



Nexus Committee Agenda

*July 23, 2013 * 1:00 – 4:00 P.M. PDT
U.S. Grant Hotel * San Diego, California*

*-- Eureka –
1850*

Open (Public) Session

State government personnel and members of the public may attend the public session either in person or by teleconference. To participate by teleconference, please dial (1) 800-264-8432 or (1) 719-457-0337 and enter participant code 149611. There is no security code. The closed session is available only to state-government personnel.

Members of the public wishing to address the committee are welcome to do so during Public Comments and when the committee turns its attention to the subject of the comment.

- I. Review of Agenda
- II. Review of Open-Session Minutes of March 7, 2013
- III. Public Comment
- IV. Nexus Director's Report
- V. Review of on-going matters
 - a. Nexus Charter (no committee action anticipated)
 - b. Template Vol. Discl. Agreement (no committee action anticipated)
- VI. Consideration of Ideas for Additional NNP Services
- VII. New Business
- VIII. Closed Session (state personnel only)
- IX. Report from Closed Session
- X. Adjourn

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 * (202) 695-8139 * Tshimkin@mtc.gov



Nexus Director's Report

July 23, 2013

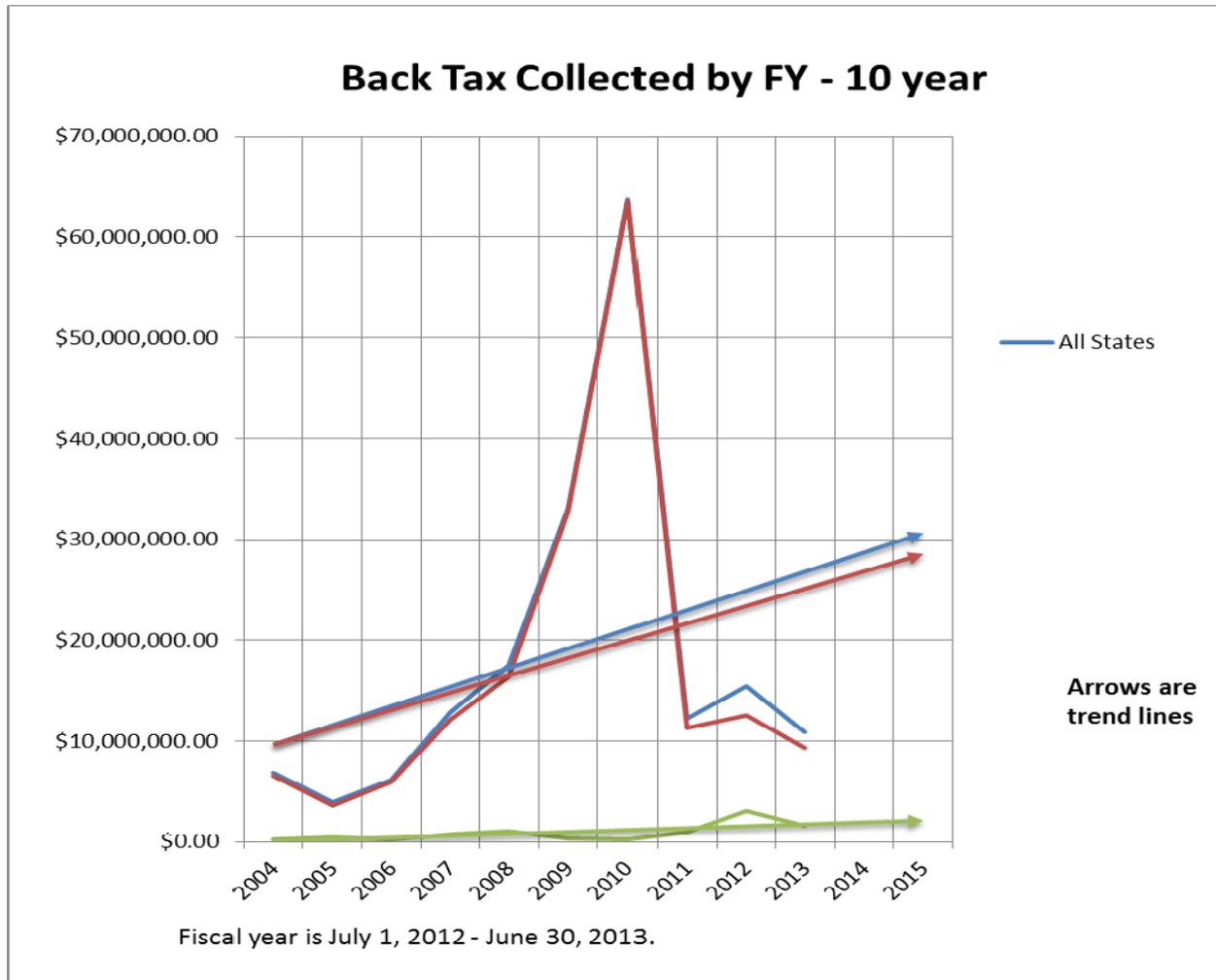
This report updates the Nexus Committee on Nexus Program activity over fiscal year 2013 (July 1, 2012 – June 30, 2013). It integrates summaries of information from report of July 2012, report of March 2013, and new information from the period after the March report through June 30, 2013.

