



MINUTES
Nexus Committee Meeting
Santa Fe, New Mexico
July 29, 2008,
8:30 a.m. - Noon MDT

-- 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:

First	Last	Affiliation
Michael	Mason	Alabama
Christy	Vandevender	Alabama
Tamra	Fucci	Arizona (phone)
Tom	Atchley	Arkansas
Danny	Walker	Arkansas
Ira	Rubinoff	California
Joe	Thomas	Connecticut
Todd	Lard	COST
Jana	Malone	COST
Charles	Wilson	District of Columbia
Ed	Many	Georgia
Reva	Tisdale	Idaho
Pat	Verschelden	Kansas
R. Jay	Frost	Louisiana
Johnette	Martin	Louisiana
Earl	Millet, Jr.	Louisiana
Liana	Techow	Louisiana
Keith	Getschel	Minnesota
Cathy	Wicks	Minnesota
Lee	Baerlocher	Montana
Eugene	Walborn	Montana
Ken	Beier	MTC
Joe	Huddleston	MTC
Ted	Jutras	MTC
Greg	Matson	MTC
Thomas	Shimkin	MTC

First	Last	Affiliation
Jeff	Silver	MTC
Antonio	Soto	MTC (phone)
Rebecca	Abbo	New Mexico
Dan	Armer	New Mexico
Heidi	Chowning	New Mexico
Andrew	Coca	New Mexico
David M.	Ferguson	New Mexico
Louie	Gomez	New Mexico
Joe		
Charles	Langston	New Mexico
Lennie	Collins	North Carolina
Mary	Loftsgard	North Dakota
Myles	Vosberg	North Dakota
Janielle	Lipscomb	Oregon
Eric	Smith	Oregon
Michael	Wulfkuhle	Revenue Solutions, Inc.
Joy	Causey	South Carolina (phone)
Christina	Heath	Texas
Sharon	Scott	Texas
Frank	Hales	Utah
Rod	Marrelli	Utah
Kathy	Oline	Washington
Andrew	Glancy	West Virginia
Craig	Griffith	West Virginia
Roy	Davis	Wisconsin
Rick	Scheer	Wyoming

The committee approved the minutes of its March 2008 meeting as amended to reflect the presence of Frank Hales at both the public and closed sessions.

B. The Commission contracted with Revenue Solutions, Inc. (RSI) to renovate the Commission's voluntary disclosure information technology. Mr. Wulfkuhle is RSI's primary contact person. He and Mr. Shimkin updated the committee on the project. Mr. Wulfkuhle said that the project is in Phase I, which primarily concerns the software to be used by Commission staff to manage the flow of voluntary disclosure information, including contract texts, status, and personnel contacts. Mr. Wulfkuhle said that two major purposes of the project are to increase the speed with which the Commission processes voluntary disclosures and, ultimately, to allow for greater control over the process by states and taxpayers through tools allowing them to perform a number of functions without intervention from Commission staff. In addition, he pointed out that the renovation would incorporate enhanced management ability for management to measure productivity, such as time to complete a disclosure, time lapse between stages, etc.

Mr. Marrelli asked whether the database would be open for use by state personnel, and if not, what use committee members would be able to make of the information Messrs. Wulfkuhle and Shimkin were presenting. Mr. Shimkin explained that the renovated database would form the backbone of the Nexus Program's most important activity, voluntary disclosure, and that the presentation was offered in support of the Nexus Committee's oversight role with the hope that committee members may have suggestions for improvement. He also noted that plans for Phase II of the renovation will open the database for use directly by states and taxpayers.

Ms. Loftsgard asked why with the current database the Commission is unable to break out reports by sales/use and income/franchise taxes. Mr. Shimkin replied that it is not impossible to do, but that it would require hiring an outside consultant because the Commission does not have a staff member with the knowledge of Access to create these reports. He said that a major reason for the database renovation project is to regain the ability to create a variety of reports, including those that Ms. Loftsgard requests, using only Commission staff. Mr. Shimkin concluded by saying that the renovated database will produce these reports shortly.

C. Mr. Soto discussed Nexus Schools. He said:

- The Nexus School in Nashville, Tennessee had 28 students from various states.
- There is a Nexus School scheduled for September 15 & 16, 2008 in Omaha, Nebraska.
- There is a Nexus School scheduled for October 21 & 22, 2008 in Boise, Idaho.
- 2009 Nexus Schools are in the planning phases and states wishing to volunteer to host a school will be welcome.

Mr. Shimkin said that the Nexus Program will soon begin a project to update Nexus School materials.

