



**Public Notice And Agenda  
NEXUS COMMITTEE MEETING  
-- Public Session --**

Courtyard Marriott Nashville Downtown  
170 Fourth Avenue North, Nashville, Tennessee

**March 19 , 2009  
8:30 AM -- Noon  
(Central Daylight Time)**

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 149 611. The closed session is available only to state government personnel in physical attendance. Members of the public wishing to address the committee with respect to a particular agenda item are welcome to do so when the committee turns its attention to that item.

**Public Session**

- I. Welcome and Introductions
- II. Review of Agenda
- III. Review of Nexus Committee Open Session Minutes from November 2008 meeting
- IV. Comments from Public (on matters not on the agenda)
- V. Update on Nexus Schools
- VI. Discussion / Recommendation re: Frequency of Nexus Committee Meetings.
- VII. Update on Voluntary Disclosure Information Technology Project
  - A. Discussion / Recommendation re: information vol discl reports
- VIII. Update on Voluntary Disclosure Revenue Results
- IX. Mark-up of Draft Voluntary Disclosure Guidelines
  - A. Comments from public on vol. discl. guidelines
  - B. Review changes made at November Nexus Committee meeting
  - C. Review of entire text
- X. Discussion of Federal Bill to Preempt Business Activity Taxes
- XI. New Business: Topics Requested by States
- XII. -- Closed Session --
- XIII. Re-convene Public Session & Report from Closed Session
- XIV. Adjourn

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*For more information about this meeting, please contact Thomas Shimkin, Director of the National Nexus Program, Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001. Telephone (202) 508-3869. Facsimile (202) 624-8819. Email tshimkin@mtc.gov.*



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

**-- PUBLIC SESSION --**

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

**A. Welcome and Introductions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. The committee reviewed the draft voluntary disclosure guidelines.

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

*Input from committee:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**G.** The committee entered closed session

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



*Working together since 1967 to preserve federalism and tax fairness*

**Open Session  
Nexus Director's Report**

**Nexus Committee Meeting  
Nashville, Tennessee  
March 19, 2009**

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program to date in fiscal year 2009.

**Minutes of July 29, 2008 Meeting**

Minutes of the November 19, 2008 open session Nexus Committee meeting will be found attached to this report. Committee members are requested to bring any corrections to the November 19 meeting.

**Nexus Schools**

The Multistate Tax Commission's Nexus School is a two day training event where students are taught state tax jurisdictional issues (nexus).

- Schools held earlier in FY 2009:
  - Baton Rouge: February 9 - 10
  - Olympia: December 16 - 17
  - Boise: October 21 - 22
  - Omaha: September 15 - 16
- The remaining Nexus School scheduled for FY 2009 will take place in Little Rock on May 18 – 19, 2009.
- Due to reduced demand and availability of the Little Rock school, we have postponed a school previously scheduled for the spring in Topeka. It may be offered in the fall or winter '09-'10 if there is sufficient demand.

- The Commission is looking into hosting one nexus school annually at a fixed location near Dulles Airport, which serves Washington, DC. Such a school would offer states an additional training opportunity without the need for a state to host the event, and would reduce travel time and expense for Commission staff. The Commission will gauge demand over the coming months and decide accordingly whether to offer this school.

Nexus staff is in the process of updating and improving the exercise workbooks used in the course. These will be ready for the Little Rock school.

Contact Mr. Antonio Soto or Mr. Ken Beier of the Commission's training staff for registration information or information about the benefits of hosting a nexus school. States that host a nexus school receive credit toward student tuition and can train staff without the expense of out-of-state travel.

### **Recommendation re: Frequency of Nexus Committee Meetings**

*Action Requested: Commission staff requests a recommendation from the Nexus Committee whether the Commission should retain the present schedule of three Nexus Committee meetings per year or whether two meetings per year would suffice. Staff will convey the committee's recommendation to the chair of the Commission and its Executive Committee.*

Facts and background: Scaling back to two meetings per year would save the Commission and states money and may therefore be desirable if the committee believes it would not impair its ability to conduct its business. The committee may wish to consider a temporary reduction to extend through the present economic difficulties. The Uniformity and Audit committees each meet three times per year, while the Litigation Committee meets twice. As a practical matter, it may be desirable for the Nexus Committee to meet whenever the Audit Committee meets, given the substantial overlap in committee membership.

