Nexus Committee Agenda
Open Session 10:30 – Noon MDT
(Preceded by Closed Session 8:30 AM – 10:15 AM MDT)
Grouse Mountain Lodge
Whitefish, Montana
July 26, 2011

-- *Oro y Plata* --
1889

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. The closed session is available only to state government personnel.

Members of the public wishing to address the committee with respect to a particular agenda item are welcome to do so during Comments from Public or when the committee turns its attention to the item of concern.

I. Report from closed session, if any

II. Review of Agenda

III. Review/Approval of Open Session Minutes of March 2011

IV. Comments from Public

V. Executive Director's Report (this may happen at any time)

VI. Nexus Director's Report
   A. Nexus schools, membership, etc.
   B. Voluntary Disclosure Program revenue results

VII. New Business

VIII. Environmental Scan (90 minutes)
   A. Elizabeth Harchenko, former dir. Or. Dep't of Rev., facilitates a strategic planning exercise

IX. 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. Telephone (202) 508-3869. Email: tshimkin@mtc.gov.

Nexus Director's Report
Nexus Committee – *Open Session*
Whitefish, Montana
July 26, 2011

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program with respect to fiscal year 2011 (July 1, 2010 through June 30, 2011). The Commission prepares its reports on a fiscal year cumulative basis.

Minutes of Last Meeting

Unapproved minutes of the March 2011 open session Nexus Committee meeting are attached in the Appendix.

Procedures of Multi-state Voluntary Disclosure

Procedures of Multi-state Voluntary Disclosure are the rules governing the Commission's voluntary disclosure program. The Nexus Committee approved them at its July 2010 meeting and staff presented them to the Commission's Executive Committee at its fall 2010 meeting. The procedures are designed to alert taxpayers to how the Commission and member states will handle certain common or important situations. The rules in large part clarify and codify existing practice.

The procedures are posted on the Commission's website along with a re-drafted explanation of the voluntary disclosure process. You will find the re-drafted webpage and the procedures by pressing the blue Multistate Voluntary Disclosure button at www.mtc.gov or by visiting directly http://www.mtc.gov/Nexus.aspx?id=4967.

The Procedures require that Nexus member states abide by them with respect to disclosures made through the Commission, except to the extent the state has opted out in advance. A state may opt out of any provision by informing Commission staff, who will note the opt out in the document itself.

Voluntary Disclosure Agreement

Commission staff have re-drafted the standard voluntary disclosure agreement and began using it in July 2011. Staff will, of course, alert state voluntary disclosure personnel to the changed text as each voluntary disclosure offer goes out.

The substantive terms do not differ from the present text other than to incorporate by reference the Procedures of Multi-state Voluntary Disclosure. The revision shortens the agreement significantly by eliminating unnecessary verbiage. The agreement is reduced from seven pages to four (not counting signature pages and exhibits). All sections are now numbered for easy citation. The hope is that taxpayers will find this document more clear, easier to review, and easier to work with.

A copy of the revised text is attached at the appendix. Comments are welcome.

Membership

We conclude fy 2011 with the same thirty-eight member states as we had in fy 2010. Due to on-going unfilled staff positions, the current level of member dues is sufficient to maintain the present profile of Nexus Program services. The positions now unfilled formerly provided research services related to nexus discovery.

Staffing

The program continues to focus on multi-state voluntary disclosure. Approximately 3½ FTEs work on voluntary disclosure, including the ½ FTE of the program director. The remaining ½ FTE (mostly the program director) works on Nexus School, compliance projects, other projects, and general administration.

Nexus Schools

The Multistate Tax Commission's Nexus School is a two-day training course that teaches the basics of state tax jurisdiction (nexus) to government personnel. The first day is dedicated to study of nexus law (what actions create nexus) and the second day covers techniques to discover non-filers who have nexus. The course is open only to state personnel.

The Commission conducted two Nexus Schools during this period – Helena in October 2010, and Denver in May 2011. A school will be offered in the fall in Little Rock, dates to be determined.

Staff continues its on-going project to update Nexus School materials.

Voluntary Disclosure Information Technology

Staff continues to work with Revenue Solutions Incorporated (RSI) to make incremental improvements to the voluntary disclosure management software and will continue to do so as resources permit. In addition, RSI has prepared a very rough estimate of the cost of proceeding with Phase II of the Commission's database development. Phase II would involve, among other things, a capacity for taxpayers and states to communicate directly but anonymously. It would also allow states and taxpayer to check the status of a case online at any time.

Voluntary Disclosure Marketing

Commission staff continues to explain the multi-state voluntary disclosure program during speaking engagements. The Nexus director made presentations to:

- Income Tax Symposium of Tax Executives Institute, Miami Fla.
- New Jersey Society of Certified Public Accountants, Roseland NJ
- Cornell Tax Club, New York City
- BNA State Tax Roundtable, Washington DC
- Got Nexus? Analyzing BNA's 2011 Survey of State Tax Departments (webinar), Washington DC

Other Commission staff, including the executive director, advertised multi-state voluntary disclosure during most presentations they made during the fiscal year.

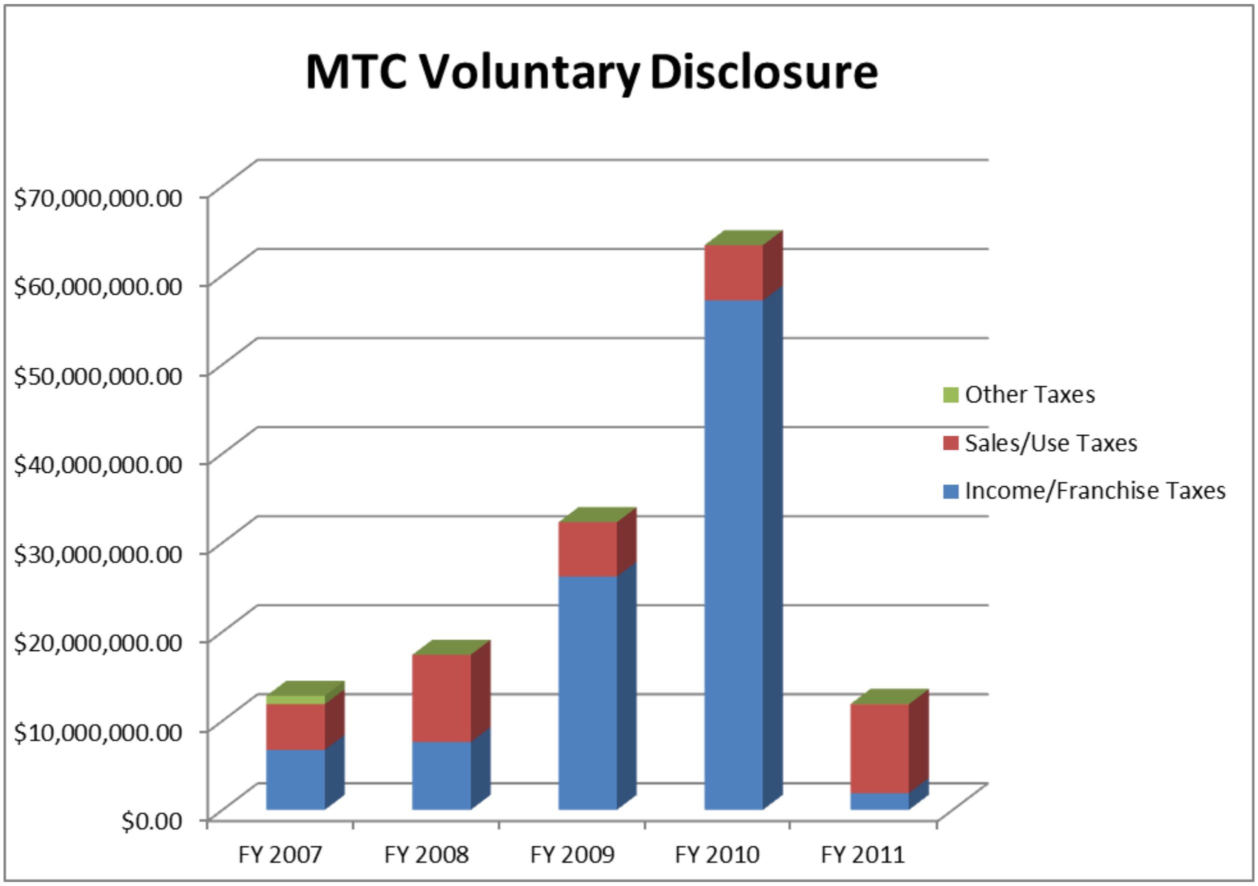
Other important sources of referrals to the program are from Google searches, state websites referencing the Commission's program, and pamphlets about multi-state voluntary disclosure given to taxpayers after state audits.