Multistate Voluntary Disclosure

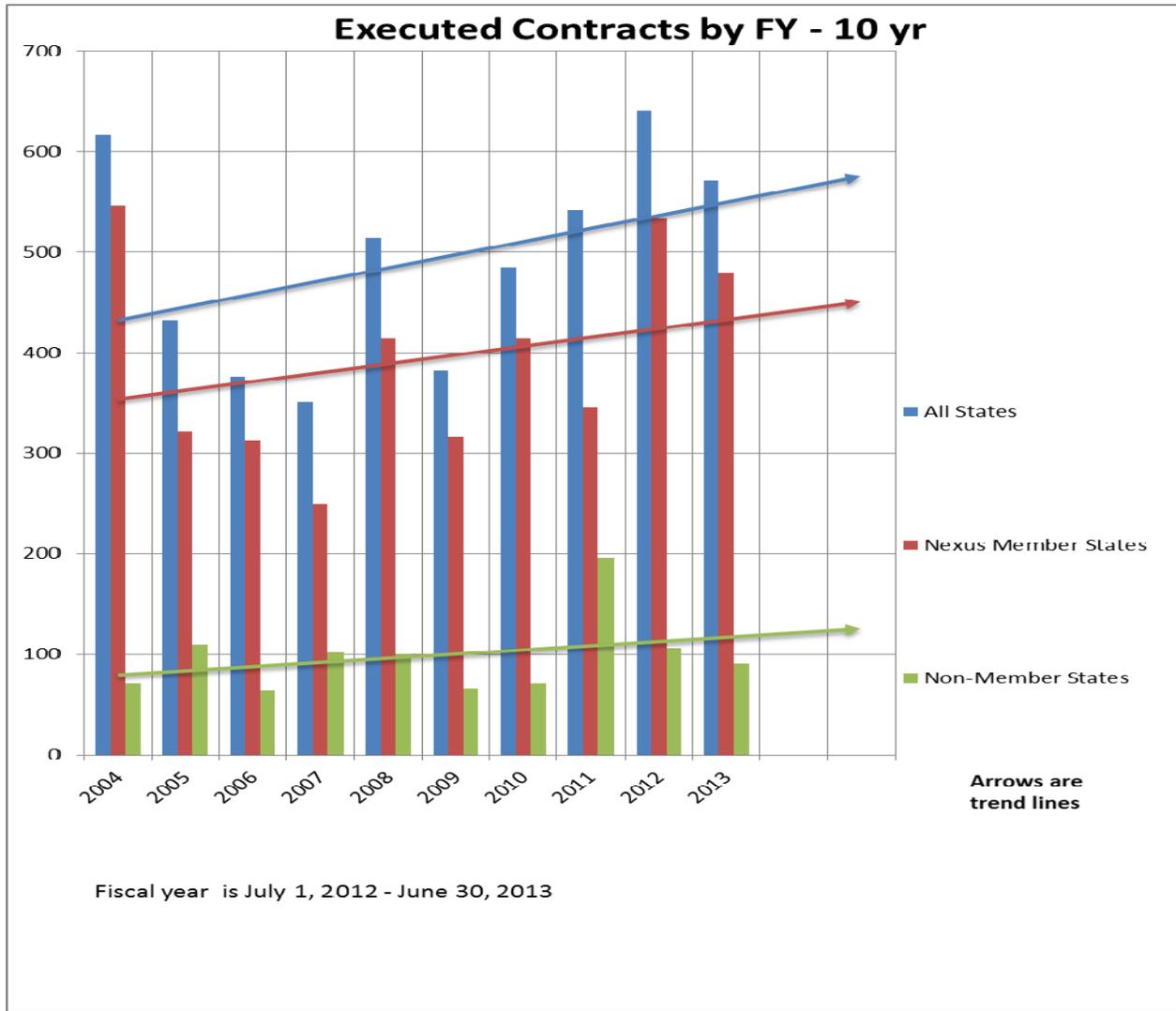
In fiscal year 2013 the National Nexus Program --