### **Voluntary Disclosure Information Technology**

#### **Secure Email**

The Commission's Audit Program has begun use of its secure email system with states and taxpayers to send confidential taxpayer information. The system allows secure email communication with persons not within the Commission's computer system. I described this system to you in my July and November 2008 reports. Should you or your staff receive a secure email from Nexus staff, please follow the simple instructions to retrieve the secure information.

## **Database Renovation**

The first phase of renovation of the Commission's voluntary disclosure database is nearly complete. Staff members have moved from testing the software to full-scale use in daily voluntary disclosure operations. The contractor fixed a number of glitches identified in the testing phase. Staff is working with the contractor to fix a few items of concern that have arisen during routine use. The purpose of this new software is to better manage an increased voluntary disclosure caseload more accurately and more quickly without hiring additional personnel.

A significant component remaining to be created is the web-based process by which a potential taxpayer applies for voluntary disclosure. When built, it will allow an applicant to fill out the Commission's standard application for voluntary disclosure on a web page, save partially complete work and resume at another time, and submit the application to the Commission via the internet. An applicant will be given a password to allow access to his partially completed application. The application will customize itself based on the states and tax types provided by the applicant; thus, questions asked by only certain states will not appear on the application unless the applicant has selected a state that requires it.

To protect the Commission's computer systems from dangerous content, applicants will do their work on a dedicated server outside the Commission's firewall and will at no time have access behind the Commission's main firewall.

Commission staff continues to work with the contractor to get the online application process in place soon.

Upon deployment of the online application process the Commission will examine whether to proceed with the second phase of this project. This phase, if undertaken, will allow states and taxpayers to access the voluntary disclosure database directly and to perform a number of functions there without intervention from Commission staff.

Phase II will:

- Decrease processing time by allowing states and applicants to perform some functions without Commission assistance while preserving personal attention where appropriate;
- Give applicants more control over the voluntary disclosure process by giving them controlled access directly to state decision makers. (This will allow taxpayers to assure themselves that their positions have been fully presented to state decision makers. It also reduces the chance for error when Commission staff passes information between state and taxpayer.)
- Increase worker productivity.

Commission staff will likely call upon interested Nexus Committee members and their staffs to participate in the design of a Phase II system.

### **Reports**

The voluntary disclosure database presently produces a number of reports, including:

- Return On Investment By State (dollars returned for each dollar of dues)
- Dollar Return By Tax Type By State
- Tax Amounts Paid By Taxpayer By Year

I invite Nexus Committee members to bring to my attention any additional reports you would like to see.

The Commission received fewer reports from the vendor than were contracted for. Staff is working with the vendor to address the deficiency.

### **Voluntary Disclosure Revenue**

Revenue from the National Nexus Program's voluntary disclosure program continues to zig and zag its way along a pleasing upward trend. All amounts below include only payments for back liability that the Commission received and forwarded to the states. Insignificant amounts of incidental fees, interest or penalty may be included if received at the end of the voluntary disclosure process. They include absolutely no revenue resulting from anticipated future filings.

To date in fiscal year 2009 (as of February 26) the National Nexus Program collected back tax of \$5,340,441 (likely to rise slightly due to late-arriving data).

In calendar year 2008 the National Nexus Program collected back tax of \$14,525,696.

For comparison purposes, the program collected the following rounded amounts for these fiscal years. In each case to date refers to February 26 of the fiscal or calendar year.

- FY 2008: \$7.9 million
- FY 2007: \$10.8 million
- FY 2006: \$2.3 million

For comparison purposes, voluntary disclosure produced the following rounded amounts of revenue in the following calendar years:

- CY 2007: \$9.9 million
- CY 2006: \$14.3 million
- CY 2005: \$3.8 million
- CY 2004: \$4.5 million
- CY 2003: \$8.9 million

Please see appended material for charts illustrating some voluntary disclosure revenue data.