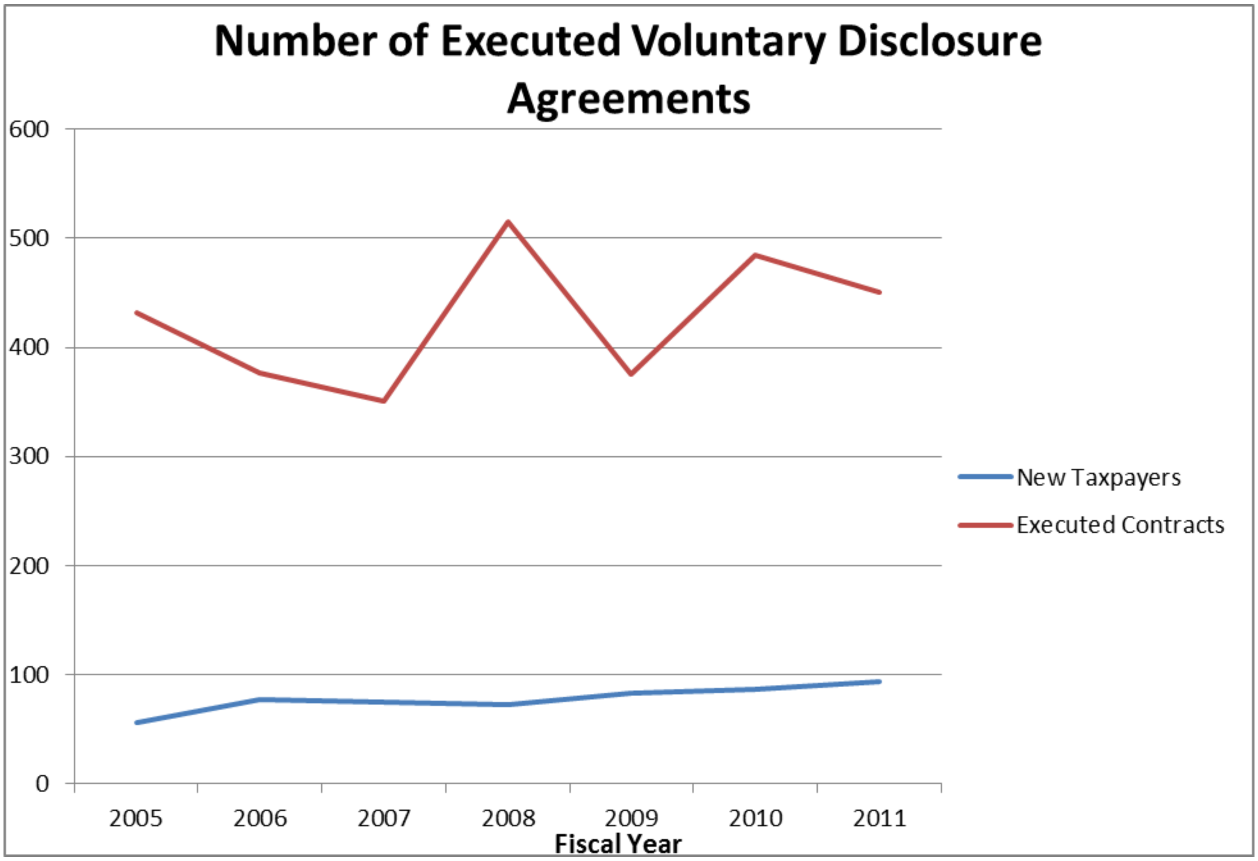
Voluntary Disclosure Revenue

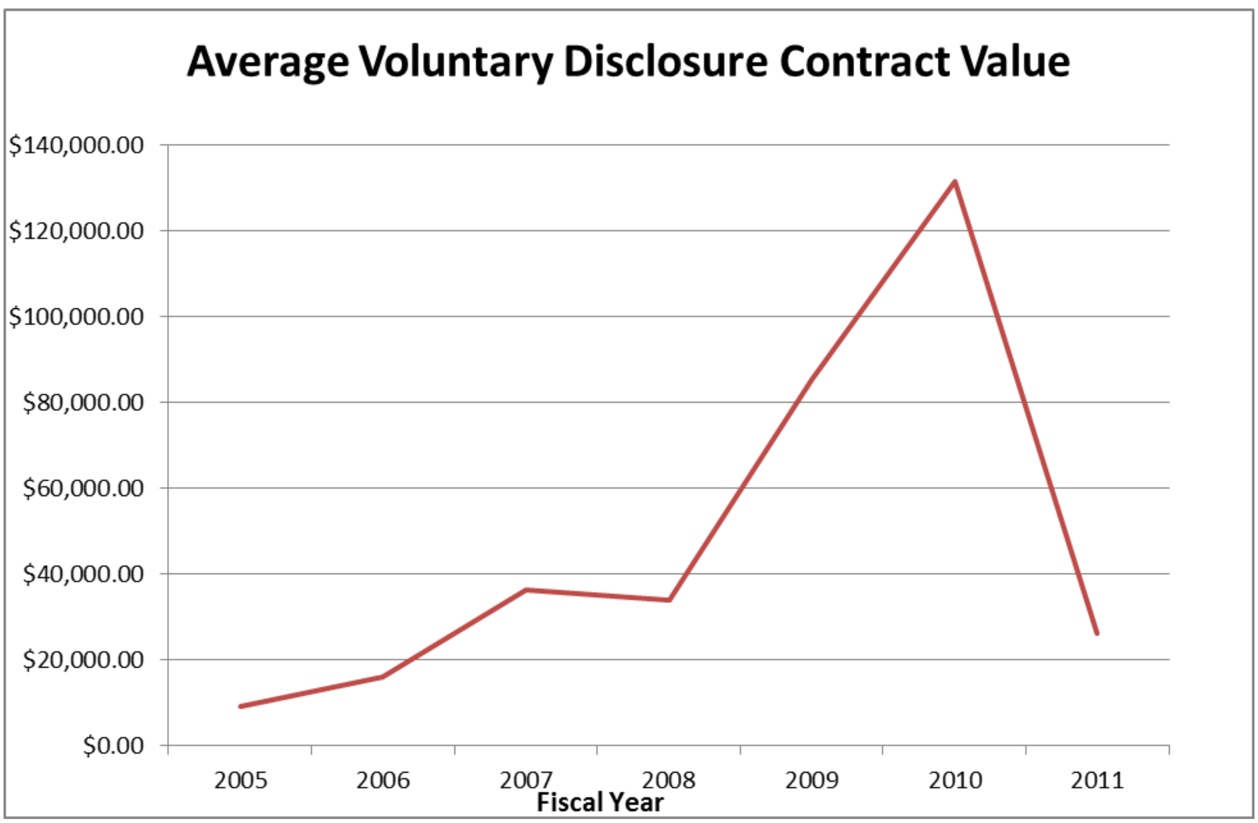
The Multistate Tax Commission's Voluntary Disclosure Program has experienced steadily growing success over the past two decades as measured both by taxpayers brought into compliance, and unpaid back taxes remitted to the states. Fiscal Years 2009 and 2010 were outliers in that the majority of the back taxes collected in those years came from two related entities. In Fiscal Year 2011 the Voluntary Disclosure Program approximately matched the strong results of Fiscal Year 2007.

