

Multistate Voluntary Disclosure Improvement Team
Report to
Nexus Committee and Strategic Planning Steering Committee
December 17, 2015

Background

At the recommendation of the Nexus Committee, the MTC Strategic Planning Steering Committee approved a project to identify opportunities to streamline the Multistate Voluntary Disclosure Program so that it works more efficiently for taxpayers and states. The project team began working in January 2015. This report describes our process and findings, and recommends further action that the project team believes will help improve the Multistate Voluntary Disclosure process for states and taxpayers.

Project Description

Problem: The Multistate Voluntary Disclosure Program is often labor-intensive for taxpayers, state personnel and the MTC National Nexus Program staff. There are opportunities to streamline the voluntary disclosure program to make it more efficient for both the states and taxpayers.

Risks: A labor-intensive process is less likely to be used by taxpayers and states. The MTC Multistate Voluntary Disclosure Program is currently the primary program offered by the National Nexus Program. If it isn't being used by significant numbers of states or taxpayers, it cannot return the best value to both constituencies. Also, a complex system can result in a slower process.

Expected outcomes from the project:

- List of opportunities for improvement to the MTC Voluntary Disclosure Program.
- Estimate or description of likely costs and benefits of any recommended changes.
- List of recommended measures for determining whether more taxpayers and states are using the MTC VDP.
- Recommended targets for time to complete a voluntary disclosure.

Process

We gathered information in four ways. First, we interviewed taxpayer representatives who have used the Multistate Voluntary Disclosure Program. Second, we asked for feedback from the states through e-mail and during Nexus Committee meetings. Third, the MTC Nexus staff gathered data on the time it takes to process a voluntary disclosure, including the time elapsed between the major steps in the process. Finally, we conducted interviews of some states from which we thought we could gain more insight into the causes for delay in the process. We were looking for stages in the process where significant amounts of time elapsed between steps, causing the overall process to be delayed.

Findings

The Multistate Voluntary Disclosure process involves nine major stages of activity:

1. Taxpayer application for voluntary disclosure
2. MTC staff prepares draft voluntary disclosure agreement for taxpayer
3. Taxpayer approves draft agreement (or requests changes, which may result in a period of negotiation)
4. MTC staff sends draft of taxpayer agreement to state(s)
5. States review and approve agreement (or make counter offer to taxpayer changes)
6. MTC staff sends final agreement to taxpayer for signature
7. Taxpayer returns signed agreement with appropriate returns/spreadsheets/payment
8. MTC staff transmits full package to state(s)
9. MTC staff enters records data in database and retains copies of contract and accompanying documents.

According to the Procedures of Multistate Voluntary Disclosure, posted on the MTC web site, there are time frames specified for the major stages of activity. The time frames are *maximum* time frames. For taxpayers, the time frames are the maximum allowable to protect the taxpayer from losing anonymity and protection from discovery while the application is pending. For the MTC staff, the time frames are maximum times within which information or documents are to be provided to taxpayers or the states. For the states, the time frames are the maximum time the states represent that they may need in order to make a decision or take an action. Based on the maximum time frames specified in the Procedures, a voluntary disclosure should take no more than 7 months if there are no counter offers or requests for information involved. Data gathered by MTC National Nexus staff indicate that “clean” applications typically take between three and four months to complete. If counter offers or requests for information are involved, the time frame for completion of a voluntary disclosure may be increased by several months.

The stages in the process in which MTC staff are directly involved usually occur in a timely way, and staff actions are generally completed well within the maximum time specified in the Procedures. The stages at which delays are most likely to occur are those in which the taxpayer or the states must take some action. Specific examples include:

- Taxpayer questions about process before a completed application is filed
- Taxpayer requests for special treatment, such as different look back period, which must be reviewed by the state
- State delays in responding to MTC contacts
- State requests for additional information from taxpayers
- Taxpayer delays in completing tax returns, schedules and registration forms after a voluntary disclosure agreement has been signed by the state

With the exception of one unusual situation (2013), data for the years 2012, 2013 and 2014 indicate that the numbers of applications filed by unique taxpayers has remained fairly constant at around 100 per year, resulting in between 550 and 750 individual voluntary disclosure applications (one taxpayer/one state). Of those applications, at least half were for 5 or fewer states. The 2012-2014 data also indicates that, typically, around 500 disclosure agreements (between one taxpayer and one state) are executed each year. Exceptions occur when a large number of applications have come in.

In 2013 a single taxpayer representative filed applications on behalf of about 150 similarly-situated taxpayers. Those applications each involved more than 20 individual states. In 2014, over 2,260 disclosure agreements were executed, reflecting the significant number of applications from the prior year. According to the National Nexus Program Director, you can count on this kind of thing happening occasionally, you just cannot predict when it will happen.