**Voluntary Disclosure on Commission’s website**

The Commission’s web site continues to be an important source of information for taxpayers about the multi-state voluntary disclosure program and the most common way applicants acquire an application form. With the exception of a small spike in November, taxpayers downloaded voluntary disclosure applications fairly evenly over the period.

Most Popular Nexus Web Pages -- Number of Visitors --	Jul. 2008	Aug. 2008	Sept. 2008	Oct. 2008	Nov. 2008	Dec. 2008	Jan. 2008	Total # Visitors
<b>About National Nexus Program</b>	655	514	522	650	638	516	586	<b>4,081</b>
<b>About Voluntary Disclosure</b>	365	321	313	417	434	347	415	<b>2,612</b>
<b>About Nexus School List of Vol. Disclosure States</b>	194	137	159	184	176	195	206	<b>1,251</b>
<b>Voluntary Disclosure Policies</b>	99	89	108	182	199	166	184	<b>1,027</b>
<b>List of Nexus Member States</b>	89	71	88	88	166	142	146	<b>790</b>
<b>Vol. Discl. Application Process</b>	122	105	89	123	119	96	91	<b>745</b>
<b>Voluntary Disclosure Application</b>	93	71	82	136	146	103	103	<b>734</b>
<b>Application</b>	67	70	76	76	137	83	99	<b>608</b>

## **Voluntary Disclosure Guidelines**

The voluntary disclosure guidelines project is an effort of states and Commission staff to develop a set of written guidelines to govern the voluntary disclosure process. The goal is to make the voluntary disclosure process more transparent to taxpayers and to guide Commission staff in the course of their work assisting taxpayers to come into compliance with state tax laws. It is hoped that states will adopt these guidelines as their own with respect to multi-state voluntary disclosures (they would not affect a state's own voluntary disclosure program, i.e., the one a taxpayer encounters when he approaches a state directly and not through the Commission).

At its July 2008 meeting the Nexus Committee referred the guidelines to a drafting group for further consideration. The drafting group met once and produced a draft, which the full Nexus Committee considered at its November 2008 meeting. The draft attached reflects the document as amended by the committee through the November 2008 meeting. Only changes made as a result of the November 2008 meeting are shown as changes.

It is very important that committee members study the draft guidelines in advance of the meeting and arrive prepared for further mark up. I anticipate that we may be able to dispose of the final issues and move toward final approval. To ensure maximum productivity, please know your department's position on issues raised in the document and arrive with authority to make decisions at the meeting. The discussion may include consideration whether states will adopt these guidelines as binding on their voluntary disclosure cases that originate with the Commission, and if so, how that may be arranged.

## **A Few Nexus Developments For Your Information**

### "Amazon" Nexus Bills

Big news in the nexus arena is New York's law to establish a rebuttable presumption that nexus exists when an out-of-state vendor pays more than \$10,000 commission in a year to in-state operators of web sites that sell the out-of-state vendor's products by means of providing a link on their websites for customers to get to the website of the out-of-state vendor and make a purchase.

- New York: Tax Law § 1101(b)(S)(vi) ("Commission-Agreement Provision").
- New York: Amazon.com LLC et al. v. New York State Dep't of Taxation and Finance et al.; No. 60127/08 motion to grant summary judgement approved, Supreme Court, New York County, January 12, 2009. [This trial court decision was a win for New York. It will likely be appealed to the state's intermediate appellate body]

NOTE: according to a letter from COST to Hawaii House Finance Committee chair and vice-chair, as a result of this litigation Overstock.com ceased its nexus-creating relationship with some 3,400 Hawaiians who were earning commissions on Overstock product sold via their websites. COST Sends Letter to Hawaii House Finance Committee to Explain Opposition to HB 1405's Nexus Standards, State Tax Today, Feb 27, 2009, Tax Analysts Document Number: Doc 2009-4265, Tax Analysts Elect

For those who may be interested in this case, but do not wish to read it, here is a summary :

- Facts: New York based associates apply and enter into independent contractor agreements with Amazon. They are compensated with a percentage of each sale they refer. Amazon authorizes associates to put different types of links on their sites, e.g., direct listing of Amazon products on their site, a search box that links to Amazon products, and cart link that allows visitors to add Amazon merchandise to the shopping cart of the Associate's website.