Back Taxes by Tax Type

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Income/Franchise Taxes	$6,732,325.55	$7,616,116.02	$26,179,307.97	$57,183,976.74	$1,881,974
Sales/Use Taxes	$5,119,639.20	$9,799,635.52	$6,105,308.70	$6,206,553.57	$9,968,267
Other Taxes	$947,133.25	$0	$0	$0	$34,596
Total Back Taxes Collected	**$12,799,098**	**$17,468,156**	**$31,964,967**	**$63,396,870**	**$11,884,837**


MTC Voluntary Disclosure
$70,000,000.00
$60,000,000.00
$50,000,000.00
$40,000,000.00
$30,000,000.00
$20,000,000.00
$10,000,000.00
$0.00
FY 2007
FY 2008
FY 2009
FY 2010
FY 2011
Other Taxes
Sales/Use Taxes
Income/Franchise Taxes


Number of Executed Voluntary Disclosure Agreements
600
500
400
300
200
100
0
2005
2006
2007
2008
2009
2010
2011
Fiscal Year
New Taxpayers
Executed Contracts


Average Voluntary Disclosure Contract Value
$140,000.00
$120,000.00
$100,000.00
$80,000.00
$60,000.00
$40,000.00
$20,000.00
$0.00
2005
2006
2007
2008
2009
2010
2011
Fiscal Year

The chart below shows data for each of five anonymous states, selected to show a diversity of voluntary disclosure revenues. The five states provided the data. Predictably, states receive a large number of contracts through the Commission, but the average value of those contracts is lower than disclosures made directly. This seems to confirm common sense – that taxpayers work the high-dollar disclosures themselves because it is worth the effort to better control negotiations in the hope of achieving a better deal than available through the Commission.

Survey Results:
Share of State VDA Revenue and Contracts from MTC

State VDA Revenue (past 3 years)	State VDAs	Percent Vol Discl Revenue from MTC	Percent Vol Discl Contracts from MTC
$10,124,246	161	5.31%	18.01%
$11,387,887	416	1.48%	9.13%
$17,924,519	389	4.21%	7.46%
$51,641,550	360	2.52%	12.78%
$59,000,000	565	0.70%	7.79%
NA	780	NA	5.13%

Vol Discl Back Tax by Filing Requirements

	MTC Back Tax 2009-2011	Back Tax/GSP Ratio	Back Tax/ Capita
Unitary Filing Required	$75,080	0.00	$0.00
	$78,609	0.05	$0.02
	$27,440	0.06	$0.02
	$233,175	0.07	$0.02
	$29,715	0.09	$0.05
	$39,254	0.09	$0.04
Unitary Filing Optional or Prohibited	$149,265	0.11	$0.04
	$59,896	0.12	$0.05
	$37,841	0.12	$0.04
	$168,881	0.12	$0.04
	$292,429	0.13	$0.06
	$358,484	0.16	$0.06
	$334,068	0.16	$0.05
	$593,202	0.17	$0.07
	$39,333	0.18	$0.07
	$200,764	0.18	$0.07
	$67,236	0.20	$0.08
	$710,933	0.21	$0.07
	$172,708	0.21	$0.06
	$410,141	0.21	$0.11
	$57,656	0.21	$0.08
	$115,338	0.21	$0.06
	$632,455	0.21	$0.09
	$501,294	0.24	$0.09
	$2,992,779	0.30	$0.12
	$322,561	0.33	$0.12
	$613,183	0.41	$0.13
	$1,397,360	0.44	$0.21
	$1,786,229	0.51	$0.19
	$1,299,831	0.59	$0.26
	$1,420,286	0.64	$0.22
	$2,623,436	0.64	$0.23
	$1,170,688	0.64	$0.26
	$537,359	0.71	$0.30
	$348,100	0.74	$0.22
	$1,719,352	0.82	$0.29
	$755,040	0.87	$1.26
Mean GSP Ratio = 1.0			
	$680,921	1.18	$0.49
	$3,110,626	3.51	$1.07
	$5,164,142	4.16	$1.72
	$26,989,238	4.20	$1.44
	$17,885,385	4.25	$2.03
	$19,286,296	7.71	$3.33
	$10,896,927	7.83	$2.37

The above table shows the relationship between filing requirements (unitary v. separate entity) in various states and the state's MTC voluntary disclosure revenue. The table is ordered by the GSP Ratio which is an indicator of how much voluntary disclosure revenue the state received relative to the size of the state's economy. There are too many uncontrolled variables to draw reliable conclusions from these data. They are offered only to suggest patterns.

Vol Discl Back Tax by Treatment of Economic Presence

	MTC Back Tax 2009-2011	Back Tax/GSP Ratio	Back Tax/ Capita
Economic Presence is a Factor in Determining Income Tax Nexus	$75,080	0.00	$0.00
	$78,609	0.05	$0.02
	$27,440	0.06	$0.02
	$233,175	0.07	$0.02
	$29,715	0.09	$0.05
	$39,254	0.09	$0.04
Economic Presence is not a Factor in Determining Income Tax Nexus	$149,265	0.11	$0.04
	$59,896	0.12	$0.05
	$37,841	0.12	$0.04
	$168,881	0.12	$0.04
	$292,429	0.13	$0.06
	$358,484	0.16	$0.06
	$334,068	0.16	$0.05
	$593,202	0.17	$0.07
	$39,333	0.18	$0.07
	$200,764	0.18	$0.07
	$67,236	0.20	$0.08
	$710,933	0.21	$0.07
	$172,708	0.21	$0.06
	$410,141	0.21	$0.11
	$57,656	0.21	$0.08
	$115,338	0.21	$0.06
	$632,455	0.21	$0.09
	$501,294	0.24	$0.09
	$2,992,779	0.30	$0.12
	$322,561	0.33	$0.12
	$613,183	0.41	$0.13
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	$17,885,385	4.25	$2.03
	$19,286,296	7.71	$3.33
	$10,896,927	7.83	$2.37

The above table shows the relationship between income tax nexus standards (economic presence v. physical presence) and the state's MTC voluntary disclosure revenue. The table is ordered by the GSP Ratio which is an indicator of how much voluntary disclosure revenue the state received relative to the size of the state's economy.

