

**Nexus Committee Meeting  
Notice and Agenda - Open Session  
March 4, 2010, 8:30 AM -- Noon MST**

The Westin Tabor Center, 1672 Lawrence Street, Denver, Colorado

- *Nil Sine Numine* -  
1876

**Public Session**

The following persons attended in whole or in part:

NAME	AFFILIATION
Christy Vandavender*	AL
Danny Walker*	AR
Tamra Fucci *	AZ
James Maisto*	CT
Ted Jutras *	MTC
Antonio Soto *	MTC
Thomas Shimkin	MTC
Ken Beier*	MTC
Rebecca Abbo *	NM
Charles Redfern*	NH
Lennie Collins	NC
Myles Vosberg	ND
Mary Loftsgard	ND
Brandin Seibel *	SD
Joan Cagle *	TN
Hermi Nanez*	TX
Michael Christensen *	UT

\* attended by telephone

Chairman Lennie Collins called the meeting to order at 8:30 a.m. Committee members in physical attendance and on the telephone identified themselves.

**Review of Agenda**

There were no objections to the agenda.

**Review of July 2009 Minutes**

The Committee reviewed the minutes of its July 2009 meeting. The backup briefing books available at the meeting did not contain the minutes, but as these had been distributed prior to the meeting by email and posted on the Commission's website such that committee members were able to review them in advance, the committee proceeded to their consideration nevertheless. Ms. Janielle Lipscomb (Oregon) moved to strike the word "by" on page 13. The committee approved her motion and approved the minutes as amended, subject to subsequent correction if a member had not reviewed the minutes and later discovered an error.

### **Public Comment**

The chair invited members of the public to comment on any matter relevant to the committee. No one commented.

### **Nexus School**

Mr. Antonio Soto of the Commission reviewed the status of Nexus School. He said that the District of Columbia had sponsored a school in the DC metropolitan area that was lightly attended, and attended exclusively by DC personnel and one Commission staff member. He said that there are no schools on the calendar presently and that the Commission will welcome any state that wants to sponsor a school. Sponsoring states assist with site selection, help out at the school as needed, and agree to send a minimum number of students. In return, the state receives a three thousand dollar tuition credit.

### **BATSA**

Mr. Shimkin reviewed the status of the federal Business Activity Tax Simplification Act. He explained that it is perennial legislation that has never advanced significantly in the legislative process and that the prospects for a hearing or other action in the near-term are very low. Mr. Matson said that the bill is being watched carefully by state government organizations in addition to the Commission, including National Governors Association, National Conference of State Legislatures, and Federation of Tax Administrators.

### **Nexus Director's Report**

Mr. Shimkin gave a detailed report on the status of the states' National Nexus Program --

- **Membership.** Other than Rhode Island and Wyoming, which did not renew their Nexus memberships, the program continues in fy 2010 with all member states that it had in fy 2009.
- **Staffing.** The program has shifted focus toward voluntary disclosure at the committee's direction, and reduced its staff level from 6 3/4 FTE to 4 FTE, with the largest reduction in the area of enforcement and compliance. Increased efficiency, primarily through automation, have allowed the program to process significantly greater numbers of disclosures with a reduced staff.

- **Secure E-mail.** The Tumbleweed secure email system is fully operational and users are rarely experiencing trouble using it.
- **State-specific revenue.** A member asked about voluntary disclosure revenue results specific to each state. Mr. Shimkin said that he has those numbers for most states attending the meeting and he invited them to retrieve their report at a break or at the conclusion of the meeting. He said that all member states would receive their numbers by email shortly.
- **Voluntary Disclosure Information Management.** In response to a question from the chair, Mr. Shimkin explained that hiring of a contractor and substantial work to develop Phase II of the voluntary disclosure software project is unlikely to be funded during the present period of sharply reduced state revenues. Mr. Matson also addressed the Phase II project, saying among other things that it is linked to a similar project contemplated for the Commission's Audit division. Mr. Collins suggested that the Nexus Committee and staff should get a good idea of the desired features of Phase II and then states might volunteer the time of some of their information technology staff to help with implementation. Mr. Shimkin said that he would welcome volunteers to help give greater detail to the features that states want in such a system. The following volunteered: Melissa Kopp (MT); Christy Vandevender (AL); Tamra Fucci (AZ).

