

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 behalf of member states. 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, the taxpayer receives a benefit from each participating state, usually relief of all penalty and waiver of all back tax except that from the *lookback period*, which is usually the prior three or four years (state policies 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 fine. 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

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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, and as such, is a state instrumentality. However, 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 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. When a state opts out of a particular section, it is noted by footnote.

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

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- 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. Ineligibility

- 5.1. 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, each state may make its independent decision on the matter, taking into consideration extenuating circumstances, such as passage of time.¹ See §14.1 for the definition of *contact*.
- 5.2. 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 order to conduct its business, taxpayers wishing to remain anonymous to the NNP should 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:

¹ 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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- 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. Accidental Disclosure of 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 accidentally identifies the applicant (except to the extent the taxpayer has given its written consent to 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 the primary responsibility of the taxpayer.
- 7.2. Neither the NNP nor a state shall attempt to learn the identity of an anonymous applicant except when the taxpayer voluntarily discloses it, whether as a result of completing an MVD contract or otherwise.
- 7.3. 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:
 - 7.3.1. Make no use of the identity; and
 - 7.3.2. Conduct itself as if the identity had never been disclosed.

8. Mistaken Filing or Payment to State

- 8.1. If a state receives notice that it mistakenly received a return, filing, or payment, the state shall:

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- 8.1.1. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received; and
 - 8.1.2. Apply a mistaken payment (or payments) to the tax owed, apply any remainder to interest, and refund any further remainder to the taxpayer.
 - 8.2. The state shall not be required to refund a mistaken payment except to the extent it exceeds a taxpayer's tax liability at the end of the MVD process.
 - 8.3. Notwithstanding §8.1.1, the state may process a mistakenly received registration or filing.
9. Mistaken Filing or Payment to NNP

- 9.1. If the NNP receives notice that it mistakenly received a return, filing, or payment other than of a collected fiduciary tax, the NNP shall:
 - 9.1.1. At the applicant's option, either return, destroy, or retain for future use the mistaken return, filing or payment;
 - 9.1.2. Make no use of mistakenly received information except as the taxpayer permits; and
 - 9.1.3. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received.
- 9.2. 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.

10. Premature or Incomplete Filing or Payment to NNP

- 10.1. 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.
- 10.2. 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 §15), NNP may return the received items to the sender.

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10.3. Standard deadline procedures shall apply, including the deadline to close an inactive *case* or *file*.

11. Gross Misrepresentation

11.1. If a taxpayer's *case* is open in any state and 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:

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

11.1.2. 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

11.1.3. Decline to knowingly assist this taxpayer with MVD again.

11.2. 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 either the taxpayer or its tax practitioner. If after 10 days good cause has not been shown, the NNP shall:

11.2.1. Inform states that have received the taxpayer's application of the taxpayer's identity, and present to them the evidence of gross

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misrepresentation (evidence affecting one state but not another shall be disclosed only to the affected state);

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

11.2.3. Decline to knowingly assist this taxpayer with MVD again.

11.3. 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 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 shall:

11.3.1. 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

11.3.2. 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).

12. Withdrawal

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

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

12.3. *Protection from audit* per §13 ceases at 12:01 AM on the calendar day immediately following withdrawal.

13. Protection from Audit

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- 13.1. *Protection from audit* means that, upon receipt of notice per §14.2, 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 and the type of tax at issue, pending that taxpayer's timely and proper completion of its MVD.
- 13.2. Provided that the state (or the Commission on behalf of the state) has not *contacted* (see §14.1) the taxpayer, it is *protected from audit* 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 §13.3. Post mark dates shall be honored as the date of receipt.
- 13.3. NNP shall *open a file* with respect to one or more types of tax upon receipt of a writing from or on behalf of the taxpayer that includes all of the following elements:
 - 13.3.1. A statement that the taxpayer intends to pursue MVD with respect to that state;
 - 13.3.2. A statement of the tax type(s) with respect to which MVD is sought;
 - 13.3.3. 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."
- 13.4. *Protection from audit* 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 audit* ceases at 12:01 AM on July 9.
- 13.5. Absent a contrary written statement from the state, *protection from audit* is available only with respect to tax types that are administered by the state's department of revenue (by whatever name), which is the state's primary tax collection and tax enforcement body. For example, by whatever name they may be called, taxes measured by sales of tangible personal property, use of tangible personal property, sales of certain services, gross receipts, net income, and net worth are usually administered by a state's department of revenue. Taxes measured by sales of communication services and insurance premiums usually are administered and collected by another state