DRAFT MINUTES
Nexus Committee -- *Open Session*
March 3, 2011
Intercontinental Kansas City at the Plaza
401 Ward Parkway, Kansas City, Missouri

- Salus populi suprema lex esto -
1821

NAME	AFFILIATION		NAME	AFFILIATION
Chris Sherlock	AL		Antonio Soto*	MTC
Christy Vandevender	AL		Diane Simon-Queen*	MTC
Danny Walker*	AR		Michelle Lewis*	MTC
Walter Anger*	AR		Lennie Collins	NC
Jim Zenk	Ernst & Young		Mary Loftsgard*	ND
Kevin Boyer	Ernst & Young		Myles Vosberg*	ND
Anita DeGumbia	GA		Lee Evans	NJ
Randy Tilley	ID		Rebecca Abbo	NM
Laurie Riva	IL		Louie Gomez*	NM
Bryan Vargas	KS		Janielle Lipscomb	OR
Pat Verschelden	KS		Tim Donovan	SC
Ellen Auger	MN		Brandin Seibel	SD
Keith Getschel	MN		Terry Frederick	Sprint
Cathy Felix	MTC		Stacy Gibson	TN
Greg Matson	MTC		Joan Cagle*	TN
Jeff Silver	MTC		Hermi Nanez*	TX
Joe Huddleston	MTC		Michael Christensen *	UT
Ken Beier	MTC		Shelley Robinson*	UT
Les Koenig	MTC		J. Richard Harvey, Jr.	Villanova School of Law
Steve Yang	MTC		Warren Townsend	Walmart
Ted Jutras*	MTC		Roy Davis	WI

* *attended by telephone*

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

Review of Agenda
The Committee approved the agenda as proposed.

Review of Previous Minutes
The Committee approved the minutes of the July 2010 Nexus Committee meeting without amendment.

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

Nexus Director's Report
Thomas Shimkin, director of the National Nexus Program, reviewed staff activities and other matters:

Procedures
Mr. Shimkin reminded the committee that it had approved the *Procedures of Multi-state Voluntary Disclosure* at its July 2010 meeting. He reminded the committee that the *Procedures* essentially codify existing procedures with respect to multi-state voluntary disclosure. He said that the Executive Committee had reviewed them and that the Commission has posted the Procedures on its website. He noted that they are in effect and that taxpayers in voluntary disclosure will rely on them. He reminded committee members that the *Procedures* allow a state to opt out of any provision simply by requesting a footnote to that effect.

Website
Mr. Shimkin noted that he had substantially re-drafted the Nexus section of the Commission's website in an effort to make it more useful. In particular, he said that he had re-drafted the explanation of the multi-state voluntary disclosure process to better reflect the *Procedures* and contemporary practice.

Voluntary Disclosure Contract
Mr. Shimkin also noted that he had re-drafted the template voluntary disclosure agreement used by almost all states for their multi-state voluntary disclosure contracts. By eliminating unnecessary language, the revision shortens the document without making material changes. It incorporates the rules of the *Procedures of Multi-state Voluntary Disclosure* by reference, which, he said is essentially a codification of current practice, and it adds sections and subsections for easy citation. He said that the Commission would alert state personnel to the changed template as it is put into service. He emphasized that state-specific modifications, as certain states request, will be retained as they were in the previous version.

Mr. Shimkin reviewed in general the terms of the revised contract, pointing out in particular:

- No one admits the existence or absence of nexus
- A contract signed by a state and unaccepted by a taxpayer after 90 days becomes void
- The *Procedures* are incorporated by reference

Membership

Mr. Shimkin gratefully noted that the Nexus Program is finishing up fiscal year 2011 with thirty-eight members, as it began the year. He said that the present membership is adequate to maintain the current level of services.

Nexus Schools
Mr. Shimkin informed the committee that staff had taught a Nexus School in October 2010 in Helena, and that one is scheduled for May 11 and 12 in Denver.

Marketing
Mr. Shimkin explained that he and other Commission staff advertise the multi-state voluntary disclosure program at each speaking engagement. Mr. Shimkin made presentations at the following since the committee's last meeting: Tax Executives Institute (Income Tax Symposium); New Jersey Society of Certified Public Accountants; and the Cornell Tax Club (New York City). He emphasized that states can be a fruitful source of referrals for their sister states by informing taxpayers of the multi-state program at the conclusion of a state audit resulting from a nexus discovery.

Multi-state Voluntary Disclosure
Continuing, he explained the results of the multi-state voluntary disclosure program. Calendar year 2010 achieved $14.3 million revenue for states, approximately the same as calendar year 2008. CY 2009 was outsized at $86.8 million due to a single taxpayer.

Comparing results on a fiscal year basis, he said, the first six months of fy 2011 yielded $8.2 million compared to $63.6 million in full-year fy 2010 and $32 million in full-year fy 2009 (2010 and 2009 were outsized due to a single taxpayer).

The average value of a voluntary disclosure contract in the first six months of fy 2011 was $37,471. He said that he is satisfied with this number, notwithstanding its dip from $131,509 in fy 2010 (inflated due to a single taxpayer). He said that the average contract size is on a steep upward trend over five years, which may indicate that larger tax firms are becoming comfortable with multi-state voluntary disclosure.

Mr. Shimkin explained the results of a study Nexus staff performed to discover the principal motivations of taxpayers who enter multi-state voluntary disclosure. The very great majority reported that they were either unaware of the law (12 out of 30 responses) or had received erroneous professional advice (7 out of 30 responses). A corporate acquisition motivated 5 out of 30.

An analysis of the data showed a cyclical nature to multi-state voluntary disclosure starts – noticeably higher in January through March.

Mr. Shimkin reviewed other voluntary disclosure data that was provided to committee members in their written materials.

Closed Session

The committee entered closed session. The committee later returned to open session, reported on its closed session activities, and adjourned.

APPENDIX

Documents in the Appendix have been presented to the Nexus Committee in a previous nexus director's report and are duplicated here for reference.

Reasons for Initiating a Voluntary Disclosure:

Based on a random sample of 30 voluntary disclosures over the past five years, the following represents the most common reasons for initiating an application for voluntary disclosure:

Unaware of Laws	12
Received Erroneous Advice	7
Acquisition	5
Company Error	4
Abundance of Caution	2

Many of the taxpayers who stated that they were in some way "**Unaware of Laws**" regarding their tax liability in a state stated that they were rapidly expanding and either did not know about various taxing requirements, or did not know that those requirements applied to their particular business.

Claims of "**Erroneous Advice**" from previous tax advisors were also common. These mistakes were often found upon an internal audit, or hiring of a new tax firm.

"**Acquisition**" of a non-compliant entity was the third most common reason for disclosure. In some of these cases the purchasing entity was filing a disclosure on behalf of an entity that it recently acquired. More commonly though, an entity that was in the process of being acquired was forced to come into compliance by the purchasing company prior to completion of the sale.

MULTISTATE TAX COMMISSION
MULTI-STATE VOLUNTARY DISCLOSURE AGREEMENT

[TAX NAME] TAX

MTC [YY-XXX] & [STATE NAME]

1. Parties

1.1. This Agreement is entered into by and among the [State or Commonwealth] of [State Name]; MTC [YY-XXX]; and the Multistate Tax Commission.

2. Purpose

2.1. The parties acknowledge that nexus (jurisdiction required for a state to tax) is sometimes difficult to determine.

2.2. The parties neither admit nor deny that MTC [YY-XXX]'s activities in [State Name] created nexus.

2.3. The parties agree to settle MTC [YY-XXX]'s potential back liability through compromise as set forth herein.

In exchange for the mutual promises herein, the [State or Commonwealth] of [State Name], MTC [YY-XXX], and the Multistate Tax Commission agree as follows:

3. Procedures of Multistate Voluntary Disclosure

The Procedures of the Multistate Voluntary Disclosure are incorporated herein by reference and, where applicable, govern this agreement as if set forth in full. The full text of the Procedures is available at www.mtc.gov or by request from the staff of the Nexus Division of the Multistate Tax Commission.

