Multistate Tax Commission

Multistate Voluntary Disclosure Program Procedures

1. Definitions

1.1 The "Multistate Voluntary Disclosure Program" ("MVDP") is part of the Multistate Tax Commission's ("Commission") National Nexus Program ("NNP") and consists of an agreement between the Commission and each participating state to encourage multistate taxpayer compliance. The MVDP provides a process by which a taxpayer that has not previously filed returns for taxes administered by a participating state can apply to one or more participating states through the MVDP to seek a voluntary disclosure agreement ("agreement") with the state to achieve tax-compliant status. In exchange for the taxpayer's compliance as provided in the agreement, the state will waive penalties (unless otherwise indicated in the agreement), back taxes owed for time periods prior to the state's lookback period, and interest on such back taxes. The state's lookback period includes past due tax filing periods for which the taxpayer must file returns and pay back taxes plus interest as part of the agreement. Each state determines its own lookback period. Collected but unremitted tax plus interest must be paid without regard to the lookback period and if the agreement provides, without waiver of penalties.

1.2 "State" refers to a state tax department of one of the fifty United States and includes the District of Columbia. A "participating state" refers to a state that, at the time it has entered into a voluntary disclosure agreement with a taxpayer, has entered into an agreement with the Commission to participate in the NNP and MVDP.

2. Role of the Commission

NNP staff are employees of the Commission and represent participating states when communicating with taxpayers concerning processing applications and completion of agreements under the MVDP.

3. Application Procedures

3.1 As of the latest revision date of this document, all participating states apply these procedures to applications submitted and agreements entered into under the MVDP except as set forth below:

3.1.1The D.C. Office of Tax and Revenue participates in the MVDP, but applicants through the MVDP will also need to submit an online voluntary disclosure request to the

D.C. Office of Tax and Revenue on its website and proceed through its online voluntary disclosure program.

3.1.2 The Michigan Department of Treasury participates in the MVDP but prepares its own voluntary disclosure agreements, and applicants will need to adhere to its procedures in completing those.

3.1.3 The New Mexico Taxation and Revenue Department participates in the MVDP, but applicants will be required to participate in its managed audit program and adhere to its procedures.

3.1.4 South Carolina Department of Revenue participates in the MVDP but requires the applicant to disclose its identity prior to the Department agreeing to execute a voluntary disclosure agreement.

3.1.5 The Texas Comptroller participates in the MVDP but prepares its own voluntary disclosure agreements, and applicants will need to adhere to its procedures in completing those.

3.2 These procedures are specific to the MVDP and do not apply to a participating state's own independent voluntary disclosure program or applicable rules and policies.

3.3 Participating states acknowledge that taxpayers entering into agreements under the MVDP do so in reliance on these procedures.

4. Eligibility

4.1 A taxpayer may submit an application and participate in the MVDP unless it is ineligible, as describe in Paragraph 4.2. The participating state has the discretion and ultimate authority to accept or reject a taxpayer's application.

4.2 A taxpayer who has had prior contact with a participating state concerning a tax type is ineligible to participate in the MVDP with respect to that state and tax type. "Prior contact" includes at any time in the past registering, filing a tax return or making a tax payment with respect to that tax type and state, or receiving a contact (as defined in Section 12) from that state (including such contact by the Commission on behalf of that state). If a state contact does not specify a specific tax type, it is construed to be with respect to all tax types.[1]

4.3 A taxpayer who would be ineligible to participate in the MVDP due to prior contact with a state but who believes special circumstances may apply should provide a detailed explanation of the prior contact and special circumstances in the application (including why, when, the results, etc.). NNP staff may then inquire of that state whether it would consider the application and inform the taxpayer of the results of the inquiry.

[1] A state contact with Texas may at the state's option be construed to be with respect to any tax type, without regard to whether that tax type 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.

5. Anonymity and Disclosure

5.1 A taxpayer may, but need not, be anonymous to the Commission during the MVDP process up until execution of the agreement. Taxpayers wishing to remain anonymous to the Commission may apply through a representative such as an attorney or tax advisor. A taxpayer choosing to remain anonymous must provide the Commission in the application taxpayer or representative contact information, including taxpayer or representative name, telephone number, e-mail address, U.S. Postal Service address, and street address.

5.2 In the event the Commission knows the taxpayer's identity, it shall not knowingly release it to any other party under any circumstances except: (1) to a state after an agreement with that state has been signed by the taxpayer; (2) to any other party with the taxpayer's written consent; or (3) by order of a court of competent jurisdiction.

