



## **Nexus Committee Agenda**

March 7, 2013 \* 1:00 p.m. – 5:00 p.m. CST  
 Hyatt Regency St. Louis at the Arch  
 315 Chestnut Street, St. Louis, Missouri

-- Salus populi suprema lex esto --  
 1821

### **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 July 2012
- III. Public Comment
- IV. Nexus Director's Report
- V. Participation in Multi-state Voluntary Disclosure by Non-members of Nexus Program
- VI. Deadline Policy of Multi-state Voluntary Disclosure
- VII. Update of Nexus Charter
- VIII. Ideas for Additional Services
- IX. New Business
- X. Closed Session (state personnel only)
- XI. Report from Closed Session
- XII. 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  
 Open Session  
 March 7, 2013



### Minutes of July 2012 Meeting

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Beginning of Minutes of July 2012

Walter Anger	AR	J.A. Cline, Jr.	LA
Tom Atchley	AR	Edward Beal	HI
Myles Vosberg	ND	Christy Vandevender	AL
Matt Peyerl	ND	Rebecca Abbo	NM
Frank Hales	UT	Pat Kelley	NJ
Tim Donovan	SC	Rusty Johnson	TX
Keith Getschel	MN	Hermi Nanez	TX
Rick DeBano	WI	Christina Heath	TX
Robynn Wilson	AK	Lynn Boyes	MI
Randy Tilley	ID	Chris Potts	MI
Mike Mason	AL	Kim Knoll	MI
Lennie Collins	NC	Chris Sherlock	AL
Tom Shimkin	MTC	Jeff Silver	MTC
Amber Kirby	MTC	Cathy Felix	MTC
Gary Humphrey	OR	Terry Frederick	Sprin t
Janielle Lipscomb	OR	Todd Lard	COST
Eugene Walborn	MT	Fred Nicely	COST
Lee Baerlocher	MT	Dan DeJong	TEI
Pete Donnelly	GA	Demesia Padilla	NM
Nirmail Dhaliwal*	DC	Charles Wilson*	DC
Dale Chattin*	IN	Sandy Weiner*	CCH
Zara Esting*	DC		
		* Participated by telephone	

*Italics indicate a committee decision or item to follow-up.*

Review of Open Session Minutes of March 2012

The committee unanimously approved the minutes of the July 2012 meeting that Mr. Shimkin had emailed to members.

Comments from Public

Mr. Collins invited comments from the public. There were none.

Nexus Director's Report

Mr. Shimkin gave an overview of the National Nexus Program's activities. These included complementing state compliance and enforcement projects, providing states with nexus information, and encouraging state and taxpayer participation in the voluntary disclosure program.

He reviewed the FY 2012 voluntary disclosure program. The Commission:

- Concluded 613 agreements;
- Began 933 agreements;
- Recovered \$15,245,740 aggregate back revenue on behalf of participating states (includes non-members of the Nexus program); and
- Recovered \$12,546,884 on behalf of Nexus member states.

He explained that the figures provided in the report include neither interest nor the value of gaining a taxpayer. He gave each state a written report on its state-specific revenue results.

Mr. Shimkin explained that the Commission offers voluntary disclosure services to non-member states. Including non-members in a multi-state disclosure encourages taxpayers to use the program, and thus increases the chance that the taxpayer will disclose to member-states. It is also a service to the taxpayer, which is one of the missions of the National Nexus Program, he said.

Mr. Shimkin reviewed highlights of the Nexus Program's activities in FY 2012:

- The Commission is considering vendors to maintain and upgrade its voluntary-disclosure management system. He reported that the current vendor has not been able to provide support since March due to a staff shortage and that it cannot guarantee uninterrupted support in the future.
- Mr. Shimkin then reported on the two Nexus Schools that took place during the past year. He said that attendance had increased in the past year as compared

to recent years, and informed the committee of upcoming schools in St. Paul in September and Salt Lake City in December.