4. Duties of MTC YY-XXX

4.1. MTC YY-XXX shall:

4.1.1. Fill out and sign the MTC [YY-XXX] Signature Page;

4.1.2. Return the MTC [YY-XXX] Signature Page to the Multistate Tax Commission;

4.1.3. Provide the Multistate Tax Commission the appropriate tax returns or filings as the state may require with respect to tax periods that begin after [Lookback Date]; spreadsheets in lieu of actual sales/use tax returns are acceptable unless [State Name] states otherwise on the [State Name] Signature Page;

4.1.4. If the type of tax subject to this Agreement requires registration (such as a sales/use tax seller's permit), the Taxpayer must provide the Multistate Tax Commission the appropriate registration forms, or otherwise register with [State Name] (such as online) for sales/use tax;

4.1.5. Remit to the Multistate Tax Commission payment of tax due under returns or filings in a negotiable instrument made payable as [State Name] may require; and

4.1.6. Remit to [State Name] interest due with respect to the Lookback Period within thirty days of receipt of notice from [State Name] of the amount due.

4.2. If MTC [YY-XXX] fails to meet all the requirements of Section 4.a-e. within 90 calendar days of receiving the Agreement signed by [State Name], and neither [State Name] nor the Multistate Tax Commission has given a written extension of time, the Agreement shall be void. MTC [YY-XXX] may apply again without prejudice or request that [State Name], in its sole discretion, execute and issue a replacement Agreement.

4.3. If MTC [YY-XXX] fails to meet the requirement of Section 4.f. within 90 days of notice from the state of interest due, and [State Name] has not given a written extension of time, the Agreement is voidable at the option of [State Name].

4.4. MTC [YY-XXX] waives its right to allege a lack of nexus or jurisdiction to tax (including jurisdiction based on statute) as the reason for a protest of the tax, interest or penalty (if any) owed under this Agreement. A protest, however called, includes all claims for refund and disputes of the amount of tax, interest, and penalty (if any) owed. A protest may be administrative or judicial. MTC [YY-XXX] does not waive its right to protest on any other basis, including without limitation calculation error and statutory interpretation with respect to issues other than nexus or jurisdiction.

4.5. MTC [YY-XXX] shall make its books and records available to [State Name] upon reasonable notice for the purpose of:

4.5.1 verifying the factual representations that [State Name] relied upon in deciding whether to enter into this agreement, including the amount of tax due pursuant to the Agreement; and

4.5.2 verifying the amount of tax due pursuant to the returns or filings.

5. Duties of [State or Commonwealth] of [State Name]

5.1. Except to the extent otherwise stated in section 11 of this Agreement, [State Name] forever discharges all [Tax Type] tax, together with interest and penalty thereon, with respect to tax periods that end on [LB dates].

5.2. [State Name] shall not assess or collect any amount so discharged. But notwithstanding the previous sentence, if state procedure requires it, [State Name] may assess any of said tax, interest, and penalty and then immediately abate them. MTC [YY-XXX] agrees to cooperate in that procedure if necessary.

6. Duties of the Multistate Tax Commission

6.1. The Multistate Tax Commission shall maintain the original of this Agreement when fully executed and shall provide a certified copy to each of [State Name] and MTC [YY-XXX].

6.2. The Multistate Tax Commission shall make its best efforts to resolve problems that may arise with respect to this Agreement.

7. Confidentiality

7.1. The confidentiality rules of Procedures of Multistate Voluntary Disclosure govern this Agreement. For the purpose of emphasis and not limitation, the parties specifically acknowledge that Multistate Tax Commission and [State Name] shall not:

7.1.1. disclose to any third party that it entered into this Agreement with MTC [YY-XXX]; or
7.1.2. disclose to any third party that MTC [YY-XXX] participated in voluntary disclosure.

7.2. However, the Multistate Tax commission and [State Name] may:

7.2.1. disclose the terms of any generic voluntary disclosure agreement (not terms specific to MTC [YY-XXX]; and
7.2.2. Disclose generic information about voluntary disclosure in which the identity of MTC [YY-XXX] is not disclosed.

8. Representations

8.1. MTC [YY-XXX]'s representation of material fact in its application for multi-state voluntary disclosure is attached to this Agreement as Exhibit 1 and incorporated into this Agreement as if they were specifically stated included herein.

8.2. MTC [YY-XXX] represents that it is not under a tax audit and it has received no inquiry from [State Name] or the Multistate Tax Commission regarding potential liability arising from [Tax Type].

9. Misrepresentation

9.1. The parties acknowledge that [State Name] and Multistate Tax Commission have no capacity to verify MTC [YY-XXX]'s statements of material fact before entering into this Agreement, and that [State Name] therefore relies upon the facts as presented to decide whether to enter into this Agreement. If MTC [YY-XXX] represents a material fact in this Agreement (including Exhibit 1) that [State Name] determines with clear and convincing evidence to be false or materially misleading, [State Name] may, within ninety days of the discovery thereof, in its sole discretion, void this Agreement and proceed as if it had never existed. It may in this case retain all tax, interest and penalty (if any) already paid (if in fact it is owed) and take such administrative or judicial action as it deems appropriate to enforce its revenue laws.

9.2. Because MTC [YY-XXX] has exclusive access to the facts that [State Name] uses to determine whether to enter into this Agreement, MTC [YY-XXX] is strictly liable to accurately represent all material fact.

9.3. A false or misleading fact rises to materiality only if it is of such importance that [State Name] would reasonably have not entered into this Agreement, or have done so on significantly different terms, had it not relied upon the false or misleading fact.

9.4. To void the Agreement [State Name] must have demonstrably clear and convincing evidence that a material fact is false or misleading.

10. Miscellaneous

10.1. Each party to this Agreement warrants that the person executing it is authorized to do so.

10.2. The parties shall execute a single copy of the Agreement and the Multistate Tax Commission shall maintain it in its records and make available to either MTC [YY-XXX] or [State Name] upon request. A photocopy or reproduction of the original that the Multistate Tax Commission certifies as a true copy of the original shall be treated for all purposes as the single executed original copy.

10.3. Without regard to any contrary conflict of law rule, the law of [State Name] shall govern this Agreement. Jurisdiction and venue of any administrative or judicial action with respect to this Agreement shall lie exclusively in the appropriate administrative or judicial body of [State Name].

10.4. This agreement shall be in effect when [State Name], MTC [YY-XXX], and the Multistate Tax Commission have signed it.

10.5. The law of [State Name] shall apply to the interpretation and enforcement of this Agreement and any administrative or legal action with respect to it shall be brought exclusively in the appropriate executive or judicial body of [State Name].

11. Special Terms

This section records any non-standard terms that [State Name] and MTC [YY-XXX] want to include in this Agreement. It is otherwise left blank.

Any term to the contrary in this Agreement notwithstanding,

[   ]

[State Name] enters into this Agreement:

[State Name]

By: ________________________________

Printed Name
& Title: ________________________________

Date: ________________________________

Multistate Tax Commission enters into this Agreement:

Multistate Tax Commission

By: ____________________________________

Joe Huddleston
Executive Director

Date: ____________________________________

MTC [YY-XXX] enters into this Agreement:

MTC [YY-XXX]

MTC [YY-XXX] Name: ______________________________

FEIN: ______________________________

By: ______________________________

Printed Name
& Title: ______________________________

Date: ______________________________

Multistate Tax Commission
Procedures of Multi-state Voluntary Disclosure

1. Definition and Purpose of Multi-state Voluntary Disclosure

1.1. The Multistate Tax Commission National Nexus Program (NNP) is a state instrumentality to which member states delegate enumerated, limited powers to act on their behalf. The NNP's multi-state voluntary disclosure program (MVD) is one such limited delegation.