- Signed **571** voluntary disclosure agreements (each representing a Case) and began **4,050** Cases (sic). The extraordinary number of new cases is uncharacteristic.
- Recovered **\$10,842,380** aggregate back revenue on behalf of participating states (includes non-members of the Nexus program that nevertheless accept Commission voluntary disclosures).
- 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. A report of each member-state's revenue collection amounts will be distributed separately to the representative of each member state. Representatives not physically attending the meeting in San Diego will receive their report after July 31 by email.

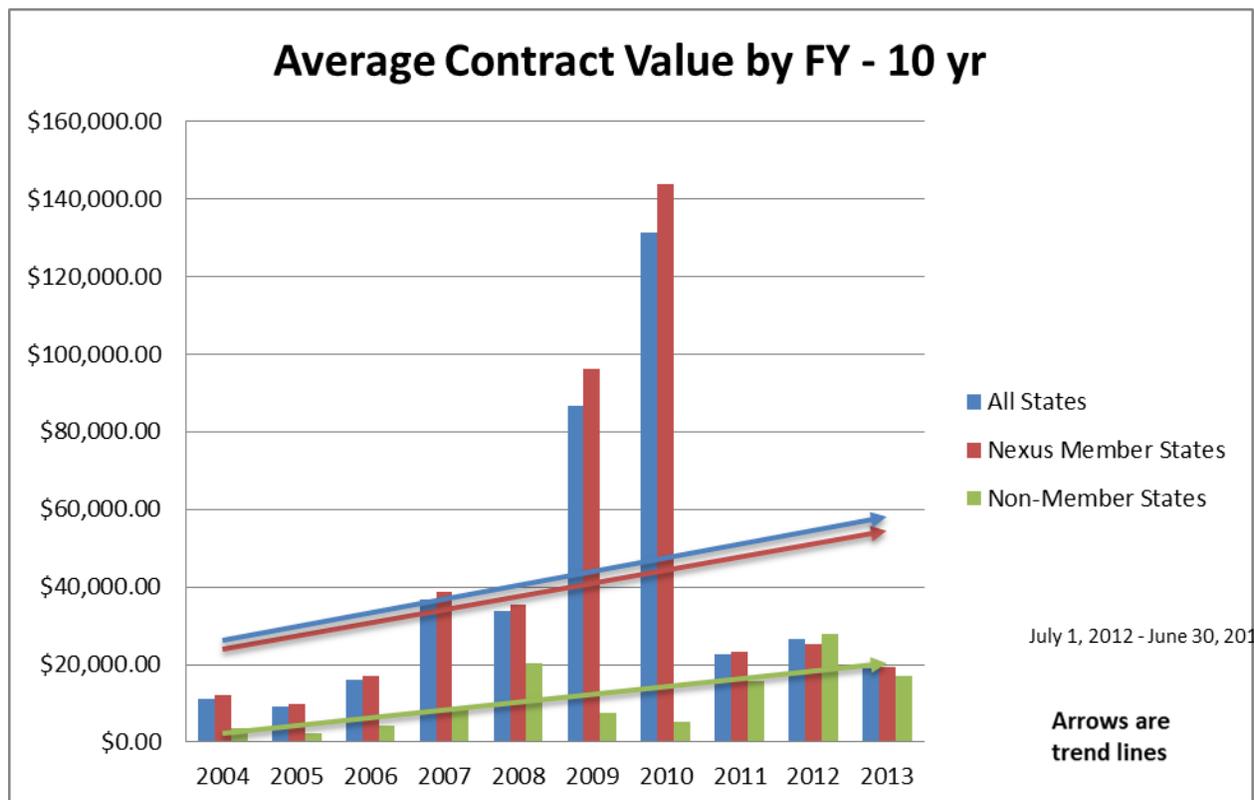


The total amount of back tax collected through the Multi-state Voluntary Disclosure Program in FY 2013 for all states was \$9,829,107, a decrease of \$5,636,040 from FY 2012. The 37 Nexus program members multistate voluntary disclosure collections decreased in FY 2013 from FY 2012 by \$3,523,954. Non-Nexus program members multistate voluntary disclosure collections decreased in FY 2013 from FY 2012 by \$2,112,086. The large spike in revenue recovered in fy 2009 and fy 2010 is due to a single taxpayer. Such large taxpayers come forward occasionally; their appearance cannot be predicted, other than to say that there will eventually be another (like a ten-year flood).



