



**Multistate Tax Commission  
Nexus Committee  
Open Session Minutes  
July 23, 2013  
San Diego, California**

NAME	STATE OR AFFILIATION	NAME	STATE OR AFFILIATION
Michael Gamble	AL	William von Tagen	ID
Julie Magee	AL	Randy Tilley	ID
Chris Sherlock	AL	Jennifer Hays	KY - LRC
Curtis Stewart	AL	J. A. Cline	LA
Christy Vandevender	AL	Jason DeCuir	LA
Walter Anger	AR	John Mollenkamp	MO
Tom Atchley	AR	Lee Baerlocher	MT
Alan LoFaso	BOE	Gene Walborn	MT
Pete Donnelly	GA	Rebecca Abbo	NM
Phyllis Abe	HI	Demesia Padilla	NM
Leticia Jacobs	HI	Lennie Collins (Chair)	NC
		Leanne Johnson	NC
Donald Kuriki	HI	Matt Peyerl	ND
Madelaina Lai	HI	Ryan Rauschenberger	ND
Lynn Lyckman	HI	Emily Thompson	ND
Ted Shiraishi	HI	Myles Vosberg	ND
Michael Chakarun	ID	Julie Anderson	OR
Richard Jackson	ID	Gary Humphrey	OR
		Katie Lolley	OR
		Steve Bouchard	OR
		Joan Cagle *	TN
		Hermi Nanez *	TX
Tom Katsilometes	ID	Christina Heath	TX
David Langhorst	ID	Frank Hales	UT
Ken Roberts	ID	Shelley Robinson *	UT
		Rick DeBano	WI

<i>NAME</i>	<i>AFFILIATION</i>	<i>NAME</i>	<i>AFFILIATION</i>
Laura Mahoney	BNA Daily Tax Report	Benjamin Abalos	MTC
Greg Turner	Council on State Taxation (COST)	Ken Beier	MTC
Russ Brubaker	FedTax	Cathy Felix	MTC
Eva Rayburn	PwC	Joe Huddleston	MTC
Dan Bucks	Self Employed	Gregory Matson	MTC
Jamie Fenwick	Time Warner Cable	Thomas Shimkin	MTC
----	----	Jeffrey Silver	MTC
----	----	Steve Yang	MTC
		Diane Simon-Queen *	MTC

\* Participated by telephone

*Italicized text* indicates a committee action or a matter to follow up.

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Nexus Committee Chair Lennie Collins convened the meeting.

### **I. Review of Agenda**

### **II. Review of Open Session Minutes of March 7, 2013**

*The committee unanimously approved by voice vote the minutes of the March 2013 meeting.*

### **III. Public Comment**

Nexus Chairman Lennie Collins invited comments from the public. There were none.

### **IV. Nexus Director's Report**

Mr. Collins asked Nexus Director Thomas Shimkin to give an update of program activities.

#### **• Multi-state Voluntary Disclosure**

In fiscal year 2013 the National Nexus Program --

- Signed **571** voluntary disclosure agreements (each representing a Case) and began **4,050** Cases. The extraordinary number of new cases is uncharacteristic. It is due to a single application on behalf of numerous similarly-situated taxpayers in the same industry.
- Recovered **\$10,842,380** aggregate back revenue on behalf of participating states (includes non-members of the Nexus program).
- Recovered **\$9,277,480** on behalf of Nexus member states.

These amounts include only amounts actually received before the Commission closes its File; neither interest, which taxpayers pay directly to states after their Commission Files are closed, nor the future value of new taxpayers are included.

The total amount of back tax collected through the Multi-state Voluntary Disclosure Program in FY 2013 for all states decreased by \$4,622,767 compared to FY 2012. The 37 Nexus-Program members' recovery of revenue through multi-state voluntary disclosure decreased by \$3,220,863 compared to FY 2013. Revenue collection for states not members of the NNP decreased by \$1,401,904 compared to FY 2012. Variations between years of these amounts is normal. The long-term trend is upward toward increased revenue collection.