1.2. MVD is the process whereby a taxpayer that has not filed a return of sales/use or business activity tax in one or more *states* may come into compliance through a single point of contact and substantially uniform procedure. Business activity taxes include taxes such as income, franchise, business and occupation, commercial activity, and net worth tax. In exchange for compliance in a state, the taxpayer receives a benefit from that state, usually relief of all penalty and, except with respect to the *lookback period,* waiver of all back tax and all back interest. The *lookback period* is the range of past tax filing periods with respect to which the taxpayer must file returns as part of the MVD. *Lookback periods* vary. However, sales and use tax collected from others must be surrendered in its entirety, without regard to the *lookback period*, and may in some *states* involve a small, non-waivable penalty. In most *states* interest is not waived.

1.3. Because a taxpayer's obligation to file tax returns outside its state of domicile is sometimes unclear, it is appropriate for *states* and taxpayers to compromise by means of MVD. Taxpayers are relieved of the financial uncertainty of potential tax obligations while *states* protect the public interest and promote compliance with their tax laws.

1.4. MVD furthers the purposes of the *Commission* and its *National Nexus Program* by:

1.4.1. Fostering increased state tax compliance by businesses engaged in multi-jurisdictional commerce;

1.4.2. Establishing national cooperation in the administration of state tax issues arising in the nexus area, including the identification of businesses involved in multi-jurisdictional commerce which are not now in compliance with applicable state tax laws;

1.4.3. Educating taxpayers as to their state tax reporting responsibility when they become involved in the systematic development of a market in a specific state; and

1.4.4. Promoting fair and consistent state tax enforcement in the nexus area.

1.5. *State* as used in these procedures includes only the fifty United States and the District of Columbia. It includes political subdivisions only to the extent their taxes are administered and collected by the *state*.

2. Role of the *Commission*

The National Nexus Program is a program of the Multistate Tax Commission available to *states* by subscription independent of membership in the Multistate Tax Commission itself. To encourage participation in MVD, the *Commission* seeks to play the role of a fair broker between *states* and taxpayers as they seek to settle their nexus issues.

3. Purpose of Multi-state Voluntary Disclosure Procedures

3.1. The purpose of this document is to set forth guidelines with respect to multi-state voluntary disclosure in order to ensure fair and consistent treatment of all taxpayers. This in turn allows taxpayers to better order their affairs with respect to these procedures, and to reduce the burden on state and taxpayer personnel by reducing the need to address policy issues on a case by case basis.

3.2. Participating *states* believe that established guidelines will encourage greater participation in multi-state voluntary disclosure by taxpayers and *states*, and thereby increase compliance with *state* tax laws, to the benefit of the citizens of the participating *states* and of taxpayers wishing assistance to come into compliance.

4. Adoption of Procedures

4.1. All member states of the NNP accept these procedures as the state's procedure with respect to multi-state voluntary disclosure except:

4.1.1. The following *states* accept no part of these procedures: ___________; and

4.1.2. A *state* may opt out of a particular section, which is noted by footnote where it occurs in the text.

4.2. These procedures do not apply to a *state's* single-state voluntary disclosure program.

4.3. Except as a *state* may exempt itself per § 4.1.1 or 4.1.2, NNP member *states* adopt these procedures as an expression of current policy based on discretionary administrative authority; they shall not be construed to be promulgation of regulations.

4.4. Participating *states* acknowledge that taxpayers entering into multi-state voluntary disclosure do so in reliance on these procedures; therefore, participating *states* agree to apply to a taxpayer with an Open MVD *case* the procedures as they existed when that taxpayer opened that MVD *case*.

5. Eligibility

5.1. Generally, a taxpayer may participate in MVD unless it is ineligible. However, a state is not required to accept a taxpayer's MVD offer even if it is otherwise eligible.

5.2. A taxpayer is generally ineligible to participate in MVD with respect to a tax type and a *state* if it has at any time in the past filed a tax return or similar filing or made a payment with respect to that tax type and that *state*, or if it has been *contacted* by that *state* (or the *Commission* on behalf of that state) with respect to the taxpayer's potential or actual obligation to file a return or make a payment with respect to that tax type and that *state*. However, if a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax. [1] Each state may make its independent decision with respect to eligibility, taking into consideration extenuating circumstances, such as passage of time See §15 for the definition of *state contact*.[2] .

5.3. A taxpayer who would generally be ineligible for MVD but nevertheless wishes to pursue it, should so advise *Commission* staff, who will inquire of the affected *states* and inform the taxpayer which, if any, care to receive an application.

6. Anonymity and Disclosure

6.1. A taxpayer may, but need not, be anonymous to the *Commission* during the MVD process. Because the *Commission* needs to easily communicate with a taxpayer (directly or through its attorney or tax advisor) in order to conduct its business, taxpayers wishing to remain anonymous to the *Commission* will find it most convenient to approach through a representative such as an attorney or tax advisor who has a fixed place of business that

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[1] A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the *contact*. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

[2] Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted*. Such persons will ordinarily not know of their ineligibility before they apply.

may be used for communication purposes. A taxpayer choosing to remain anonymous while approaching the *Commission* directly should make arrangements to ensure timely communication by telephone, e-mail, US Postal Service, and private overnight delivery service, which will prevent delay in processing the application. The *Commission* must know a taxpayer's identity after an MVD contract is executed in order to ensure proper processing.

6.2. In the event the *Commission* knows the taxpayer's identity, it shall not knowingly release it to any other party under any circumstance except:

6.2.1. To a *state* after an MVD contract has come into effect with respect to that *state*;

6.2.2. To any other party with the taxpayer's written consent;

6.2.3. By order of a court of competent jurisdiction; or

6.2.4. In accordance with § 12.1.2 or § 12.2.1.

6.3. Participating *states* agree to not require, whether by court order or otherwise, that the *Commission* release a taxpayer's identity except:

6.3.1. To a *state* after an MVD contract has come into effect with respect to that *state*; or

6.3.2. To any other party with the taxpayer's written consent; or

6.3.3. In accordance with § 12.1.2 or § 12.2.1.

7. Disclosure of Taxpayer's Identity

7.1. The Commission shall take reasonable care to review a taxpayer's application and other communications intended to be sent to a state to ensure that nothing therein identifies the applicant (except to the extent the taxpayer has given its written consent to that disclosure). However, under no circumstance shall the *C*ommission be liable for failure to detect such information or for having made such application or communication available to a *state*. Ensuring that communications intended to be forwarded to a *state* be in a form appropriate for that *state* to see is primarily the taxpayer's responsibility.

7.2. Neither the *Commission* nor a *state* shall attempt to learn the identity of a taxpayer in MVD except:

7.2.1. When the taxpayer voluntarily discloses it as a result of completing an MVD contract or otherwise;

7.2.2. In the course of governmental activity that does not use any information acquired as a result of the taxpayer's participation in MVD; or

7.2.3. In accordance with § 12.1.2 or § 12.2.1.

7.3. Neither the *state* nor the Multistate Tax Commission shall use information acquired as a result of a taxpayer's participation in MVD to develop independent sources of information about the taxpayer for the purpose of discovering its identity.

7.4. Unless the taxpayer consents otherwise in writing, or in accordance with § 12.1.2 or § 12.2.1, if a *state* learns the identity of a taxpayer before the MVD contract is in effect with respect to that *state*, the *state* shall:

7.4.1. Make no use of the identity; and

7.4.2. Conduct itself as if the identity had never been disclosed.

8. Opening A Voluntary Disclosure *Case*
(see also § 19 for definitions of Case *and* File*)*

8.1. A taxpayer opens a voluntary disclosure *case* with respect to a *state* and a tax type when the *Commission* receives a writing that:

8.1.1. *States* that the taxpayer "applies for voluntary disclosure" (or other words to that effect);

8.1.2. Lists the *state*(s) to which the taxpayer wishes to voluntarily disclose;

8.1.3. Lists the type(s) of tax sought to be voluntarily disclosed; and

8.1.4. Provides the last digit of the taxpayer's federal employer identification number (FEIN) or last digit of its taxpayer identification number (TIN).