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.

Average contract value has 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

There are currently thirty-seven member-states of the National Nexus Program. All but four states 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. California FTB, California BOE, and the District of Columbia are included here as separate states.

State	NNP Member	MVD Participant
Alabama	Yes	Yes
Alaska	No	Yes
Arizona	Yes	Yes
Arkansas	Yes	Yes
California	No	No
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware	No	No
District of Columbia	Yes	Yes
Florida	Yes	Yes
Georgia	Yes	Yes
Hawaii	Yes	Yes

Idaho	Yes	Yes
Illinois	No	No
Indiana	No	Yes
Iowa	Yes	Yes
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	Yes
Maine	No	Yes
Maryland	Yes	Yes
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes
Mississippi	No	Yes
Missouri	Yes	Yes
Montana	Yes	Yes
Nebraska	Yes	Yes
Nevada	No	No
New Hampshire	No	Yes
New Jersey	Yes	Yes
New Mexico	Yes	No*
New York	No	No
North Carolina	Yes	Yes
North Dakota	Yes	Yes
Ohio	No	No
Oklahoma	Yes	Yes
Oregon	Yes	Yes
Pennsylvania	No	Yes
Rhode Island	No	Yes
South Carolina	Yes	Yes
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	No	Yes
Washington	Yes	Yes
West Virginia	Yes	Yes
Wisconsin	Yes	Yes
Wyoming	No	Yes
* New Mexico has no voluntary disclosure program of any kind		

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; the NNP concluded the open cases that it could and has not opened any new ones.

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. FTB staff did not give a reason, but it 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 apparent election that a taxpayer may choose between a state's statutory formula (single sales in California) and the three-factor formula of the Compact. California has withdrawn from the Compact. Separately, the NNP will open no new disclosures for the California State Board of Equalization after June 30, 2014, unless the SBE pays dues to the NNP. This policy is in line with the broad policy, requested by the Nexus Committee, to not open new voluntary disclosure cases as of June 30, 2014 for states that are not then dues-paying members of the NNP.

Nexus Committee Meeting Schedule

The Nexus Committee requested staff to 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, and managing 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*; 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.

Template Agreement

The consensus of the July 2012 Nexus meeting was to make two changes to the template agreement: delete “and fees”, which applied only to the District of Columbia, and delete former section 6.4., which was redundant language requested by former member Ohio. Staff explained this in the Nexus Director’s Report of March 7, 2013.

Change to Taxpayer’s Deadline

The committee approved a change in both the template multi-state voluntary disclosure contract (agreement) and the *Procedures of Multi-state Voluntary Disclosure*. Staff noted this in the Nexus Director’s March report.

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.

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. I made in-person visits to tax administrators and/or 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 three times 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. The link should read along the line of,

“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 OR (202) 695-3767.”

The current status of this project is:

- 16 states link or refer to multi-state voluntary disclosure;
- 8 states refer collaterally to the MTC (e.g. prior contact with the MTC as disqualifying the taxpayer for the state program), which staff is working to upgrade to a link;
- 2 states, after staff asked, said that they will not include the MTC link.

NNP staff will contact you within the next few months to request that your state link if it does not already and you have not declined (please feel free to not wait).

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 reference to obsolete programs, describing the mission in more general terms, and making it much more concise. The Charter page on the Commission's website having received 567 unique visits in fy 2013 (see immediately below) highlights the importance of ensuring that this document is up to date. Both the original and the revision are included in the appendix below.

Ideas for Additional Services

At the committee's March 7, 2013 meeting the chair requested that members come up with ideas of services that the NNP can offer, particularly as a way to encourage non-members to join. An information exchange project was suggested, for example. He requested that members email these to Nexus staff at Tshimkin@nexus.gov in advance of the July 2013 meeting.

Nexus Web Pages

Below is a summary of the types and numbers of visitors to the Commission's web pages.