- The Statute: presumes a vendor (here, Amazon) is doing business in the state if he makes more than \$10,000 sales per year to New York residents by means of New York based associates in the referral program. The vendor may rebut the presumption by showing that there is no constitutional nexus.

- Amazon's claim: alleges the statute violates the US Commerce Clause because it taxes an entity with no nexus to New York; it is a federal and state Due Process violation because it effectively establishes an irrebuttable presumption and it is overly vague and broad; and it violates federal and state Equal Protection because it targets Amazon.

- The arguments:

- Commerce Clause:

- Court notes that substantial nexus is required, and that it must include a physical presence, but the physical presence need not be substantial, but rather must be 'demonstrably more than the slightest presence'. The court notes precedents holding that activities performed by non-employees in-state on its behalf can be imputed to the out of state vendor.

- Amazon characterizes the in-state activity as mere advertising and not work by ‘traveling salesmen’, pointing out that they do not necessarily solicit sales from New York residents. Calling on the language of Tyler Pipe, 483 U.S. 232 (1987), Amazon claims that its associates are not significantly associated with its ability to establish and maintain a market for sales in New York because they account for less than 1.5% of its New York sales.
- Harking to language from Scripto, 362 U.S. 207 (1960), the court states, “Amazon should not be permitted to escape tax collection indirectly, through use of an incentivized New York sales force to generate revenue, when it would not be able to achieve tax avoidance directly through use of New York employees engaged in the very same activities.”
- Due Process:
  - Amazon claimed there is no rational relationship between the facts triggering the presumption – the contracts with New York residents who are paid commission – and the presumed fact that they will solicit business from other New York residents. The court dismisses as highly improbable that a number of such people would not solicit sales from other New Yorkers. As to the vagueness issue, the court found no merit to a claim that the statute is vague.
- Equal Protection:

the court found that the law did not irrationally single out a “class of one” for disparate treatment, i.e., that the law affected others as well, and, in the alternative, if there was disparate treatment it was not irrational.
- Minnesota: HF 401 and SF 282 are pending in the legislature (introduction, first reading and referral to Committee on Taxes).
- California: AB X3 27 (introduced Jan 31) and AB 178 (introduced Feb 2, hearing possible March 5)
- Connecticut Raised Bill 806 (referred to Finance Feb 3, hearing held Feb 9)
- Hawaii HB 1405 (intro Jan 27, approved in committee Feb 12, sequential referral to another committee with hearing Feb 26)

## BAT Preemption

United States H.R. 1083: U.S. representatives Rich Boucher (D Va.) and Bob Goodlatte (R Va.) have introduced the perennial Business Activity Tax Simplification Act of 2009. This legislation or a close cousin has appeared with each of the past five congresses. It would expand the scope of P.L. 86-272 and establish a physical presence standard for nexus with respect to business activity taxes, such as corporate income tax. The bill would allow numerous loopholes, however, by which a taxpayer could have a significant physical presence yet still be protected from tax.

## **NNP 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 NNP 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 NNP

The NNP 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, NNP 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

***DRAFT***

***Not approved by MTC or any state.***

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* decline to apply these procedures in their entirety: \_\_\_\_\_; 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. 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.

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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 contact does not specify a specific type of tax it is construed to be with respect to all types of tax.<sup>1</sup> Each state may make its independent decision with respect to eligibility, taking into consideration extenuating circumstances, such as passage of time.<sup>2</sup> See §15 for the definition of *contact*.

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5.3. A taxpayer who would generally be ineligible for MVD but nevertheless wishes to pursue it, should so advise NNP 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 *NNP* during the MVD process. Because the *NNP* needs to easily communicate with a taxpayer (directly or through its attorney or tax advisor) in

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<sup>1</sup> A 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.

<sup>2</sup> 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.