8.2. Providing the FEIN or TIN information allows the *Commission* to positively distinguish the applicant from other taxpayers without compromising its anonymity.

8.3. A writing may be presented in any way, including Postal Service, fax, and e-mail. It need not be signed.

8.4. Having an open *case* means that the taxpayer is *protected from discovery* in the listed *states* beginning 12:01 AM on the calendar day following the *Commission*'s receipt of the writing and ending on the calendar day following expiration of a time limit (deadline) as set forth in §16. Unless the *case* is *closed*, *protection from discovery* in that *case*'s *state* resumes at 12:01 AM on the calendar day after the taxpayer takes the required action. See § 14.1 for the definition of *protected from discovery*.

9. Mistaken Filing or Payment to *State*

9.1. If a *state* receives notice or otherwise becomes aware that it mistakenly received a return, filing, or payment, the *state* shall:

9.1.1. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received; and

9.1.2. Apply a mistaken payment (or payments) to the tax owed, apply any remainder to interest, and refund any further remainder to the taxpayer.

9.2. 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.

9.3. Notwithstanding §9.1.1, the *state* may process a mistakenly received registration or filing.

10. Mistaken Filing or Payment to *Commission*

10.1. If the Commission receives notice that it mistakenly received a return, filing, or payment other than of a collected fiduciary tax, the *Commission* shall:

10.1.1. At the applicant's option, either return, destroy, or retain for future use the mistaken return, filing or payment;

10.1.2. Make no use of mistakenly received information except as the taxpayer permits; and

10.1.3. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received.

10.2. However, without regard to the applicant's preference, the *Commission* shall forward to the *state* a mistakenly received collected fiduciary tax payment and shall not return, destroy, or retain it for future use. A collected fiduciary tax is sales tax, use tax, excise tax, withholding tax, or any other tax or funds collected or received from another on behalf of the state under color of state authority.

11. Premature or Incomplete Filing or Payment to the *Commission*

11.1. A signed MVD contract, returns, registration forms (sales/use tax only) and payment are generally due to the *Commission* from the applicant at the end of the MVD process (the MVD contract governs this).

11.2. If the *Commission* receives one or more, but not all, required items, the *Commission* shall hold the received items pending receipt of the rest. However, if the *Commission* has not received all items within 60 days of their due date (see §16 for time limits on taxpayer), The *Commission* may return the received items to the sender.

11.3. Standard deadline procedures apply, as indicated in § 16, including the deadline to close an inactive *case* or *file*.

12. Material Misrepresentation

12.1. A *material misrepresentation* is a false or misleading statement by a taxpayer (or its representative), made in good faith or otherwise, about a fact, which successfully induces a state to take a position to its substantial detriment with respect to acceptance of a voluntary disclosure contract (or significant terms in it) with that taxpayer.

12.2. If the *Commission* has clear and convincing evidence that a taxpayer has made a material misrepresentation, the Commission shall present the evidence thereof to the taxpayer and invite it to show good cause why the *Commission* should not take action pursuant to this section 12.

12.3. If the taxpayer cannot otherwise be contacted after a good faith effort, the *Commission* shall send a certified letter to the contact person and address of record of both the taxpayer and its tax practitioner, if any.

12.4. If 10 days after the later of presenting the evidence to the taxpayer and mailing a certified letter the taxpayer has not shown good cause, the *Commission* shall:

12.4.1. With respect to states that have executed a contract with the taxpayer based on the *material misrepresentation*, the *Commission* shall identify the taxpayer and inform each state of the evidence regarding the material misrepresentation.

12.4.1.1. The state may in this case void the voluntary disclosure contract, or any part of it that was the result of the material misrepresentation, within ninety calendar days of receiving notice regarding the material misrepresentation. In such case, it will be as if the contract (or excised terms) never existed; the state may keep all revenue paid to it as a result of the voluntary disclosure and may pursue additional remedies as permitted by law.

12.4.2. With respect to states that received an offer from the taxpayer containing a material misrepresentation but have not accepted it, the *Commission* shall withdraw without comment the pending voluntary disclosure offer. An offer is considered pending until it has been either rejected, withdrawn or signed by both state and taxpayer (accepted and fully executed). The *Commission* shall not disclose the existence of the material misrepresentation or the identity of the taxpayer to these states.

12.4.3. With respect to states that did not receive a voluntary disclosure offer containing a *material misrepresentation* from this taxpayer, the *Commission* shall not disclose the existence of the *material misrepresentation* and shall not disclose the identity of the taxpayer to these states.

13. Withdrawal

13.1. A taxpayer may withdraw from a state *without prejudice* at any time before *the Commission* sends the signed contract, return, or payment to that *state*. *Without prejudice* means the taxpayer may apply again by submitting all new materials.

13.2. A withdrawal requested by a taxpayer shall be in writing and shall enumerate the *states* from which withdrawal is sought. Absent a contrary written statement, a withdrawal with respect to a *state* shall be presumed to include all tax types and shall be presumed to be effective upon receipt by *the Commission*.

13.3. *Protection from Discovery* per §14 ceases at 12:01 AM on the calendar day immediately following withdrawal.

14. Protection from Discovery

14.1. *Protection from Discovery* means that, upon receipt of notice per §15.2, the Commission and participating *states* shall suspend with respect to an eligible taxpayer (see § 5.2) so protected, all inquiry 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. Provided that the *state* (or the *Commission* on behalf of the *state*) has not *contacted* (see §15.1 for definition) the taxpayer, it is *protected from discovery* in a state with respect to a type of tax beginning at 12:01 AM on the calendar day following the day that *the Commission* receives its request for MVD that meets the requirements of § 8

14.3. *Protection from discovery* ends at 12:01 AM on the day following the last day available to a taxpayer to meet a deadline as set forth in these procedures. For example, given a seven day deadline and time period beginning on July 1, *protection from discovery* ceases at 12:01 AM on July 9. *Protection from discovery* resumes at 12:01 AM on the calendar day after the taxpayer takes the required action.

15. *State Contact* While *Protected from discovery*

15.1. *State contact* means any communication with respect to a type of tax from *state* personnel to a *person* with respect to that *person*'s actual or potential tax obligation in that *state* with respect to that type of tax. Examples of *state contact* include but are not limited to: a telephone call or correspondence from a *state* revenue official, a nexus questionnaire mailed to the taxpayer, and a notice of audit or assessment. [3] A *state contact* is deemed received when mailed or sent. If a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax.[4]

15.2. For purposes of §15, a *person* means either a natural or a juristic person. With regard to a *state* whose laws allow for unitary, combined, or consolidated filing of returns, all constituent entities of a unitary or combined group, of a group filing on a consolidated

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[3] Texas extends this policy to exclude from eligibility those whose nexus to the state is being investigated by the state but who have not yet been *contacted.* Such persons will ordinarily not know of their ineligibility before they apply.

4 A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax is included in an enumeration of tax types accompanying the Contact. For example, Texas may interpret a communication to a taxpayer that references only corporate franchise tax to also include sales and use tax.

basis, or of a group otherwise affiliated, are a single *person* for purposes of §15 without regard to whether the *state* was aware of the existence of such entity or of its relationship to its constituent entities.

15.3. A taxpayer *contacted* by a *state* with respect to which the taxpayer is *protected from discovery* may assert its *protection from discovery* by doing all of the following:

15.3.1. Inform the *Commission* of the *state contact*, including if possible the name and contact information of the *state* person who made the *state contact* and a copy of any writing that was part of the *state contact*; and

15.3.2. Provide the *Commission* this, or a similar, written statement: "MTC Anonymous YY-XXX gives *the Commission* permission to disclose its identity to the *state* of [*state* name] for the purpose of *protection from discovery* as described by the Multistate Tax Commission Procedures of Multi-state Voluntary Disclosure." YY-XXX stands for the taxpayer's voluntary disclosure identification number.

