheets is less than \$500, [Signatory State] or the Commission may void this Agreement." The purpose of this language is to give either the state or MTC staff authority to void the voluntary disclosure agreement when the taxpayer signs the agreement and provides back tax returns or spreadsheets that show a back tax liability of less than \$500 for the state's lookback period. This language aligns with the longstanding policy that applications for voluntary disclosure are not processed if the application indicates an estimated back liability of less than \$500 for the prior 4 tax years. The above language also addresses the problem occurring with some of the sales/use tax economic nexus applications, which contain back tax liability estimates of \$500 or more, but when the taxpayer provides the back tax returns or spreadsheets, they reflect much lower back tax liability amounts than \$500.

This survey is intended to provide guidance to MTC staff when the back tax returns or spreadsheets for a sales/use tax economic nexus voluntary disclosure agreement reflect a back tax liability of less than \$500 for the lookback period, and MTC staff will need to exercise discretion in either voiding the agreement or seeking the state's determination on whether to void the agreement, depending on extent that the back tax liability amount is below \$500. The results of the survey will be presented to the Committee Chair, Christy Vandevender, at the Committee meeting on April 21, 2020 in Alexandria, VA, with the goal of the Committee reaching a "consensus" on the amount of back tax liability, equal to or below which MTC staff would have authority to void the agreement without seeking input from the state.

Please indicate for your state the lookback period back tax liability amount shown on returns or spreadsheets below which MTC staff may void the sales/use tax economic

nexus voluntary disclosure agreement without seeking the state's input, by entering an "X" on one of the lines below and emailing your response (one response per Nexus Program state) to rcram@mtc.gov by COB 3/20/2020:

MA MN ND NE SC WI_____ \$500

CO KY__ \$400

GA KS_____ \$0

AL—NA--Alabama does not enter into VDAs for Simplified Sellers Use Tax

Memorandum

To: Christy Vandevender, Nexus Committee Chair

From: Richard Cram, Director, National Nexus Program

Re: Survey Results on Payment Plans

Date: April 21, 2020

Provided below is the survey on payment plans sent by email on March 31, 2020 to participating states in the National Nexus Program, and the responses received.

To Nexus Committee Members:

We are starting to receive requests from taxpayers contemplating applying for voluntary disclosure, asking if payment plans are available. As you know, our current Procedures for the MTC Multistate Voluntary Disclosure Program does not include a payment plan option. The taxpayer is required to register, file returns (or spreadsheets if the state permits for sales/use tax), and pay the back taxes owed within 60 days of receiving notice from MTC staff that the state has signed the agreement, unless an extension is granted.

Given the extraordinary circumstances that we are all going through, some states may have already adopted policies that would include a payment plan option for voluntary disclosure agreements. Could you please respond for your state tax agency whether your state has adopted such a policy and if so, describe what that policy is?

Also, as you know, the MTC spring meetings previously scheduled to be held in Alexandria in April have been cancelled. However, we are planning to convene committee meetings, including Nexus Committee, telephonically. More information on the dates (Nexus Committee will likely meet on April 21—time to be determined) and times for those meetings will be forthcoming. The above issue will likely be added to the Nexus Committee agenda: should a payment plan option at least temporarily be added to the MTC Multistate Voluntary Disclosure Program Procedures, and if so, how should that be implemented?

Please respond by email to the following question by COB April 7, 2020:
Has your state adopted a policy of allowing payment plans to be included in or entered into in conjunction with voluntary disclosure agreements?

FL GA IA NM TX WA WI___yes

AL AZ CO KS KY MA MT NC ND NE NJ OR SC TN VT VW___no

If “yes,” please describe:

FL: Payment plans for voluntary disclosure cases is not a new procedure in Florida. We offer up to 24 months at the current interest market rate.

GA: Georgia has long allowed payment plans up to 60 months in conjunction with VDAs. Additionally, due to the pandemic, we are allowing up to 90 days grace period before payment plans become effective.

IA: If an applicant tells us they need a payment plan we will accommodate them. We like to know up front so that we may make note of it in our agreement. They may then send in their filings with a partial payment or no remit. We bill them for tax and interest and then they work with our accounts receivable department to set up a payment plan according to their standard procedures. They have a calculation based upon amount due and the payee may take up to two years to pay, depending on how much they owe.

NM: New Mexico has the managed audit program which waives Penalty and Interest if Paid in Full within 180 days. If the taxpayer needs more than 180 days payment plans are available, but P&I are included.

TX: We do offer 12 month VDA payment plans. The taxpayer has to pay 25% down and then in equal payments for the remaining balance. There will be some interest due since they are choosing a payment plan.

WA: Due to the COVID-19, Washington State is allowing extensions for those impacted and being flexible. Below is our relief website:

- <https://dor.wa.gov/about/business-relief-during-covid-19-pandemic>
- Our processes as it relates to payment plans has not changed. Washington State does allow payment plans under certain conditions. We would want the taxpayers to communicate with DOR to discuss options before the due date of the final assessment. When we get this question, we end up focusing on the timeline of the voluntary disclosure program which can take 6 months or longer till an amount is due for payment. This communication usually allows the taxpayer to understand the process and allows them to start setting aside the funds for the assessment.

WI: Taxpayers can apply for a payment plan via My Tax Account. These are generally accepted as long as the plan/request is for one year or less.

Other comments:

AL: Alabama does not have the authority to allow payment plans in conjunction with VDAs, and at this time does not intend to pursue adopting this policy. However, in light of these extraordinary times, we have decided to handle this situation by granting a 60 day extension as needed by the MTC VDA taxpayer to submit returns and payments. We anticipate that taxpayers will each experience different circumstances, so if a MTC VDA taxpayer needs more than one 60 day extension, such request will be granted.

MA: We do want to work with taxpayers who come forward voluntarily, if a taxpayer needs more time to comply with VDA agreement terms they are encouraged to contact us **dorvoluntarydisclosure@dor.state.ma.us**

MT: In light of the current situation facing our world, we are open to working with the taxpayer if requested but do not currently have specifics for how that would work.

ND: – no formal policy; however, we will consider a payment agreement related to a VDA on a case by case basis based on the facts and circumstances of the taxpayer.

NE: Nebraska has never entered into a payment plan in conjunction with a VDA, but we would be in favor of allowing such under certain conditions. Those conditions would include signing of a payment plan agreement and adding language in the VDA that failure to make the required payments would result in the VDA being void.

OR: We would, however, support the MTC in allowing payment plans due to the current situation.

SC: I think it best that each company contact me and we can work out the details from there.

TN: However, we have, on occasion, added a paragraph allowing the taxpayer to contact our Collection Services Division within 30 days to set up a payment plan. The payment plans are based on financial ability to pay. Therefore, we cannot approve a payment plan without identifying the taxpayer and having them fill out an application. Although the voluntary disclosures are handled by our Audit Division, the payment plans are not.

VT: The state of Vermont would be open to a payment plan option.

WV: West Virginia does not allow payment plans as part of our Voluntary Disclosure Agreement process. However, once a voluntary agreement is entered, the taxpayer is given sixty days to make payment.