Other issues that can affect the total amount of time for completion of a voluntary disclosure agreement are:

- MTC staff noted that processing paper documents submitted by either taxpayers or the states takes longer than processing materials submitted electronically
- MTC staff also noted that they are often unaware of changes in state law or policy, and learn about these kinds of changes only when a state submits a counter offer or a request for additional information
- MTC staff and the states noted that the complexity of a filing – either the total number of states for which a taxpayer is seeking to make disclosure or the number of tax types for which a taxpayer seeks to make disclosure – adds to the total amount of time that completing agreements can take
- There are a variety of electronic data formats requested by the states for schedules that support applications for disclosure, which can contribute to taxpayer confusion, error or delay in submitting the final disclosure package
- Turnover in state personnel, internal state procedures, and states' resources that are devoted to voluntary disclosure also affect the efficiency of the voluntary disclosure process

Our interviews with state agency personnel indicated that there are many differing sets of expectations about what the MTC National Nexus staff should be doing once an agreement has been reached between the state and the taxpayer. One difficult area to address seems to be identifying the best time for MTC to hand the matter off to the state for direct follow up with a taxpayer – after an agreement is reached; after payment is received; or only after all information requested by the state (registration, returns, supporting schedules, etc.) are completely and correctly submitted by the taxpayer.

Finally, we have heard that although national accounting firms are well aware of the Multistate Voluntary Disclosure program, practitioners in smaller local or regional firms are not as familiar with the program.

Recommendations

Based on our research and the feedback we have received, the project team recommends the following action items and projects to improve the efficiency of the Multistate Voluntary Disclosure process:

Project: Review document submission processes and identify ways to further automate these steps in the process – according to MTC National Nexus Program staff, many of the documents that move between taxpayers and the states are still going through the paper mail system. Time savings can be achieved if most or all documents can be transmitted electronically. The project team recommends that the Nexus Committee consider sponsoring a project to review the processes by which documents are transmitted.

Project: Review MTC Multistate Voluntary Disclosure materials on the web site for clarity and ease of use – the materials on the MTC web site are detailed and consist exclusively of text material. It is difficult for taxpayers to find key requirements, deadlines and other information that is important for preparation of a disclosure application and successful completion of the voluntary disclosure process. States and taxpayers could save significant amounts of time if key requirements and time lines were highlighted. The project team recommends that the Nexus Committee consider sponsoring a project to review the web site materials and organize them for clarity and accessibility.

Project: Review the Multistate Voluntary Disclosure application and agreement format, and update them to determine whether current state-specific voluntary disclosure requirements are absolutely necessary. One of the primary goals of the multistate voluntary disclosure program is that it provides a “one stop” process for taxpayers that is more streamlined than going to each of the states separately. One of the “time eaters” that we heard about was the need to “tailor” the voluntary disclosure agreement for specific state requirements. There are now numerous footnotes in the MTC standard agreement that reflect specific state requirements that have been added over time. It appears to the team that it is time to review the application and agreement formats so that a single document can be used for all states. The team recommends that the Nexus Committee consider sponsoring a project to review the application and agreement forms to make them usable for all of the states with a minimum of tailoring.

Action Item: MTC National Nexus Program staff should annually solicit updated information from the states on changes in laws, rules, policies or procedures (including tax amnesties). Tax nexus is a constantly changing area of law and policy. The National Nexus Program staff can provide better service to both taxpayers and states if those staff members have the most up-to-date information about state nexus and voluntary disclosure programs available.

Action Item: MTC National Nexus Program staff host an annual training for state personnel who work with voluntary disclosure to review the MTC procedures and policies. We learned from our conversations with many states that the people who work with voluntary disclosure applications may not be the people who attend Nexus Committee meetings. Also, there is turnover among state personnel. A regular review, which could be by teleconference, would help both MTC National Nexus Program staff and state personnel have a common understanding of how the process works, and what issues are causing concerns.

Action Item: The MTC National Nexus Program staff should reach out to state, local and regional practitioner groups to seek greater awareness of the Multistate Voluntary Disclosure Program.

Although many national level practitioners are aware of the multistate voluntary disclosure program, regional and state practitioners are not as well informed. Asking for regional, state and local associations to include material about the program on their web sites and in newsletters would raise the profile of the program and enable more taxpayers to use it.

Action Item: The MTC Nexus Committee should have a regular discussion about the Multistate Voluntary Disclosure Program performance.

Our discussions with the states revealed that their expectations for the multistate voluntary disclosure program change over time. Two policies were adopted recently in recognition of MTC staff resource limitations (\$500 minimum threshold to process a disclosure application for a state; eliminate service for taxpayers who want to file in a state that is not a Nexus program member). These changes were effective July 1, 2014. Nexus Committee should review the effect of these changes on levels of service to taxpayers after they have been in effect for a few years. The Nexus Committee should regularly discuss the fundamental purpose for the multistate voluntary disclosure program and review the balance between resources, state expectations and taxpayer convenience in light of the program's purpose and goals.

Respectfully submitted,

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