- Mr. Shimkin reported that Nexus Program membership has not changed since the departure of Ohio, which withdrew despite having received significant revenues from the multi-state voluntary disclosure program. He explained that Ohio's withdrawal does not affect the remaining member states.
- He commented on California's recent withdrawal from the Compact, and explained that despite the withdrawal it could still remain a member of the National Nexus Program, which is an optional, separately-subscribed service of the Commission.
- Mr. Shimkin reported that Pennsylvania, despite being a non-member state, has recently begun to accept voluntary disclosure applications submitted by the Commission. He told the committee that he is encouraging the state to join the program.
- He reported that he had participated with a representative of the Council on State Taxation (COST) in an interview discussing the Bureau of National Affairs' nexus survey for 2012 and on another occasion joined COST in a presentation to the National Association of Publicly Traded Partnerships. Each presentation was about national nexus trends.
- He said that the Commission's website had been updated to invite taxpayers to request citations to state primary source material regarding nexus.

Discussion: Preserving Procedural Uniformity within Multi-state Voluntary Disclosure.

Amendments to the Voluntary Disclosure Agreement

Mr. Shimkin said that the multi-state voluntary-disclosure agreement's last major revision and approval by the committee was in 2010. He explained that he has made some minor changes to the contract that are not substantive and apply to all states. Substantive changes requested by a particular state that do not apply to all states are noted in the voluntary-disclosure agreement by footnote, he said. Amendments to the Procedures of Multi-state Voluntary Disclosure

Mr. Shimkin asked the committee to turn its attention to the Procedures of Multi-state Voluntary Disclosure as provided in the Nexus Director's Report. He

reminded the committee that it adopted the Procedures in order to give notice to taxpayers regarding state policy in specific situations, such as deadlines, and as a guide to Commission and state staff. He said that some state voluntary-disclosure representatives are unaware of these Procedures. He requested that committee members remind their voluntary disclosure staffs of the Procedures. Confusion over due dates has been particularly problematic, he said.

Nexus Charter

Mr. Shimkin said that some provisions of the Nexus Charter are no longer relevant. The committee requested that Mr. Collins include a discussion of this on the agenda of the next meeting.

#### Committee Discussion

Mr. Collins invited comments on the Nexus Director's Report.

Mr. Walborn, MT, asked that the committee discuss non-members participating in the Commission's voluntary disclosure program without paying dues. He suggested that non-member states be allowed a limited number of disclosures without charge before they have to join. Mr. Mike Mason, AL, added that it seems as though the non-member states wouldn't be bound by the Procedures or the committee's decisions. Mr. Shimkin responded that non-member states are bound by the agreements that they sign and are encouraged to honor the Procedures of Multi-state Voluntary Disclosure.

Mr. Collins invited discussion of the Commission's template voluntary-disclosure agreement. Mr. Shimkin said that he had made some non-substantive changes. He cited as an example the addition of language about fees in Section 6.1 (waiving "fees" in addition to tax and interest). He explained that this change was made at the request of a member state, and since the language could apply to all states with no material effect (no other state charges a "fee") he included it in the main agreement rather than as a footnote. He said that doing so makes the agreement less confusing for taxpayers by retaining uniformity. He said that he added a new Section 6.4 (waiver of back liability contingent on taxpayer performance per agreement) for the same reason. Mr. Walborn, MT, asked whether the committee needed to discuss the addition of Section 6.4. Mr. Collins said that he would include that discussion on the agenda of the next meeting in response to the consensus of the committee.

The committee consensus was that it should approve all changes to the agreement and Procedures before

implementation. Mr. Shimkin said that he will present all proposed changes to the committee in the future.

The committee turned its attention to a discussion of the timelines provided for by the agreement and the Procedures. Mr. Shimkin said that the agreement and Procedures have self-enforcing timelines; if the taxpayer does not take action according to the timelines it automatically loses protection.

"Protection" according to the Procedures means that a state will allow a taxpayer to complete its voluntary disclosure on the normal terms if the state discovers the taxpayer's noncompliance after the taxpayer has applied to the Commission for voluntary disclosure but before the agreement is in force. He told the committee that taxpayers have had difficulty complying with certain deadlines and that this has burdened states with frequent requests for extensions. He suggested, for example, that the template contract and the Procedures allow a taxpayer 60 days to return a signed agreement, returns, and payment, rather than the current 28 days.

Mr. Collins invited comments from the committee.