15.4. Upon proper notice, the *Commission* shall timely inform the *state* in question that the taxpayer is involved in MVD with respect to that *state* and the type(s) of tax and the *state* shall suspend its inquiry or other compliance-related activity pending the taxpayer's completion under the normal and usual terms of the MVD with respect to that *state* and that (those) type(s) of tax.

15.5. If a taxpayer fails to meet a time deadline of the MVD process after *contact* by the *state*, then *protection from discovery* shall thereupon cease and the *state* may, at its option, continue its *state contact*, inquiry, or compliance-related action. The *Commission* shall not grant an extension of time after *state* contact. The *state* should at this time advise the *Commission* whether it is willing to further consider the MVD application and the taxpayer should advise the *Commission* whether it wishes to continue the MVD application. If both taxpayer and *state* choose to continue, The *Commission* shall continue to process the MVD. If either the taxpayer or the *state* chooses to not continue, The *Commission* shall close its *case* on the taxpayer with respect to that *state*.

16. Time Limits: Taxpayer

16.1. The following time limits (deadlines) apply to the taxpayer for the purpose of determining whether the taxpayer is *protected from discovery*. Failure to meet a time limit shall suspend the taxpayer's *protection from discovery* until the action in question is completed and, in some cases as noted, result in closure of the *file*.

16.1.1. The *Commission opens* a *file* (see § 8) until the *Commission* receives a properly prepared Application: 14 days.

16.1.2. Taxpayer receives draft contract until taxpayer responds to draft contract by either accepting or requesting changes: 28 days. The draft contract is the text the *Commission* will send to the indicated *states* as part of the taxpayer's MVD proposal.

16.1.3. Taxpayer responds to state counter-offer to draft contract: 28 days. Taxpayer has 28 days to respond to each subsequent counter-offer.

16.1.4. Taxpayer responds to request for information from *state* or the Commission: 14 days. Taxpayer has 14 days to respond to each subsequent request for information from the *state* or the *Commission*.

16.1.5. From taxpayer receipt of a state-signed contract (or other expression of intention to enter into the voluntary disclosure agreement) until the *Commission* receives it back from the taxpayer together with all required filings, returns and payment: 28 days.

16.1.6. Notwithstanding the requirement of § 16.1.5, an MVD draft contract signed by a *state* shall remain a valid offer to the taxpayer for the period of time stated in the contract the state signed or, if no period is stated, 90 days from the day it was mailed or sent to the taxpayer or its representative (protection from discovery is lost 28 days after it was mailed or sent). It may be returned signed at any time within that period together with all required returns and payment, after which time it shall be void, unless the *Commission* or the *state* issues an extension in writing.

16.2. The *Commission* may at its option close the *file* of a taxpayer at any time 90 days or more after the taxpayer loses and fails to regain *protection from discovery*. *Closing the file* means that the taxpayer must apply from the beginning if it wishes to pursue MVD.

16.3. Except when the *Commission* closes a taxpayer's *file* due to inactivity for 90 or more days after loss of *protection from discovery*, the taxpayer is free to miss any deadline it chooses without consequence other than temporary loss of *protection from discovery.* Therefore, the *Commission* may, without specific *state* authorization, grant one or more short extensions of time to a taxpayer, but only upon demonstration of extreme hardship that the taxpayer could not have reasonably prevented.

17. Time Limits: *State*

17.1. The *state* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

17.2. The following time limits apply:

17.3. From *state* receipt of draft contract until it sends its response to the *Commission*: 42 days (6 weeks);

17.4. *State* responds to counter-offer: 42 days (6 weeks);

17.5. *State* sends bill for interest to taxpayer: 42 days (6 weeks)

18. Time Limits: *Commission*

18.1. The *Commission* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult. Taxpayers should bring any time requirements to the attention of *Commission* staff, who will do their best to accommodate taxpayer needs by arranging faster *Commission* processing and requesting the *states* to do likewise.

18.2. The following time limits apply to the *Commission*:

18.3. From *Commission* receipt of application for voluntary disclosure to sending draft contract to taxpayer: 7 days;

18.4. From *Commission* receipt of taxpayer's approval of draft contract to sending draft contract to *state*: 7 days;

18.5. Forwards requests for information, counter offers, and other communications: 2 business days;

18.6. Forwards *state*-signed contract to taxpayer: 7 days;

18.7. Forwards taxpayer signed contract, returns and payment to *state*: 7 days.

19. Definitions and Miscellaneous Time Procedures

19.1. *Days* are calendar days unless the text clearly states otherwise.

19.2. A time limit (deadline) falling on a federal holiday or a weekend shall be extended to the next business day.

19.3. *Days* are counted thus: the first day is the calendar day immediately after the day in which the initiating action took place.

19.4. A filing or document mailed or sent by a taxpayer shall be construed to have been received by a state or by the *Commission* on the date of actual receipt, without regard to its postmark and the date it was mailed or sent.

19.5. No return, filing, or payment that was accidentally or prematurely made and returned to the sender for that reason shall count with respect to any time deadline of these procedures.

19.6. *File* means the total number of state *cases* existing with respect to an applicant. It is assigned a *file* number in the format MTC YY-XX, such as MTC 09-40 or MTC 09-99.

19.7. *Case* means that subset of a *file* that applies to only one state and one taxpayer, e.g., MTC 09-40 ND or MTC 09-99 MA

19.8. *Commission* means the Multistate Tax Commission.

19.9. *NNP* means the National Nexus Program, a division of the Multistate Tax Commission. *States* may subscribe to NNP independently of their membership in the *Commission* itself and any other program of the Commission.

19.10. The MVD process ends with respect to a *state* when:

19.10.1. that *state* and the taxpayer have each signed the MVD contract; and

19.10.2. the *state* has received all tax returns, payment and other material due, including but not limited to any interest and non-discretionary fees that the state billed in accordance with the MVD contract after receipt of the tax returns.

20. Electronic Communications

20.1. Unless the text clearly states otherwise, communications by fax machine, electronic mail (e-mail), and similar technological means shall count as written communications for purposes of these procedures.

20.2. MVD contracts shall be signed with ink on paper unless the state and taxpayer each agrees to substitute one or more facsimile signatures. A facsimile signature for purposes of these procedures is a signature created or transferred by fax machine, over the internet as an image, or by similar technology, which the sender intends to be used to indicate and memorialize the sender's acceptance of an MVD contract.

20.3. The *Commission* may communicate with *states* and taxpayers through the internet, including its world wide web and electronic mail features. However, unless authorized in writing by the taxpayer or adequate encryption or reasonable safeguards are used, neither the *Commission* nor a *state* shall transfer over the internet in a manner susceptible of interception by an unauthorized person any confidential taxpayer information, such as a taxpayer's name, taxpayer identification number, telephone number, address, amount owed, factual circumstances, et cetera.

21. Non-Member States

21.1. If sufficient resources are available, the *Commission* may offer voluntary disclosure services to *states* that are not members of the National Nexus Program as a convenience to a taxpayer requesting such services and as a way for the state to become familiar with the *Commission*'s voluntary disclosure services.

21.2. A *state* that participates in the multi-state voluntary disclosure process as a non-member *state* of the National Nexus Program shall not be required to take any action or refrain from taking any action as a result of these Procedures of Multi-state Voluntary Disclosure, but it is encouraged to abide by them voluntarily.