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order to conduct its business, taxpayers wishing to remain anonymous to the *NNP* 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 may be used for communication purposes. A taxpayer choosing to remain anonymous while approaching the *NNP* 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 *NNP* must know a taxpayer's identity after an MVD contract is executed in order to ensure proper processing.

- 6.2. In the event the *NNP* 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; or
  - 6.2.3. By order of a court of competent jurisdiction.
- 6.3. Participating states agree to not require, whether by court order or otherwise, that the *NNP* 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.

## 7. Disclosure of Taxpayer's Identity

- 7.1. The *NNP* 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 *NNP* 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.

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7.2. Neither the *NNP* 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; or

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.

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, 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)

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- 8.1. A taxpayer opens a voluntary disclosure case with respect to a *state* and a tax type when the NNP 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 taxpayer identification number (TIN).

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8.2. Providing the FEIN or TIN information allows the NNP 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 file means that the taxpayer is *protected from discovery* in the listed *states* beginning 12:01 AM on the calendar day following *NNP*’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 *File* is *closed*, *protection from discovery* in the listed *states* 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*.

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## 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:

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

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

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

12.1. If a taxpayer's *case* is *open* in any *state* and the *NNP* obtains clear and convincing evidence of gross misrepresentation of a material fact that the taxpayer provided as part of, or in support of, its application for MVD to a *state*, such as would likely have affected that *state's* decision whether to accept, reject, or counter-offer the proposal, *NNP* shall present the evidence to the taxpayer and invite it to show good cause why its *file* (with respect to all *states*) should not be closed, and its identity and the evidence of gross misrepresentation reported to the states that have received the taxpayer's application. If after 10 days good cause has not been shown, the *NNP* shall close the *file* (with respect to all *states*) and:

12.1.1. Not disclose the taxpayer's identity or evidence of gross misrepresentation to *states* that did not receive the taxpayer's application; and

- 12.1.2. Inform *states* that did receive the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*); and
  - 12.1.3. Decline to knowingly assist this taxpayer with MVD again.
- 12.2. If a taxpayer's *file* is closed (with respect to all state cases) when the NNP obtains clear and convincing evidence of gross misrepresentation of a material fact that the taxpayer provided as part of, or in support of, its application for MVD to any state, such as would likely have affected that state's decision whether to accept, reject, or counter-offer the proposal, NNP shall present the evidence to the taxpayer and invite it to show good cause why its identity and the evidence of gross misrepresentation should not be reported to the states that have entered into an MVD contract with it. If the taxpayer cannot otherwise be contacted after a good faith effort, this requirement will be met by sending a certified letter to the contact person and address of record with the NNP of both the taxpayer and its tax practitioner, if any. If after 10 days good cause has not been shown, the *NNP* shall:
- 12.2.1. Inform *states* that have received the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross misrepresentation (evidence affecting one *state* but not another shall be disclosed only to the affected *state*);
  - 12.2.2. Not disclose the taxpayer's identity or evidence of gross misrepresentation to states that did not receive an application; and
  - 12.2.3. Decline to knowingly assist this taxpayer with MVD again.

12.3. If a taxpayer whose *file* is closed for misrepresentation is represented by a tax practitioner and there is clear and convincing evidence that the tax practitioner knowingly participated in the gross misrepresentation, or was aware of it and remained silent, then *NNP* shall present the evidence to the tax practitioner and invite him or her to show good cause why his or her identity and the evidence of gross misrepresentation should not be reported to the states that have received the taxpayer's application. If after 10 days good cause has not been shown, the *NNP may at its option*):

12.3.1. Decline to knowingly assist this tax practitioner with MVD again (this prohibition shall be limited to the particular person in question and shall not extend to his or her partner or firm unless they were involved in their own right); and shall

12.3.2. Inform the states that have received the taxpayer's application of the tax practitioner's identity and present to them the evidence of gross misrepresentation (evidence affecting one state but not another shall be disclosed only to the affected state).

### 13. Withdrawal

13.1. A taxpayer may withdraw from a state *without prejudice* at any time before *NNP* 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 *NNP*.

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, NNP 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.