- Mr. Myles Vosberg, ND, told the committee that he supports the change because taxpayers rarely meet the current deadline.
- Ms. Christy Vandevender, AL, also supported the change.
- Mr. Rick DeBano, WI, proposed that the committee discuss the suggested change but delay a decision.
- Mr. Shimkin told the committee that the Procedures allow the Commission to grant a brief extension. He told the committee that front-line auditors working on multi-state disclosures sometimes do not know this because they are not aware of the Procedures.
- Mr. J.A. Cline, LA, added that, like Alabama, Louisiana often has trouble getting materials from taxpayers within a 28-day window, but that he agrees with Mr. DeBano that the committee should delay a decision.
- Ms. Robynn Wilson, AK, suggested that the committee meet by teleconference to decide the issue before March. Mr. Collins acknowledged the committee's consensus and asked Mr. Shimkin to schedule one.
- Mr. Keith Getschel, MN, asked Mr. Collins to include discussion of Section 6.4 (waiver of liability

contingent on taxpayer performance). He said that he approves of the change to 60 days. He added that he does not like non-member states making changes to the agreement.

- Mr. Collins advised the committee that any changes that a state wants that would cause their agreement to deviate from the Agreement template should be considered cautiously.
- Mr. Getschel agreed, saying that the Agreement and Procedures were drafted so that taxpayers would know what they are getting into and that uniformity has prompted more taxpayers to come forward.

Mr. Collins moved on to the next issue for consideration, Section 5.4 of the Agreement. He explained that the change suggested for Section 5.4 would allow a taxpayer to request a refund of amounts paid under the agreement based on computational or clerical error. This change would delete existing language in Section 5.4 that allows the taxpayer to request a refund on any basis other than a lack of nexus or a lack of jurisdiction to tax, "including without limitation calculation error and statutory interpretation with respect to issues other than nexus." He told the committee that the question for consideration is whether taxpayers should be allowed to request refunds based on clerical error only or also based on substantive changes to a taxpayer's return and court decisions that change applicable law retroactively.

- Mr. Collins asked whether any members were opposed to the proposed change to Section 5.4, and what the members do in such situations in their states' own agreements.
- Mr. Getschel told the committee that he would oppose it if the suggested language limits the taxpayer's ability to amend a return.
- Mr. Peyerl told the committee that he agrees with Mr. Getschel.
- Mr. Collins asked whether the committee believed that the change is not necessary because the taxpayer's rights are understood.
- Ms. Vandevender, Mr. Getschel, Mr. Walborn, and Mr. Peyerl agreed that the change is not necessary.
- Mr. Peyerl asked Mr. Shimkin to explain the need for the change. Mr. Shimkin responded that Ohio requested it, that he thought it was an option the committee

might want to consider in any case, and that including it in the template contract would retain uniformity. He said that uniformity is the most important value that the Commission offers voluntary disclosants and that he therefore prefers to apply changes uniformly. Ms. Vandevender asked Mr. Shimkin why the committee entertains Ohio's requests since Ohio is no longer a member. Mr. Shimkin responded that including non-member states helps member-states by making multi-state voluntary disclosure more attractive to taxpayers.

Mr. Randy Tilley, ID, moved to retain the original language of Section 5.4 in the agreement and reject the proposed amendment. The committee rejected the proposed change with two abstentions and all others in favor.

Mr. Collins directed the committee's attention to proposed new Section 8 (voluntary disclosure agreement binds successors in interest). Mr. Shimkin informed the committee that Arizona has required this language for many years and that he proposed adding it to the template agreement to promote uniformity and because he believes that it would improve the agreement.

- Mr. Collins asked whether an acquiring company would be bound if it buys only assets and ceases to use the acquired company's FEIN. Mr. Shimkin said that this would be the case.
- Ms. Vandevender asked how the proposed language would affect a sales agreement that shields a buyer from this liability. Mr. Shimkin said that a seller can only sell what it owns. He said that he has not researched the question, but he believes that normally the voluntary disclosure agreement would bind the buyer, even when it is only a sale of substantially all assets.
- Mr. Pete Donnelly asked the committee what would happen if a purchaser failed to do its due diligence and was unaware of the agreement at the time of purchase.
- Messrs. DeBano, Getschel, and Peyerl said that they believe the change to be unnecessary. Mr. DeBano said that Wisconsin regularly works with audits of taxpayers that are no longer in business.