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agency and would therefore not be eligible for *protection from audit* absent a contrary written statement from the state.

14. State Contact While *Protected From Audit*

14.1. 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, and a notice of audit or assessment.

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

14.2.1. 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

14.2.2. 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 *protection from audit* as described by NNP Procedures of Multi-state Voluntary Disclosure."

14.3. 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, audit, 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 type(s) of tax.

14.4. If a taxpayer fails to meet a time deadline of the MVD process after *contact* by the state, then *protection from audit* 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 choose to not continue, NNP shall close its *file* on the taxpayer with respect to that state.

15. Time Limits (Deadlines)

- 15.1. The following time limits (deadlines) apply to the taxpayer for the purpose of determining whether the taxpayer is *protected from audit*. Failure to meet a time limit shall suspend the taxpayer's *protection from audit* until the action in question is completed and, in some cases as noted, result in closure of the *file*.
 - 15.1.1. NNP *opens a file* (see § [insert number]) until NNP receives a properly prepared Application: 14 days.
 - 15.1.2. Taxpayer receives draft contract until taxpayer responds to draft contract by either accepting or requesting changes (may run concurrently with period from *open file* to submit application): 14 days. The draft contract is the text NNP will send to the indicated states as part of the taxpayer's MVD proposal.
 - 15.1.3. Taxpayer responds to state counter-offer to draft contract or state request for additional information: 14 days. The taxpayer shall have 14 days to respond to each subsequent counter-offer or request for additional information.
 - 15.1.4. 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 returns and payment: 28 days.
 - 15.1.5. Notwithstanding the requirement of § [insert immediately preceding § number re: 28 days to return signed contract], an MVD draft contract signed by a state shall remain a valid offer to the taxpayer for 90 days from the day on which the taxpayer received it (protection from audit is lost 28 days after receipt). 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 issues an extension in writing.
- 15.2. 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 audit*. *Closing the file* means that the taxpayer must apply from the beginning if it wishes to pursue MVD.
- 15.3. Except when the NNP closes a taxpayer's *file* due to inactivity for 90 or more days after loss of *protection from audit*, the taxpayer is free to miss any deadline it chooses without consequence other than temporary loss of *protection from audit*. Therefore, the NNP may, without specific state

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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.

16. Definitions and Miscellaneous Time Procedures

16.1. Days are calendar days unless the text clearly states otherwise.

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

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

16.4. A filing or document shall be construed to have been received on the date of its postmark if sent by United States Postal Service, or on the day relinquished to a private overnight delivery or courier service with instructions to deliver the filing or document in the regular course of business.

16.5. A taxpayer may re-open a closed *file*, or *open* a new *file*, by submitting a fresh application and beginning the MVD process as if the first *file* had never existed.

16.6. A taxpayer who re-opens a *file*, or opens a new *file*, shall receive a look-back date as if it had applied for the first time.

16.7. 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.

16.8. *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(X), such as MTC 09-40 or MTC 09-101.

16.9. *Case* means that subset of a *file* that applies to only one state and one taxpayer, e.g., MTC 09-40 ND or MTC 09-101 MA

17. Electronic Communications

17.1. 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.

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- 17.2. 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.

- 17.3. NNP may communicate with states and taxpayers through the internet, including its world wide web and electronic mail features. However, NNP shall under no circumstance 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, and address. 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.

18. Non-Member States

- 18.1. 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.

- 18.2. 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.