FY 2013 also saw a decrease in the number of contracts completed through the multistate voluntary disclosure program. This year 570 contracts were executed across all states; of this number, 479 of these contracts were completed for Nexus Committee member states, 91 for non-member states. Again, this decrease is a normal year-to-year variation.

Average contract value decreased in FY 2013 from the FY 2012 value by \$5,176.00 for all participating states and \$4,077.00 for Nexus member-states. Notably, the average contract value of multi-state voluntary disclosure agreements completed for non-member states fell by more than \$10,792 from FY 2012.

- **Membership in the National Nexus Program**

There are currently thirty-seven member-states of the National Nexus Program. All but four of the fifty states and D.C. participate in multi-state voluntary disclosure. Fifteen states participate in multi-state voluntary disclosure as non-members of the NNP. California FTB, Delaware, Nevada, Ohio, and New York do not participate in any way.

Ohio - Ohio did not renew its membership in the National Nexus Program for FY 2013, although the NNP nevertheless continued to provide multistate voluntary disclosure services to the state. The Commission's voluntary disclosure program produced \$4,417,126 for Ohio during the prior five fiscal years, including \$772,116 in FY 2012. The Tax Commissioner discontinued Ohio's free participation in multi-state voluntary disclosure effective August 8, 2012. He offered several reasons, including the success of Ohio's own program; the NNP concluded the open cases that it could and has not opened any new ones for that state.

California Franchise Tax Board - The California Franchise Tax Board stopped participating in multi-state voluntary disclosure in FY 2013 and has requested to not have communication with the NNP. This request does not affect the California State Board of Equalization. This request occurs contemporaneously with the *Gillette* case presently before the California Supreme Court. That case concerns whether California may require a single sales-factor in light of the Multistate Compact's election that a taxpayer may choose between a state's statutory formula (sales as the only factor in California) and the three-factor formula of the Compact. California has withdrawn from the Compact.

- **Nexus Committee Meeting Schedule**

The Nexus Committee requested that staff set up a third annual Nexus Committee meeting if possible. Staff did so; *the committee will going forward add a fall meeting to the current summer and winter ones. The 2013 fall meeting will take place at the Hotel Monteleone in New Orleans, Louisiana from 1:00 until 3:00 p.m. on December 10, 2013.*

- **Staff**

Amber Kirby left the National Nexus Program to take a position with PricewaterhouseCoopers in its state and local tax department.

Ben Abalos joined the NNP staff. He formerly managed the Commission's project to aggregate federal tax data to assist states in audits. He will be working on management of the NNP, teaching nexus schools, assisting taxpayers and states with nexus information, and managing a small load of voluntary disclosures.

The NNP had four full-time staff members in FY 2013: Director Thomas Shimkin; Assistant to the Director Amber Kirby followed by Associate Director Ben Abalos; senior paralegal Diane Simon-Queen; and paralegal Michelle Lewis. Training Manager Antonio Soto is a full-time Commission staff member whose responsibilities include administration of Nexus School. Approximately 70% of Nexus person-hours are dedicated to multi-state voluntary disclosure.

- **Outreach**

Staff has made several in-person outreach visits to states to either shore up membership in the National Nexus Program or to invite membership in Nexus and/or the Joint Audit Program. Mr. Shimkin made in-person visits to tax administrators and their senior staffs in Indiana (neither Audit nor Nexus member), Virginia (neither Audit nor Nexus member), and Maryland (Nexus member only).

The director of the National Nexus Program participated with a representative of the Council on State Taxation on a webinar panel sponsored by the Bureau of National Affairs twice in fiscal year 2013. They discussed BNA's nexus survey of state tax departments.

- **Web links**

The Commission continues to reach out to states to encourage states to place a link to multi-state voluntary disclosures on their own voluntary disclosure web pages. Recommended text for the link was provided:

“For voluntary disclosures involving more than one state you may contact the Multistate Tax Commission's National Nexus Program for a streamlined, multi-state disclosure process: <http://www.mtc.gov/Nexus.aspx?id=526> OR [Nexus@mtc.gov](mailto:Nexus@mtc.gov) OR (202) 695-3767 OR [nexus@mtc.gov](mailto:nexus@mtc.gov).