- Mr. Mike Mason, AL, suggested that this issue be taken up in the fall teleconference or that the committee vote to disapprove the language.
- Mr. Walter Anger, AR, told the committee that the added language should be considered from a uniformity perspective. He added that he thinks the language would be beneficial.
- Ms. Vandevender suggested adding proposed Section 8 as a footnote.
- Mr. Walborn said that he prefers Mr. Mason's second option - that the committee take an immediate up-or-down vote.
- The committee rejected the proposed addition of a new Section 8 on a motion with two abstentions and no nays.

Mr. Collins asked the committee to turn to the Procedures of Multistate Voluntary Disclosure. Mr. Shimkin said that the language proposed in Section 16.1.5 complements the language in the agreement: each would extend from 28 to 60 days the time to return the signed Agreement and required materials at the conclusion of the disclosure process. The proposed change to Section 16.1.6 would track the agreement, which voids the state-signed agreement when the taxpayer fails to sign it within 90 days. Mr. Collins said that he would include the matter in the agenda for the fall teleconference.

#### Nexus Charter

Mr. Collins told the committee that certain language in the charter no longer reflects actual practice and invited the committee to review it.

- Mr. Shimkin responded to Mr. Getschel that the committee would propose specific changes to the Executive Committee, which would likely consider the changes within the context of the Commission's Strategic Planning initiative.
- Mr. Frank Hales, UT, told the committee that he believes a drafting group is the best way to move forward, which he believes would be better than having the committee discuss the charter piece by piece. Ms. Robinson, UT, Mr. Walborn, MT, and Mr. Mason, AL, volunteered to help draft. Mr. Collins asked Mr. Shimkin to coordinate a draft for the committee's consideration at its fall teleconference.

New Business

- Mr. Collins said that he would omit consideration of cloud computing from the committee's next agenda because Uniformity had taken up the issue. Mr. Collins requested that members consider what additional services the Nexus Program and Nexus Committee might provide states and taxpayers, to be discussed at the next meeting.

Mr. Walborn asked to discuss non-member states' participation in the Commission's voluntary disclosure program. Mr. Collins responded that he will put this on the agenda for the next meeting.

Summary of agenda items requested for next meeting:

- Update of the Nexus Charter.
- Discussion of changes to the agreement template and Procedures to provide taxpayers with more time to return the signed contract and returns.
- Discussion of non-member state participation in the voluntary disclosure program.
- Ideas for additional services.

Closed Session and Adjournment

The committee entered closed session; returned to open session; reported on the closed session; and adjourned.

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End Minutes of July 2012

## **Nexus Director's Report March 7, 2013**

This report set forth the non-confidential issues to be deliberated at the March 7, 2013 Nexus Committee meeting and updates on the status of the National Nexus Program.

The report is divided into sections:

1. Updates on the National Nexus Program
2. Decisions for the Nexus Committee

Sections contain background documents and documents for decision where appropriate. Documents for committee decision are in courier-new font.

