



**MINUTES**  
**Nexus Committee Meeting**  
**San Antonio, Texas**  
**November 19, 2008,**  
**8:30 a.m. - Noon CST**

**-- PUBLIC SESSION --**

*Italicized text indicates a vote, committee action or follow-up item.*

**A. Welcome and Introductions**

- Chairman Lennie Collins convened the meeting. The following persons attended, all or in part:

<b>First</b>	<b>Last</b>	<b>Affiliation</b>
Chris	Sherlock	Alabama
Christy	Vandevender	Alabama
Tamra	Fucci	Arizona <i>(phone)</i>
Michael	Mason	Alabama
Todd	Lard	COST
Charles	Wilson	District of Columbia
Randy	Tilley	Idaho
Reva	Tisdale	Idaho
Dan	Hall	Illinois
Brian	Vargas	Kansas
Donna	Donovan	Michigan
Keith	Getschel	Minnesota
Lee	Baerlocher	Montana
Eugene	Walborn	Montana
Liana	Techow	Louisiana
Joe	Huddleston	MTC
Ted	Jutras	MTC
Thomas	Shimkin	MTC
Cathy	Wicks	Minnesota

<b>First</b>	<b>Last</b>	<b>Affiliation</b>
Jeff	Silver	MTC
Antonio	Soto	MTC <i>(phone)</i>
Steve	Yang	MTC
Rebecca	Abbo	New Mexico <i>(phone)</i>
Lennie	Collins	North Carolina
Mary	Loftsgard	North Dakota
Myles	Vosberg	North Dakota
Janielle	Lipscomb	Oregon
Eric	Smith	Oregon
Joy	Causey	South Carolina <i>(phone)</i>
Brandin	Seibel	South Dakota
Chris	Heath	Texas
Hermi	Nanez	Texas
Mike	Christensen	Utah <i>(phone)</i>
Andrew	Glancy	West Virginia
Craig	Griffith	West Virginia
Rick	DeBano	Wisconsin
Shandra	Rice	Wyoming <i>(phone)</i>

*The committee approved the minutes of its July 2008 meeting as presented.*

**B.** Mr. Collins solicited public comments – none were put forth.

**C.** Mr. Soto discussed Nexus Schools. He reported that:

- The MTC held well-attended Nexus Schools in Omaha, Nebraska and Boise, Idaho.
- There is a Nexus School scheduled for December 16 & 17 in Olympia, Washington.
- 2009 Nexus Schools are in the planning phases and states wishing to volunteer to host a school will be welcome.

**D.** Mr. Shimkin gave the Committee an update on the status of the voluntary disclosure information technology upgrades. Revenue Solutions, Inc (RSI) was contracted to perform the work designated as “Phase I” which includes the creation of a new database and related user-interface software, the transfer of all data from the old database to the new platform, and the building of an online form which taxpayers will use to apply for voluntary disclosure. Mr. Shimkin asserted that all portions of Phase I except for the online application are currently being tested by MTC staff, and should be fully implemented by the end of the year. Phase I should be fully completed by early 2009.

Mr. Collins asked whether or not member states would be involved in testing the new database, to which Mr. Shimkin responded that they would not be involved in testing Phase I since there is no state interface involved in Phase I of the project. If and when the Commission proceeds with Phase II, which would include secure messaging between all parties involved in a voluntary disclosure, and a secure interface for states and taxpayers to view their cases, then testing by the states would be appropriate.

Mr. DeBano asked whether the MTC had talked with New York State about getting a version of their new data management system. Mr. Shimkin replied that the New York State data management system was unveiled after the MTC had entered into a contract with RSI. The MTC is confident that the data management system that is near completion is better for MTC purposes than the one being used in New York. The MTC did look at New York’s online taxpayer questionnaire for ideas when constructing the corresponding feature for the MTC website.

**E.** Mr. Jutras presented the Nexus Program’s revenue results. The total back taxes collected for the states in fiscal year 2007-2008 totaled \$16.54 million. This represents the largest single-year sum ever collected by the National Nexus Program. The total for the first four months of fiscal year 2008-2009 was \$2.88 million, behind the previous year’s \$4.43 million at the same point. However, the correlation between the first third of the year totals and end of the year totals has historically been weak. The total number of disclosures opened during the first 4 months of FY 2008-2009 is ahead of the previous year’s pace.

Ms. Loftsgard asked whether the Nexus Program could break the revenue results down by tax-type, industry of the taxpayer, or other factors. Mr. Jutras responded that those numbers are not easily available given the limitations of the current database, and that completion of Phase I will allow the MTC to run the reports she needs.