	Page Title	Page Views	Unique Page Views	Average Time on Page
1	About the Nexus Program	8,721	6,065	0:00:34
2	Voluntary Disclosure Program	7,154	5,242	0:02:01
3	State Tax Amnesties	4,156	3,288	0:00:44
4	Nexus Primary Sources	3,740	2,695	0:00:35
5	Nexus School	1,994	1,302	0:02:41
6	List of Member States	1,392	1,089	0:01:13
7	Nexus Committee	1,009	762	0:01:02
8	Nexus Program Charter	734	567	0:00:16
9	Nexus Program Activities	706	554	0:04:28
10	Nexus Committee Archives	515	376	0:00:49
	Total	34,382	25,186	0:01:04

APPENDIX

1. Minutes of March 7, 2013 Meeting
2. Revised NNP Charter
3. Current NNP Charter

Beginning of March 7, 2013 Open Minutes

**Multistate Tax Commission
Nexus Committee
Open Session Minutes
March 7, 2013
St. Louis, Missouri**

NAME	STATE OR AFFILIATION	NAME	STATE OR AFFILIATION
Mike Gamble	AL	Louie Joe Gomez	NM
Chris Sherlock	AL	Hermi Nanez*	TX
Christy Vandevender	AL	Frank Hales	UT
Walter Anger*	AR	Gary Humphrey	OR
Randy Tilley	ID	Katie Lolley	OR
Bryan Vargas	KS	Janielle Lipscomb	OR
J.A. Cline, Jr.	LA	Steven Bouchard	OR
Pam Evans	MN	Rick DeBano	WI
Jeff Vogt	MN	Ferdinand Hogroian	COST
Lennie Collins	NC	Amber Kirby*	PwC
Matt Peyerl*	ND	Terry Frederick	Sprint
Myles Vosberg*	ND	Joan Cagle	TN
Josh Doggett	NM	Hermi Nanez	TX
Tim Donovan	SC	Andrew Glancy	WV
		Benjamin Abalos*	MTC
		Amyia McCarthy	MTC
		Ken Beier	MTC
		Thomas Shimkin	MTC

* Participated by telephone

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

Nexus Committee Chair Lennie Collins convened the meeting.

I. Review of Agenda

II. Review of Open Session Minutes of July 2012

The committee unanimously approved by voice vote the minutes of the July 2012 meeting.

III. Comments from Public

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

Nexus Director's Report – Open Session
Includes Appendix
July 23, 2013

IV. Nexus Director's Report

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

- Multi-state Voluntary Disclosure

July 1, 2012 -- February 22, 2013, the Commission:

- Opened 324 voluntary disclosure Cases
- Concluded 159 Cases
- Recovered over \$3 million for Nexus member states
- Recovered over \$1.3 million non-member states

Average value of contracts for the past 10 fiscal years, not including collections from a very large taxpayer in 2009 and 2010, are at approximately the same level as the past 10-year average level. Including the large taxpayer, there was a large spike in average value. In previous years, 2004-2008, there was a pronounced upward trend in average contract value. Mr. Shimkin advised that the timing of disclosures from large taxpayers cannot be predicted.

- Membership in National Nexus Program

Mr. Shimkin reported that the California Franchise Tax Board no longer participates in the Nexus Program or in Commission multi-state voluntary disclosures. The State Board of Equalization continues to participate in voluntary disclosures involving sales/use tax.

- National Nexus Program Staff Changes

Mr. Shimkin reported that Amber Kirby left the Nexus staff to join PricewaterhouseCoopers. Ben Abalos replaced her. The Commission is hosting Ms. Amyia McCarthy, a law-student intern during the spring semester.

- Changes to Draft Voluntary Disclosure Contract

Mr. Shimkin informed the committee that he had made two changes to the template voluntary disclosure contract based on the committee's consensus at its last meeting --

- Removed language requested by the District of Columbia to waive fees with respect to the look-back period. The agreement now waives only penalties during the look-back period. No jurisdiction other than the District has a 'fee' that would need to be waived.
- Removed language (former section 6.4) that redundantly confirmed that the taxpayer's failure to perform would excuse the state from performance.

V. Non-Member Participation in Multi-state Voluntary Disclosure

The committee took up the matter of states that are not Nexus members but participate in the multi-state voluntary disclosure program. Mr. Shimkin said that thirty-seven states are members. He said that 60% of the fee for membership in the National Nexus Program is equal across all states and that 40% is based on a state's relative revenue from all tax sources except property tax.