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*Protection from Discovery* means that, upon receipt of notice per §15.2, NNP and participating states shall not begin with respect to a taxpayer so protected, any inquiry, audit or 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.

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14.3. 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 *NNP* receives its request for MVD that meets the requirements of §8.

14.3.1.

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¶  
<#>A statement that the taxpayer intends to pursue MVD with respect to that state; ¶  
¶  
<#>A statement of the tax type(s) with respect to which MVD is sought; ¶  
¶  
A brief description of its factual circumstances that allows NNP staff to distinguish the taxpayer from other taxpayers, but not so detailed as to identify the taxpayer with particularity. For example, "a retail vendor of clothing and accessories whose sales are made primarily through mail and internet" or "a manufacturer of solvents, greases, and similar products used primarily in industrial applications."

14.4. *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 *contact* include but are not limited to: a telephone call from a *state* revenue official, a nexus questionnaire mailed to the taxpayer (it is deemed received on the day of mailing), and a notice of audit or assessment.<sup>3</sup> If a contact does not specify a specific type of tax it is construed to be with respect to all types of tax.<sup>4</sup>

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, a all constituent entities of a unitary or combined group, of a group filing on a consolidated 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.

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

15.3.2. Provide *NNP* this, or a similar, written statement: “MTC Anonymous YY-XXX gives *NNP* permission to disclose its identity to the *state* of [ *state name* ] for the purpose of

<sup>3</sup> 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.

<sup>4</sup> A 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.

*protection from discovery* as described by *NNP* Procedures of Multi-state Voluntary Disclosure.” YY-XXX stands for the taxpayer’s voluntary disclosure identification number.

15.4. Upon proper notice, *NNP* 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.

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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 *contact*, inquiry, or compliance-related action. *NNP* shall not grant an extension of time after *state* contact. The *state* should at this time advise *NNP* whether it is willing to further consider the MVD application and the taxpayer should advise *NNP* whether it wishes to continue the MVD application. If both taxpayer and *state* choose to continue, *NNP* shall continue to process the MVD. If either the taxpayer or the *state* chooses to not continue, *NNP* 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. *NNP* opens a *file* (see § 8) until *NNP* 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 *NNP* will send to the indicated *states* as part of the taxpayer's MVD proposal.

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

16.1.5. From taxpayer receipt of a state-signed contract (or other expression of intention to enter into the voluntary disclosure agreement) until *NNP* 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 on (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 *NNP* or the *state* issues an extension in writing.

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16.2. *NNP* 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 *NNP* 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 *NNP* 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 *NNP* staff, who will do their best to accommodate taxpayer needs by arranging faster *NNP* processing and requesting the *states* to do likewise.

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17.2. The following time limits apply:

17.3. From *state* receipt of draft contract until it sends its response to *NNP*: 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: *NNP*

18.1. The *NNP* 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

**Deleted:** The time limits on *NNP* action in this section are aspirational maximums.

difficult. Taxpayers should bring any time requirements to the attention of *NNP* staff, who will do their best to accommodate taxpayer needs by arranging faster *NNP* processing and requesting the *states* to do likewise.

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

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

18.4. From *NNP* 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 NNP on the date of actual receipt, without regard to its postmark and the date it was mailed or sent.

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- 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.
- 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;](#)
  - 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. *NNP* may communicate with states and taxpayers through the internet, including its world wide web and electronic mail features. However, neither *NNP* 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. Such information may be transferred through the internet provided that adequate encryption or other reasonable safeguard is used.

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Deleted: Taxpayer information, such as amount owed, factual circumstances, et cetera, that would be confidential if associated with a particular taxpayer may be transferred over the internet without safeguards to prevent unauthorized interception if the transfer is unaccompanied by, and not susceptible to being linked to, the taxpayer's identity or information that could lead to the taxpayer's identity.

## 21. Non-Member States

21.1. If sufficient resources are available, *NNP* 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 *NNP*'s voluntary disclosure services.

21.2. A *state* that participates in the *NNP* multi-state voluntary disclosure process as a non-member *state* of the *NNP* 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.