Mr. Shimkin pointed out that it is difficult to predict end-of-the-year back tax totals because a very small, and variable, number of taxpayers accounts for the great majority of revenue collected.

Mr. Huddleston pointed out that the primary goal of the Voluntary Disclosure program is to bring new taxpayers on board and to provide service to those taxpayers.

F. The committee reviewed the draft voluntary disclosure guidelines.

Mr. Lard spoke on behalf of the Council on State Taxation (COST). He said that, from his discussions with taxpayers, most believe that having written voluntary disclosure guidelines is a great idea. The consensus among the taxpayers with whom he spoke was that the guidelines will increase participation in the program and that they will benefit all parties involved.

*Input from committee:*

§ 5.1 Mr. DeBano suggested that **changing the wording to “even when it is otherwise eligible”** would improve readability by removing a double negative.

Mr. DeBano further suggested that the text be amended to make clear that a contact concerns all tax types unless it is explicitly limited to a particular, named tax type.

§ 7.1 Ms. Loftsgard suggested **removing the word “accidentally.”**

§ 8. Mr. DeBano suggested adding a cross reference to § 19.6 with respect to the definition of *File*.

§ 8.1.4 Mr. Shimkin said that he added the requirement that the applicant provide the last 3 digits of its federal employer identification number (FEIN) or taxpayer identification number. He said that the District of Columbia does this and that it will prevent a taxpayer representative from opening a MVD File for a client it does not yet have. In response to question, he said that it would also allows NNP and states to know when a taxpayer, for the purpose of reducing the lookback period, closes a File at the end of a tax year and reopens it early the following tax year.

The committee considered how to handle deadlines for the Commission and states to take action. The consensus was to include realistically achievable, aspirational deadlines.

§ 11. Mr. DeBano suggested adding a cross reference to § 16 (time limits) in § 11.3 (incomplete filings).

§ 9.2 Mr. DeBano suggested the following amendment: *The state shall not be required to refund a mistaken payment except to the extent it exceeds a taxpayer’s TOTAL tax liability at the end of the MVD process.* [capitalized word is the addition to the text]

§ 14.1 – The committee made the following changes to § 14: *Protection from Discovery* for the purposes of §14.1 means that, upon receipt of notice per §15.32, NNP and participating states shall suspend with respect to a ~~taxpayer so protected~~ an Eligible taxpayer (see § 5.2) who has not been contacted, all inquiry, ~~audit~~ and other enforcement activity (except criminal enforcement activity), with respect to that taxpayer’s non-filer status and the type of tax it seeks to voluntarily disclose, pending that taxpayer’s completion of its MVD in accordance with the time limits set forth in §16.

§ 14.2 -- The committee struck the immediately following § 14.2 as unnecessary in light of the changes to § 14.1.

Ms. Nanez (TX) asked that a footnote be inserted in § 15.1 (definition of state contact) because Texas will not abide by the policy as written in the draft guidelines. She said that the footnote should have the same content as that in § 5.2 (eligibility).

The committee requested by consensus that staff add a question to the voluntary disclosure application to ask whether the applicant files or arguably should file as part of a unitary group in the state and, if so, whether any of the unitary entities have been contacted for audit or registration purposes.

§ 15.1 – The committee requested the addition of a sentence to the definition of *contact* to clarify that contact by a state is with respect to all types of tax unless the contact communication states a specific type of tax.

The committee consensus requested that the first sentence of § 18 be deleted. The deleted sentence stated that time limits with respect to the NNP are aspirational maximums.

§ 19.1: Ms. Lipscomb asked what it means to “mistakenly receive” something from a taxpayer. Mr. Shimkin explained that it might be a tax return filed prematurely by an over-eager employee of the taxpayer, or perhaps an email from the taxpayer that the NNP mistakenly sends to the state before the taxpayer’s identity should be known. Mr. Shimkin further said that the NNP would generally advise the state when the state has received a document mistakenly.

§ 19.4 – the committee requested to change from the ‘postmark rule’, wherein a document is deemed received by the state on the date of its postmark, in favor of the rule that it is deemed received on the date of actual receipt.

§ 19.10: Mr. Debanò (WI) suggested adding the following language to a new § 19.10: The MVD process ends with respect to a state when that state and the taxpayer have each executed the voluntary disclosure contract, and the state has received all tax returns, payment and other material due, including but not limited to any interest or non-discretionary fees that the state billed in accordance with the MVD contract after receipt of the tax returns.

Mr. Collins asked Commission staff to incorporate into the draft guidelines the comments and changes the committee made. He also asked staff to communicate with states that may want to opt out of certain provisions to make sure their concerns are taken into account by means of footnotes.

**G.** The committee entered closed session

**H.** The committee re-entered public session and adjourned.