Mr. Shimkin explained that Nexus has been providing multi-state voluntary disclosure services to non-members because it is a convenience to taxpayers that encourages compliance (a core Commission function) and because taxpayers would be less likely to participate with respect to member-states if the choice of states were more limited.

Several committee members expressed concern that allowing states to free-ride encourages member states to do the same. Ideas discussed included a lower fee or introductory fee for current non-members; an a la carte fee structure; and encouraging taxpayers to lobby their legislatures for membership. Most discussion concerned whether to cut off non-member states. Mr. Shimkin suggested that if the committee were to cut off non-members that it not do so before July 1, 2014 so that he may have time to inform non-members of the policy change and solicit their memberships. In response to a question Mr. Shimkin said that the decision to cut off non-members does not require Executive Committee review.

The committee approved a motion requesting that staff not open any new multi-state voluntary disclosure cases with non-member states after June 30, 2014 and to finish non-members' cases opened before then.

VI. Deadline Policy of Multi-state Voluntary Disclosure

Mr. Shimkin explained that some state policies are frustrated because taxpayers frequently miss the 28-day deadline to return a signed contract and payment at the end of the voluntary disclosure process. He said that Procedures of Multi-state Voluntary Disclosure allows the Commission to give a reasonable extension on its own authority. Mr. Shimkin asked the committee whether it would be appropriate to extend the period to 60 days. He opined that it is reasonable for a taxpayer with multiple disclosures to need more time than it would if it had applied to a single state.

The committee considered the following issues –

- Would taxpayers continue to request extensions at the same rate even if the standard deadline were extended beyond the current 28 days?
- Should the Commission give longer extensions?
- Should the deadline be extended to 60 days?

Addressing the consequence of missing a deadline, Mr. Shimkin explained that per Procedures of Multi-state Voluntary Disclosure the penalty for missing a deadline is to lose protection from discovery. Protection from discovery means that a state will allow a taxpayer in multi-state voluntary disclosure to complete the agreement on the standard terms if the state independently discovers it during the voluntary disclosure process. He also noted that the template agreement voids a state-signed agreement offer when it is not accepted or extended within ninety days.

The committee unanimously approved a motion to approve the change from 28 to 60 days. Texas abstained.

VII. Update of Nexus Charter

Mr. Shimkin explained that the Nexus Charter is the program's mission statement and general description of its activities. He said that it needs revision to bring it in line with present practice. The Commission is no longer working on a project to set up a streamlined registration process for sales/use tax, for example. He thanked subcommittee members Robinson, Vandevender, and Walborn for their work on the re-draft. The committee unanimously approved a motion to recommend that the Executive Committee adopt the charter as re-drafted by the subcommittee.

VIII. Ideas for Additional Services

Mr. Collins invited suggestions for additional services the Nexus Program could offer states. He suggested that this may aid Mr. Shimkin's effort to recruit current non-members. Ms. Vandevender suggested that the committee consider information-exchange projects.

Ms. Christy Vandevender asked whether they might have some time to think about projects and e-mail ideas to Mr. Shimkin. Mr. Collins asked committee members to do this. He suggested that the committee might consider ideas at its third meeting if one comes about. Mr. Shimkin asked that members email ideas to him at Tshimkin@mtc.gov.

IX. New Business

A. Third Nexus Committee meeting

Mr. DeBano suggested that the committee move from two to three meetings annually. Mr. Shimkin said that is a possibility, but that Commission staff would have to evaluate it in light of budget constraints. The committee discussed the idea of adding a meeting in early December, probably at the same time and place as the Executive and Uniformity fall meetings. The committee unanimously approved a motion to recommend a third Nexus Committee meeting annually. Mr. Shimkin said that he will discuss it with the Commission's Executive Director.

B. Legal Presentation

Ms. McCarthy made a presentation about Scioto, a recent and interesting nexus case.

X. Closed Session

The committee entered closed session. The committee left closed session. No member of the public was present to hear a report on the closed session.

XI. Adjournment

The committee adjourned.