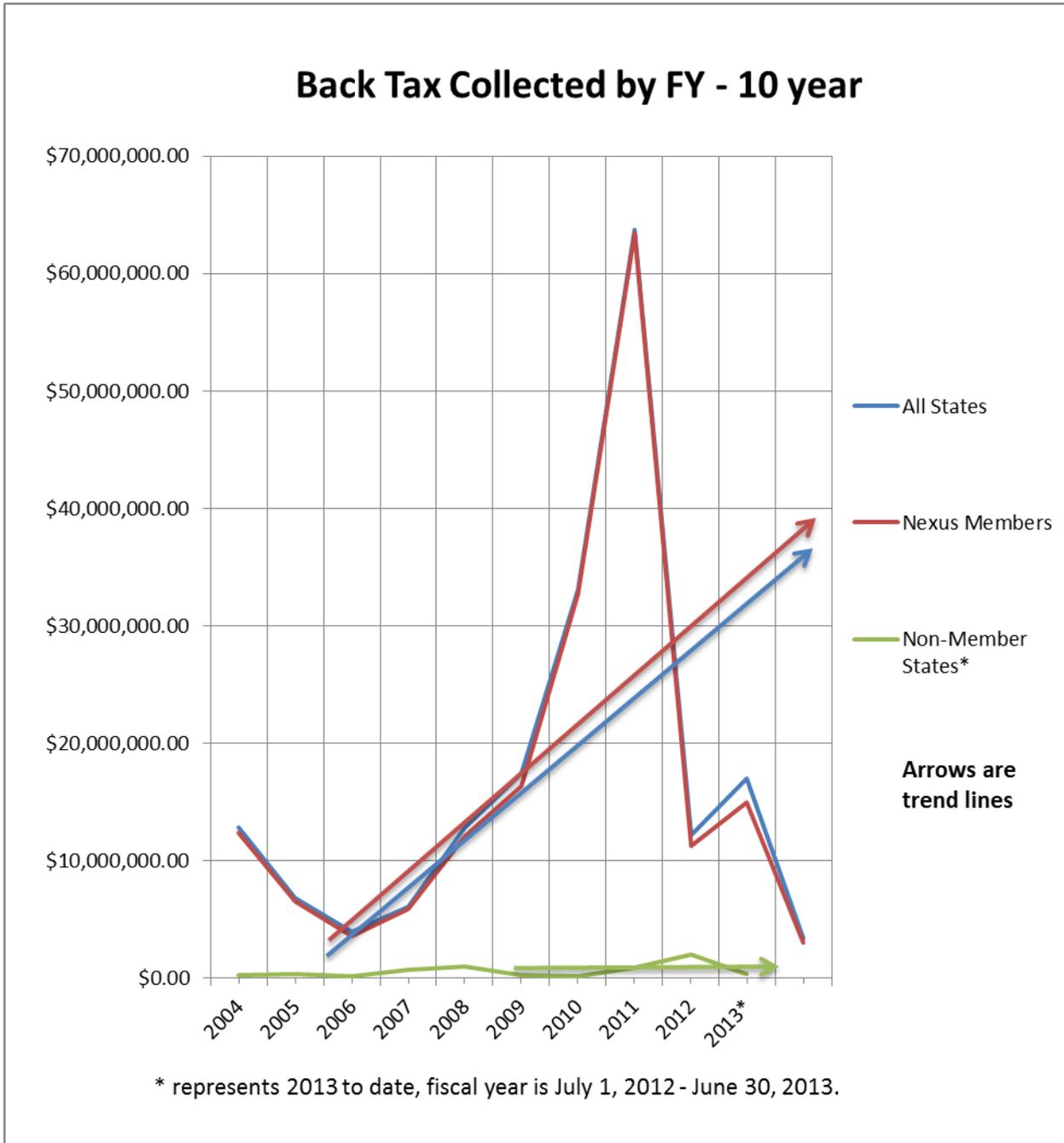
### **Program Updates**

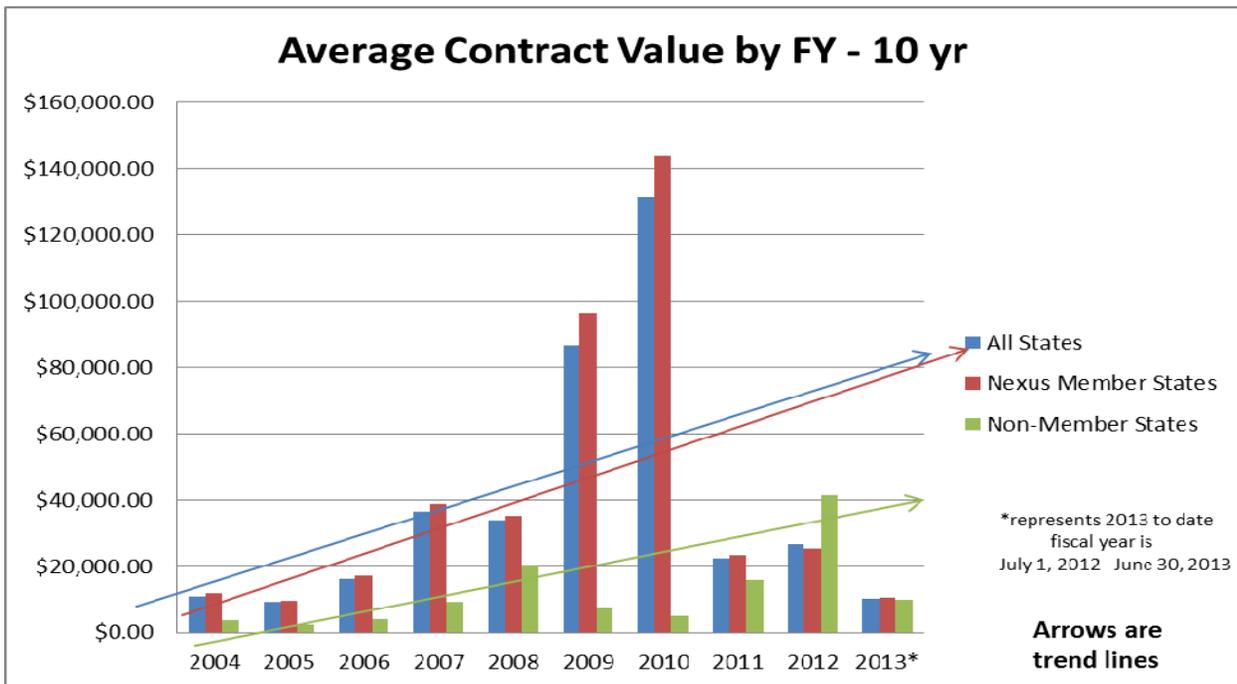
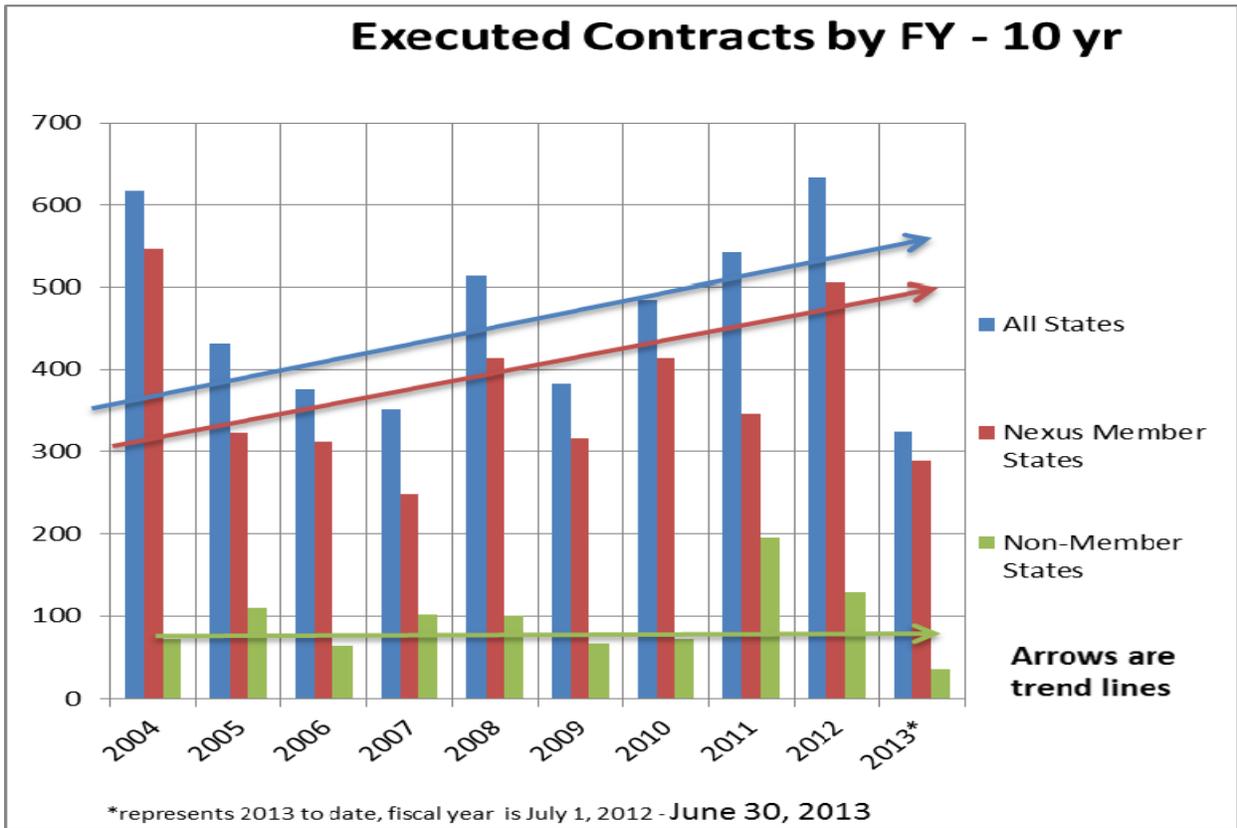
This report updates the Nexus Committee on Nexus Program activity over fiscal year 2013 to date (July 1, 2012 – February 22, 2013).