Continuing the discussion regarding information technology, Mr. Shimkin explained that the Commission's online voluntary disclosure application has been less utilized than anticipated, but efficiencies are still achieved because applications are still sent electronically, using either Word or PDF format.

Mr. Shimkin said that staff continues to work with the contractor to make marginal improvements to the voluntary disclosure management software.

Turning to the marketing of voluntary disclosure, Mr. Shimkin explained that a number of applicants find the program via a search on Google, where the Commission buys banner advertisements that appear in response to certain key words, such as "nexus" and "voluntary disclosure". He said that a small number of applicants come to the program after being referred by a state at the end of its audit process. The Commission has a brochure for this purpose. Mr. Shimkin noted that only two states are making these referrals or handing out the brochures to taxpayers at the end of a state's audit process, based on the number of brochures the Commission has given to states to hand out. People also come to the program after seeing a link on a state's website. Mr. Shimkin encouraged states to distribute the Commission's voluntary disclosure brochures to auditees at the conclusion of the audit and to maintain a link to the voluntary disclosure section of the Commission's website.

- **Voluntary Disclosure Revenue.** Mr. Shimkin said that voluntary disclosure revenue continues to increase substantially year over year. He said that in fiscal years 2007 through 2010 (partial year), revenues were \$13 m, \$17.5 m, \$32 m, and \$58.1 m respectively. He said that collections of income/franchise tax revenue far surpassed that of sales/use tax in the two most recent years due to the participation of a mega-taxpayer. Continuing, he said that despite the constant increase in revenue, the

number of concluded voluntary disclosure cases – individual contracts between a state and a taxpayer – have remained constant in the range of 351 to 515 contracts.

### **Voluntary Disclosure Guidelines**

Mr. Collins informed the committee that he had presented to Stephen Cordi, chair of the Multistate Tax Commission, the voluntary disclosure guidelines that the Nexus Committee approved at its July 2009 meeting, and that Mr. Cordi had declined to present them to the Executive Committee for consideration because he believed the Executive Committee would reject them due to Section 12, which requires Commission staff to disclose the identity of a voluntary disclosant to states that have not accepted that disclosant's offer when Commission staff believes that the disclosant has made a material misrepresentation. Mr. Cordi explained in a letter to Mr. Collins that this rule would be a powerful disincentive to participate in the Commission's multi-state voluntary disclosure program because many disclosants would avoid the risk by approaching states individually. To the extent disclosants do this, he said, states and the tax-paying community will lose out on the efficiency of their multi-state program. He further noted that disclosants will reasonably fear making a good faith mistake, particularly when a disclosure arises from the common situation of a corporate acquisition in which the acquiring company has incomplete information about the acquired company.

**Mr. Shimkin distributed alternate Section 12 language for the committee's consideration, which he had prepared in advance of the meeting at Mr. Collins' request. The committee approved a drafting subcommittee to look at the Section 12 language in advance of a full Nexus Committee meeting by telephone. Shelley Robinson (UT); Hermi Nanez (TX); and Christy Vandevender (AL) volunteered to serve. Mr. Shimkin said that he would arrange a teleconference of the full Nexus Committee to consider the Section 12 language.**

### **New Business**

There was no new business.

-- Closed Session --

Re-convene Public Session & Report from Closed Session

Adjourn

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*For more information about this meeting, please contact Thomas Shimkin, Director of the National Nexus Program, Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001. Telephone (202) 508-3869. Email tshimkin@mtc.gov.*