End of March 7, 2013 Open Minutes

Beginning of Revised Nexus Charter

Revised Charter of the National Nexus Program
of the Multistate Tax Commission
Revised [DATE]

[Pending Approval by Executive Committee]

*Adapted and updated from the Nexus Program Plan
as Adopted by the National Nexus Advisory
Committee and Multistate Tax Commission
Executive Committee May 10, 1990*

I. Purpose and Desired Results

The National Nexus Program (NNP) is a program of the Multistate Tax Commission created by and composed of member states. The purpose of the NNP is to encourage and facilitate -

- a. Compliance with nexus law by those engaged in interstate commerce;
- b. Cooperation among states regarding development and enforcement of nexus law;
{Redrafted to be more general. Removed reference to a uniform nexus standard (states closed this project about fifteen years ago).}
- c. Education of taxpayers and state personnel about nexus; and
- d. Fair and consistent enforcement of nexus law.

II. Description of Program Activities

The Program undertakes activities to further its purpose, including -

- a. A multi-state voluntary disclosure program in which non-filers may, through a confidential and substantially uniform process, and single point of contact, limit back-

tax and penalty liability arising from potential misconstrue of nexus law;

b. Information exchange among Program member-states; {Retains the information-exchange activity while removing obsolete specifics.}

c. Nexus School, a training course for state personnel regarding the basics of nexus law and techniques of discovery and nexus audit; {separates the specific item of Nexus School from the general educational programs because of Nexus School's importance.}

d. Other educational programs and presentations regarding nexus law and the availability of multi-state voluntary disclosure;

e. Litigation support to states on matters of nexus law; and {The Nexus Program does not currently engage in litigation support but should maintain the flexibility to do so.}

f. Staff support to the Nexus Committee, Executive Committee, and Commission.

III. Description of Committee Activities

The Nexus Committee meets semiannually {this reflects the change in 2009 from thrice annually to semiannually} at meetings open to the public, except for sessions that are closed pursuant to the Commission's Public Participation Policy. It furthers its purposes by --

a. Advising Program staff and the Executive Committee regarding nexus law and its administration;

b. Advising Program staff regarding policies and administration of the multi-state voluntary disclosure program;

c. Encouraging and facilitating industry-wide, multi-state voluntary-disclosure agreements; {The NNP coordinated several of these a number of years ago.}

d. Coordinating compliance projects among member states and other Commission committees;

e. Facilitating information exchange among states;

f. Providing a public forum for comment on nexus law and the National Nexus Program; and

g. Providing educational programs to state personnel and members of the public.

IV. Reporting and Consulting Relationships

a. The National Nexus Program makes regular reports to, and receives guidance from, the Nexus Committee, the Executive Committee, and the Commission.

b. The Nexus Committee makes quarterly reports to the Executive Committee and an annual report to the Commission. The Executive Committee or the Commission may establish work objectives, priorities, and deadlines for the Nexus Committee. The Nexus Committee may recommend projects to the Executive Committee.

End of Draft Charter

Beginning of Current Nexus Charter

Current Charter of the National Nexus Program

CHARTER OF THE NATIONAL NEXUS PROGRAM
*Adapted and updated from the Nexus Program Plan as
Adopted by the National Nexus Advisory Committee
and Multistate Tax Commission Executive Committee
May 10, 1990*

I. Statement of Purpose and Desired Results

The National Nexus Program has been created by the Signatory States and the Multistate Tax Commission in furtherance of the following purposes:

- A. Fostering increased state tax compliance by business that is engaged in multi-jurisdictional commerce.
- B. Establishing national cooperation in the administration of state tax issues arising in the nexus area, including possible development of a uniform nexus standard which satisfies requisite constitutional standards, the identification of businesses involved in multi-jurisdictional commerce which are not now in compliance with applicable state tax laws, the establishment of a national information network with uniform confidentiality standards, and similar activities.
- C. Facilitating taxpayer compliance through education as to a taxpayer's state tax reporting responsibility when it becomes involved in the systematic development of a market in a specific state and providing cooperative services to multistate taxpayers to reduce compliance burdens and to simplify the compliance process.
- D. Promoting fair, even-handed and consistent state tax enforcement in the nexus area.

II. General Description of Committee Activities

The Nexus Committee meets three times a year to accomplish the following activities in support of the Nexus Committee goals:

- A. Give guidance on complex nexus issues to MTC Nexus Program.
- B. Recommend nexus projects to the MTC Executive Committee.
- C. Provide educational opportunities to member states and taxpayers.
- D. Provide forum to taxpayers to resolve nexus issues.
- E. Coordinate nexus issues with MTC Audit Program.
- F. Use state and taxpayer feedback to continuously improve Nexus Program.