Sixteen states link or refer taxpayers to multi-state voluntary disclosure presently; two states declined staff's request to link.

*Mr. Shimkin requested that committee members contact Ben Abalos by telephone or at [babalos@mtc.gov](mailto:babalos@mtc.gov) if their states do not have a link to the MTC's Multi-state Voluntary Disclosure Program.*

- **Nexus Web Pages**

Data on visitors to the Commission's web pages include 34,382 “page views” (visits to a nexus-related web page) of which 25,186 were “unique page views” (visits that were not repeat visits by the same visitor).

## V. Review of on-going matters

- **Nexus Charter**

The Nexus Committee approved the revised Charter of the National Nexus Program as recommended by its drafting subcommittee. The Nexus Committee requested that the Executive Committee approve it at its meeting on July 18, 2013. The revised Charter replaces the current out-of-date one by removing references to obsolete programs, describing the program's mission in more general terms, and making it more concise. The Charter page on the Commission's website having received 567 unique visits in FY 2013 highlights the importance of ensuring that this document is up to date.

- **Template Agreement**

Discontinued Voluntary Disclosure Services: *The committee voted at its July 2013 meeting to not open any new voluntary disclosure cases as of June 30, 2014 for states that are not members of the NNP.* This reverses a long-standing policy to offer this service as a convenience to taxpayers and opportunity for states to learn about the Commission's voluntary disclosure service.

## VI. Consideration of Ideas for Additional NNP Services

At the committee's March 7, 2013 meeting the chair requested that members come up with ideas for services that the NNP can offer, particularly as a way to encourage non-members to join. An information exchange project was suggested. Mr. Shimkin requested that members email ideas to him at Tshimkin@nexus.gov in advance of the July 2013 meeting. No additional service ideas were submitted to Director Thomas Shimkin prior to the July 2013 meeting.

At the July 2013 meeting, the following ideas were raised:

- Information sharing. Christy Vandevender (Alabama) expressed that the real strength of the Committee is information sharing. Citing the clearinghouse project that states and the Commission discontinued about ten years ago, Mr. Shimkin reminded the Committee that the project failed to gain traction in large part because only one state contributed data regularly. He advised that the NNP has resources only to coordinate work done by member-states.
- Nexus information resource. A committee member suggested that Nexus staff could be a resource for nexus questions. Mr. Shimkin described the Nexus staff's on-going role and availability as a resource for states, taxpayers, and tax representatives.

Chairman Collins asked whether a directory of state personnel involved in nexus issues would help. Mr. Shimkin advised that the challenge is having such a director is keeping it current. Chairman Collins suggested that a contact information template could be sent to Nexus staff. *Mr. Shimkin offered to explore an FTA-like "Tax Exchange" on which a nexus directory might be posted and more easily kept current by nexus directory members themselves.*

- Taxpayer ideas. Mr. Shimkin asked the Committee whether states have heard from taxpayers on how the Multi-state Voluntary Disclosure program might be improved. Mr. Shimkin suggested speed of responses from states is critical when working with 37 member-states. He said that most states generally respond timely. He noted, however, that unusual taxpayer requests inevitably slows the process. He said that he works with taxpayers to avoid requests that are very unlikely to be accepted.
- He also observed that when taxpayers feel they have a lot at stake, they negotiate with states directly, relegating the Nexus program, in those instances, to handle the less important and less costly Cases.

## **VII. New Business**

Louisiana is offering taxpayers an amnesty this fall. Taxpayers may avail themselves of the amnesty or voluntary disclosure, but not both. LA's J.A. Cline advised that the advantage of amnesty is the waiver of penalty and half the interest. A press release on the amnesty can be found on Louisiana Department of Revenue's website.

## **VIII. Closed Session (state personnel only).**

The committee entered closed session.

## **IX. Report from Closed Session**

The committee returned to open session. The meeting room's doors were opened to invite members of the public in; there were none to hear the report of the closed session.

## **X. Adjournment**

The committee adjourned.