#### *Multi-State Voluntary Disclosure*

In fiscal year 2013 through February 22 (July 1 – February 22) the National Nexus Program --

- Completed 324 voluntary disclosure cases and began 159.
- Recovered \$3,381,261 back revenue on behalf of participating states (includes non-members of the Nexus program that nevertheless accept Commission voluntary disclosures).
- Recovered \$3,025,646 on behalf of Nexus member states.





### *CA FTB Status*

The California Franchise Tax Board has stopped participating in multi-state voluntary disclosure. 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.

### *Staff Changes*

Amber Kirby has left the National Nexus Program to take a position with PricewaterhouseCoopers in its state and local tax department. Ben Abalos has 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 as well as processing voluntary disclosures.

### *Agreement Changes Reversed*

The consensus of the July 2012 Nexus meeting was to reverse two staff-made changes to the template agreement. The changes are reversed and shown below.

The first: "and fees" was removed to footnotes applicable to District of Columbia, which had requested the initial change.

The second: section 6.4 was deleted. Section 6.4 was unnecessary and was inserted at the request of a former Nexus member that has subsequently stopped participating in multi-state disclosures.

Strike-through indicates deleted text and underscore indicates added text:

6. Duties of [State Name]
  - 6.1. Except to the extent that [State Name] indicates on the [State Name] Signature Page that there is a non-waivable penalty with respect to all periods that begin on or before [Lookback Date], [State Name] discharges all [Tax Type], interest thereon, and penalty thereon.
  - 6.2. Except to the extent that [State Name] indicates on the [State Name] Signature Page that there is a non-waivable penalty ~~and fees~~, [State Name] waives all penalty ~~and fees~~ arising from MTC [XX-XXX]'s failure to register and file [Tax Type] taxes and estimated taxes for all periods that begin before the Effective Date.

6.3. [State Name] shall not assess or collect any amount so discharged; however, notwithstanding the previous sentence, if state procedure requires it, [State Name] may assess any of said tax, interest, and penalty ~~and fees~~ and then immediately abate them. MTC [XX-XXX] shall cooperate in that procedure if necessary.

~~6.4 Performance by [State Name] is contingent on MTC [XX XXXX] fulfilling its duty under section 5.1.~~

## Decisions For Nexus Committee

### *Decision: Non-Member States*

Issue: Should the NNP continue to offer multi-state voluntary disclosure services to states that are not members of the program?

Background: The National Nexus Program has offered multi-state voluntary disclosure services since at least 2000 to states that are not members of the National Nexus Program.

It has been doing this because –

1. It is a service to taxpayers. Article I of the Multistate Tax Compact and Article I.C. of the Nexus Charter state that a purpose of the Commission and the Nexus Program is to facilitate taxpayer convenience and compliance. And,
2. It increases the value of the multi-state program to taxpayers by creating a nearly nation-wide portal to a substantially uniform voluntary disclosure process. This increased value encourages taxpayers to come forward, and to do so to a greater number of states, which benefits member states. And,
3. It engages states with the National Nexus Program to encourage them to join.

These are the states participating in multi-state voluntary disclosure that do not pay Nexus fees along with the amount of revenue they have achieved : AK (\$1,074,107), CA SBE (\$358\*\*) IN (\$657,502), ME (\$248,352), MS (\$556,873), NH (\$115,981), PA (\$20,908)\*, RI (\$83,741), VA (\$1,707,789), WY (\$48,137).

\*PA began to participate in late CY 2011.

\*\*Unusually low. SBE substantially slowed its processing within past year.