III. Description of Program Activities

Introductory Note: The following activities are meant to be illustrative of those activities in which the Program engages to meet the program purposes set forth in the Statement of Purpose and Desired Results. Subject to available funding and the approval of the Executive Committee, the Program may undertake additional or different activities that are consistent with the Statement of Purpose and Desired Results.

- A. **Central Clearinghouse.**

Program staff, under the direction of the Executive Committee and with the guidance of the Nexus Committee, maintains a Central Clearinghouse of nexus information pursuant to applicable state confidentiality and information sharing laws and policies. The Central Clearinghouse provides support to states to assist them in audit selection and compliance efforts regarding their sales/use and corporate tax laws. All states benefit from the centralized gathering of nexus information. On a regular basis, the Clearinghouse staff obtains reports on standardized formats from the states regarding audits they have conducted of taxpayers meeting certain parameters.
- B. **Taxpayer Education and Awareness.**

Using modern technology program staff communicates with tax practitioners and others to assist Program states in communicating the content of the Program as well as state

registration and filing responsibilities to the affected business community.

C. Central Registration and Taxpayer Assistance.

1. Registration Processing.

Program staff will create and maintain a centralized electronic registration system to facilitate the registration process for multistate taxpayers, thereby reducing the burdens of compliance.

No inquiry or effort to determine whether the business has any historical or retrospective tax liability will be made as a part of this function.

2. Voluntary Disclosure for Multistate Tax Purposes.

A component of the Central Registration and Taxpayer Assistance portion of the Program is designed to obtain sales/use tax and corporate tax registration of those multistate businesses that have nexus in Program states. The fact that activities have already occurred in the states raises the potential that an unregistered business owes a tax liability for past activities.

The Project staff informs the business or its representatives of the general compliance policy of the particular states involved and seeks to obtain the cooperation of the business in processing its registration on terms that are consistent with each state's policies. The business prepares a written statement of facts ("Representations and Warranties") on an anonymous basis that describes its contacts with each interested state over the past few years. The states review these representations to determine whether a prospective only approach is appropriate under their respective laws and policies or whether and to what extent a retrospective liability is required. No state is asked to deviate from its own requirements or policies in any manner.

Program staff circulate a standardized agreement appropriate for the resolution of the matter for execution by the states should they desire to accept the proposal of the business. No state is obligated to accept a Voluntary Disclosure agreement. Each state is free to accept an agreement as proposed, to condition its acceptance on the inclusion of additional terms or the removal of proposed terms, or to reject an agreement in its entirety.

D. Litigation Support.

Within available resources, Program staff provides legal support to the state participants in the area of tax nexus. This support includes legal research, consultation and a limited amount of representation in given cases should the participating state desire such support.

The Program legal staff monitors litigation in the nexus area and develops a network of resources within all of the states of those attorneys working in this area. The Program provides other types of direct assistance through the Program legal staff, as directed by the Executive Committee and with the guidance of the Nexus Committee.

For example, the Litigation Support effort also involves the use of Program staff legal resources to assist in the development and representation of the states in the Program's Joint Nexus Investigations as described in paragraph E. below.

E. Cooperative Nexus Enforcement.

The States believe that authority exists for the States to conduct audits of multistate taxpayers whose targeted economic activities in the taxing state establish sufficient minimum contacts to support jurisdiction under the Due Process Clause as articulated by the Supreme Court in the Quill case. The purpose of such audits is, in the first instance, to determine whether the taxpayer has Commerce Clause nexus with the taxing state. Accordingly, Program staff provides support to states that seek to enforce requests for nexus information from out-of-state companies that regularly and systematically solicit sales in member states. In addition, Program staff, utilizing public sources of information, conducts research to identify multistate companies that may have compliance issues in member states, evaluates the results of that research and takes appropriate action as a result of the research. Appropriate actions can range from no further action, to referrals to individual states, to referral to the Nexus, Audit and/or Executive Committees to authorize cooperative enforcement in select cases.

Depending on the availability of resources, Program staff can refer an audit to the Audit Program, the purpose of which will be to determine whether a multistate business has established nexus in Program states. The

Program finances the costs of such audits, through the determination of whether or not nexus exists. Assuming nexus exists, assessments may be issued for those participating states that are members of both the Nexus and the Audit programs.

IV. Reporting Relationships

The Nexus Committee shall report three times a year to the Executive Committee and annually to the Commission. The Nexus Committee will establish priorities and goals for approval or further direction from the Executive Committee. The committee shall regularly communicate with the other committees of the Commission on issues of common concern.

End Current Charter
