



MULTISTATE TAX COMMISSION

## MINUTES

**MTC Nexus Committee Meeting  
Adams Mark Hotel  
St. Louis, MO  
Wednesday, November 15, 2006  
1:30 p.m. – 5 p.m. Central Time**

**- Open Session -**

Attendees:

Michael Mason	Alabama
John Kutsukos	Connecticut
Joseph Thomas	Connecticut
Anita DeGumbia	Georgia
Ed Many	Georgia
Lynn Chenoweth	Idaho
Joe Randall	Idaho
Reva Tisdale	Idaho
Barbara Nichols	Idaho
Carol Ireland	Kansas
Bryan Vargas	Kansas
Peggy McKinley	Louisiana
Sue Pifer	Michigan
Dale Vettel	Michigan
Keith Getschel	Minnesota
Diane Luebbering	Missouri
Lee Baerlocher	Montana
Lee Evans	New Jersey
Rich Schrader	New Jersey
Linda Palmer	New Mexico
Lennie Collins	North Carolina
Mary Loftsgard	North Dakota
Charles Rhilinger	Ohio
Janielle Lipscomb	Oregon
Diana Hopkins	South Carolina
John Rogers	South Carolina
Frank Hales	Utah
Rod Marrelli	Utah

Mike Grundhoffer	Washington
Rick DeBano	Wisconsin

Jackie Dalenberg	MTC
Cathy Felix	MTC
Sheldon Laskin	MTC
Marie Plesko	MTC
Thomas Shimkin	MTC
Antonio Soto	MTC

The meeting began with review and approval of minutes from the Nexus Committee meeting at Topeka, Kansas on August 15, 2006. On a motion by New Jersey and a second by Idaho, the committee unanimously approved the minutes of the August 15, 2006 meeting of the Nexus Committee.

Sheldon Laskin, director of the National Nexus Program, began a discussion regarding the feedback loop, which refers to a system in which each participating state informs the Nexus Program how much revenue each voluntary disclosant brings to that state for a certain period after a voluntary disclosure concludes. By this means the states hope to increase the accuracy of Nexus Program reports regarding the effect on future revenue of each disclosure case. Mr. Laskin expressed concern that a number of states had not responded to a test request for data. Ms. Mary Loftsgard (ND) suggested that the requests may have been sent to former employees; she suggested that such requests also be sent to the Nexus Committee member in future. Chairman Joe Thomas (CT) asked that Nexus staff follow up with non-respondents and copy the Nexus Committee member. Mr. Laskin observed that it may be necessary to adjust the system to correctly capture cases that close near the end of a calendar year.

Mr. Antonio Soto noted that the next Nexus School is over-capacity at sixty-four students. He said that Connecticut and Colorado will host schools next year, but the program would like to have two more. He invited states interested in hosting a school to make themselves known.

Mr. Lee Evans (NJ) reported his state's victory in the Lanco decision (NJ Supreme Court, Oct. 12, 2006), which held in short that physical presence is not required to establish nexus for corporate income tax purposes. Mr. Evans informed the committee that the taxpayer had ninety days to file a petition for certiorari to the U.S. Supreme Court, but he does not believe the taxpayer will do that. In light of the decision, New Jersey may offer a voluntary compliance program for taxpayers who participated in an intangible assets holding company tax shelter scheme. Mr. Laskin spoke in further support of the reasoning in the *Lanco* decision, noting his belief that the U.S. Supreme Court often applies varying tests to the same constitutional provision, depending on circumstances, and that it is consistent with this practice that the U.S. Supreme Court would apply a physical presence test to the Commerce Clause when sales/use tax is at issue but an economic presence test when income tax is at issue.

Mr. Laskin raised the issue whether mere registration for sales/use tax collection by itself creates nexus for that tax type, noting that there have been a few cases on this issue of late, such as in Tennessee, where a business registered for the purpose of issuing resale certificates and then filed returns showing no tax due. Mr. Laskin joins Professor John Swain in the belief that mere registration does not by itself create nexus, but rather it estops the business from asserting lack of nexus as a defense to the state's assertion it should collect and remit (or pay from its own funds if it does not). Mr. Thomas pointed out the analogy to registration under the Streamlined system, which cannot be used as a factor to establish nexus.

On new business, Mr. Evans moved on behalf of New Jersey that the Nexus Committee develop a uniform statement regarding how long nexus lasts. Mr. Marrelli (UT) said that it may be better to have staff study the matter and come up with a recommendation. Chairman Thomas asked whether any states present had guidance on how long nexus lasts. The Wisconsin representative thought Wisconsin might. The Ohio representative offered that he thinks there is an informal policy statement regarding the commercial activity tax (CAT). Mr. Evans said that he would hope such a statement would develop into a bright line test. Ms. Loftsgard (ND) queried whether staff should not survey state policies and cases. Not having achieved a second, Mr. Evans amended his motion to begin this project by asking staff to first do some research on existing law. Ms. Janielle Lipscomb (OR) offered a second to the amended motion. The Committee thereupon voted unanimously that staff should research existing sources of authority on how long nexus lasts and present its results to the committee at its spring meeting.

Mr. Laskin turned the committee's attention to NASBA (National Association of State Boards of Accountancy) CLE/CPE certification of the Nexus School, which requires an unaffiliated third party to review the Nexus School materials to ensure they meet a minimum standard, e.g., are relevant, accurate and current. Mr. Laskin offered free Nexus School training for one student to the state that volunteers to evaluate the materials.

Mr. Laskin announced that Georgia has joined the National Nexus Program.