D. Mr. Shimkin noted that the briefing books distributed to state personnel in advance of the meeting contain an article about the effect of FIN 48 on voluntary disclosure and another about New York's new statute that finds nexus when an out-of-state vendor pays a sales commission to an in-state website in exchange for that website hosting a link to the website of the out-of-state vendor. Mr. Shimkin said that Amazon.com had sued New York State to overturn the law.

E. Mr. Collins discussed a conversation he had with a practitioner regarding using the Commission for voluntary disclosures:

- Practitioners often bypass the Commission to work directly with states as a way to keep more work in house.
- Routine disclosures tend to go smoothly through the Commission, but delays occur when the applicant has unusual issues or when issues vary among states.

F. The committee reviewed the draft voluntary disclosure guidelines, beginning at section 13.

- Mr. Shimkin said that he intended to adopt the practice of the District of Columbia to record the last three digits of a taxpayer's FEIN at the opening of a new case. He explained that this would allow the Commission to positively identify the applicant if it requests an accommodation in the event a state contacts it mid-disclosure, while maintaining the applicant's anonymity. Positive identification would ensure that the correct taxpayer receives the accommodation while preserving its anonymity. Mr. Marrelli and Ms. Martin agreed.
- There was a discussion, initiated by Mr. Getschel, regarding the phrase "protection from audit." He said that the term may be misleading because it implies that a state cannot audit the accuracy of a tax return. Ms. Fucci suggested replacing the phrase with "protection from nexus investigation". *After discussion the committee voted to approve either this language or "protection from nexus review".* The committee approved the intended concept, with two nay votes, and asked the drafting committee to choose between the two expressions. The consensus of the committee was that whatever term is used should be well defined.
- Mr. Scheer and Ms. Tisdale asked what types of prior state contact should disqualify an applicant from protection. Ms. Martin stated her belief that protection should be denied to an applicant from the moment a state discovers the applicant, even before it gives the applicant notice of its discovery. Messrs. Marrelli, Huddleston and Getschel disagreed. The committee considered a number of state actions that might disqualify an applicant, including receipt of a nexus questionnaire, conduct of a nexus investigation, and audit. The committee reached no consensus and *referred the matter to the drafting committee to make revisions in advance of the fall meeting.*
- Ms. Loftsgard suggested deleting 13.5, which states that protection from audit is available only with respect to types of taxes administered by the department of revenue. *The committee voted to delete section 13.5.*

Section 14:

- Mr. Collins said that taxpayer feedback suggested that the guidelines need a definition of "contact".
- Mr. Getschel said that it is still unclear when sections 13 and 14 are invoked. The consensus of the committee was that the drafting committee should carefully examine definitions in these two sections.
- Ms. Wicks expressed concern about how "nexus investigation" and "contact" work.
- A committee member suggested using the definition of "contact" contained in the amnesty portion of the Streamlined Sales Tax Agreement.

- Ms. Loftsgard suggested being specific about what happens to a taxpayer who fails to assert its protection from audit by following the procedure of section 14.2 (giving notice to the Commission in a prescribed manner).

Section 15:

- Mr. Collins suggested the addition of deadlines for the Commission and states to process work to complement those applicable to the taxpayer.
- Mr. Marrelli inquired as to the repercussions if a state did not reply in sufficient time, and whether the contract should automatically be deemed denied. Ms. Martin suggested that it should not since that would only hurt the taxpayer.
- Mr. Collins related that a practitioner had told him that 14 days is too short a deadline for a taxpayer to reply to a state. Ms. Martin agreed.
- Mr. Collins said that he is concerned that taxpayers would delay the process in order to advance the lookback period at the beginning of a new tax year.

Section 16:

- *Ms. Martin moved to eliminate sections 16.5 and 16.6, which the committee approved by vote. These sections allowed a disclosant to close a File and later open a file with a refreshed lookback date as if the first File had not existed.*

Section 17: No comments

Section 18: No comments

Mr. Collins asked the drafting committee to incorporate changes and send out a revised draft without delay. Mr. Shimkin said that he would issue an invitation to each member of the Nexus Committee, particularly those who participated previously, to join the drafting committee.

The committee consensus approved having a Nexus Committee teleconference in advance of the November Nexus Committee meeting in order to streamline the committee's work at the November meeting.

Mr. Lard (COST) said that procedures are an important issue to members of his organization. He said that he will try to have written comments prior to the fall meeting of the Nexus Committee.

In response to a question, Mr. Huddleston reaffirmed the Commission's commitment to safeguard disclosant and taxpayer information and to use such information collected as a result of voluntary disclosure only for limited purposes related to voluntary disclosure.

G. The committee entered closed session

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