To give these numbers perspective, IN would have paid \$28,218 for Nexus membership in fy 2012 as a Compact or Sovereignty member; and \$23,515 as an Associate member. Compact and Sovereignty members financially support the Commission. Associate members do not financially support the Commission. Membership fees are calculated 60% flat-fee 40% revenue (total state tax minus property tax).

### Options:

1. Continue the present policy
  - a. This choice would offer the benefits described above – continued service to taxpayers and collateral value to member states. It may be

a useful tool to combine with an invigorated marketing push by staff or committee members or both.

2. End non-member participation

a. This choice may be more equitable for member states; or

3. End non-member participation on a date certain in the future

*Decision: Nexus Charter*

Issue: Should the Charter of the National Nexus Program and its committee be updated? If so, how?

Background: States created the National Nexus Program and its Charter in 1991. The Charter sets forth the foundational purposes, activities, and reporting relationships of the Nexus Committee, the NNP staff, and their relationships among each other and to other parts of the Commission. The Commission's Executive Committee approves changes as circumstances warrant. The Nexus Committee decided at its July 2012 meeting to review it for needed changes and to recommend changes to the Executive Committee if needed. A drafting subcommittee produced the draft below for the Nexus Committee to consider. Staff added editorial comments as background for the committee's convenience.

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*Beginning of Draft Charter*

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

{Staff recommends adding original heading : "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 -

{Removes: A. Central Clearinghouse (a former program to share taxpayers' reported apportionment factors among member states); B. Central Registration (the Streamlined Sales and Use Tax process subsumed this activity);}

- 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; New.
- 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*

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*Beginning of Current Charter*

**[CURRENT] 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*

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Nexus Director's Report  
Open Session  
March 7, 2013



*Decision: Deadline Policy*

Issue: Staff recommends that the committee increase from 28 to 60 the number of days permitted for a taxpayer in multi-state voluntary disclosure to return a signed contract and tax returns at the end of the multi-state voluntary disclosure process.

Background

A taxpayer's obligation with respect to this deadline appears in two places: the template voluntary disclosure agreement and the Procedures of Multi-state Voluntary Disclosure.

Most states use the template voluntary disclosure agreement in lieu of their own disclosure agreement. Use of a substantially uniform multi-state text provides applicants greater efficiency and thereby encourages participation. The practice has been to frequently give extensions, which some state staff have found disruptive. A longer standard period would reduce the number of extensions. I include the relevant excerpts below, emphasis added.

The Procedures of Multi-State Voluntary Disclosure are the rules of procedure of the Commission's voluntary disclosure program. The Nexus Committee approved these. They bind Nexus-member states except to the extent that a state has opted out entirely or in part. I include the relevant excerpts below, emphasis added.

Deadline Policy: Text of Agreement

This is the pertinent part of the current template agreement for multi-state voluntary disclosure. Strike-through denotes proposed deletion. Underscore denotes proposed insertion.

....

5. Duties of MTC [XX-XXX]

5.1. Except to the extent that [State Name] or the Commission gives a written extension, MTC [XX-XXX] shall send to the Commission the following within ~~28 days~~ 60 days of written notice that [State Name] has approved its voluntary disclosure Agreement:

5.1.1. the completed and signed MTC [XX-XXX] Signature Page, if provided;

5.1.2. the appropriate [Tax Type] returns, filings, or spreadsheets with respect to tax periods that begin after [Lookback Date], as the state may require;

5.1.3. the appropriate registration forms (or register online), if the type of tax requires registration; and

5.1.4. tax due under the returns, filings, or spreadsheets via negotiable instrument payable to the taxing authority of [State Name].

....

5.3.If MTC [XX-XXX] within 90 calendar days of the date that the Multistate Tax Commission sent the Agreement to MTC [XX-XXX] fails to meet the requirements of Subsection 5.1, and neither [State Name] nor the Multistate Tax Commission has given a written extension of time, the Agreement is void...

### Deadline Policy: Text of Procedures

This is an excerpt of the pertinent part of the Procedures of Multi-state Voluntary Disclosure.

...

#### 16. Time Limits: Taxpayer

16.1. The following time limits (deadlines) apply to the taxpayer... Except to the extent that the Commission or state grants a written extension, 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...

16.1.5. 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~~ 60 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~~ 60 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 state issues an extension in writing...