5.3 Participating states agree not to require, whether by court order or otherwise, that the Commission release a taxpayer's identity except: (1) to a state after an agreement with that state has been signed by the taxpayer; or (2) to any other party with the taxpayer's written consent.

6. Disclosure of Taxpayer's Identity

6.1 The Commission shall take reasonable care to review of 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 Commission 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 taxpayer's responsibility.

6.2 Neither the state nor the Commission shall use information acquired as a result of a taxpayer's participation in the MVDP to develop independent sources of information about the taxpayer for the purpose of discovering its identity except to confirm taxpayer representations made in the application or agreement. Neither the Commission nor a state shall attempt to learn the identity of a taxpayer in the MVDP except: (1) when the taxpayer voluntarily discloses it as a result of executing an agreement or otherwise; (2) in the course of governmental activity that does not use any information acquired as a result of the taxpayer's participation in the MVDP; or (3) to confirm taxpayer representations made in the application or agreement.

6.3 Except to the extent that the taxpayer consents otherwise in writing or the state is acting pursuant to Section 6.2(3), if a state learns the identity of a taxpayer before the agreement with that state is in effect, the state shall: (1) not make use of the identity; and (2) conduct itself as if the identity had not been disclosed.

6.4 A state may disclose the taxpayer's identity and related information if required to do so pursuant to an inter-government exchange of information agreement or by law.

7. Opening a Voluntary Disclosure Case (see Subsection 16.6 and 16.7 definitions of "file" and "case")

7.1 A voluntary disclosure case with respect to a taxpayer, state and a tax type is considered opened when the Commission receives a properly completed application electronically submitted to the Commission using the link provided on the Commission's website.

7.2 Having an open case means that the taxpayer is protected from discovery (as defined in Section 12.1) as to the participating states applied to beginning 12:01 AM (Eastern time) on the calendar day following the Commission's receipt of the electronically submitted application and ending on the calendar day following expiration of a time limit (deadline) as set forth in Section 13.

8. Mistaken Filing or Payment to State

If a state receives agreements, returns or payments intended for another state and sent by mistake, the state shall return the mistakenly sent items to the sender.

9. Mistaken Filing or Payment to Commission

If the Commission receives notice that it mistakenly received a return, filing, or payment, the Commission shall at the applicant's option either return, destroy, or retain for future use the mistaken return, filing or payment.

10. Withdrawal

10.1 A taxpayer may withdraw an application to a state without prejudice at any time before the state receives the taxpayer-signed agreement, return, or payment to that state. The taxpayer will be required to submit a new electronic application if the taxpayer later decides to re-apply.

10.2 An application withdrawal requested by a taxpayer shall be in writing to Commission staff and shall identify the states from which withdrawal is sought.

10.3 Protection from discovery under Section 11 ceases at 12:01 AM (Eastern time) on the calendar day immediately following withdrawal.

11. Protection from Discovery

11.1 Protection from discovery means that, upon receipt of a properly completed and electronically submitted application, the Commission and the participating state applied to shall suspend with respect to an eligible taxpayer (see Section 4.2) so protected, all inquiry and other enforcement activity (except criminal enforcement activity), with respect to that taxpayer's non-filer status and the tax type it seeks to voluntarily disclose, pending that taxpayer's timely completion of an agreement in accordance with Section 13 or an extension granted by the state or the Commission.

11.2 Provided that the state (or the Commission on behalf of the state) has not already contacted (see Section 12.1 definition of "state contact") the taxpayer, it is protected from discovery in a state with respect to a tax type beginning at 12:01 AM (Eastern time) on the calendar day following the day that the Commission receives from the taxpayer a properly completed and electronically submitted application for voluntary disclosure to that state for that tax type pursuant to Section 7.1.

11.3 Protection from discovery ends at 12:01 AM (Eastern time) on the day following the last day available to a taxpayer to meet a deadline as set forth in Section 13 or an extension granted by the state or the Commission.

12. State Contact While Protected From Discovery

12.1 "State contact" means any communication with respect to a tax type from state personnel to a person with respect to that person's actual or potential tax obligation in that state with respect to that tax type. Examples of a state contact include but are not limited to: a telephone call or correspondence from a state revenue official, a nexus questionnaire mailed or e-mailed to the taxpayer, and a notice of audit or assessment.[2] A state contact is deemed received when e-mailed, mailed or sent. If a state contact dos not specify a specific tax type, it is construed to be with respect to all tax types.[3]

12.2 For purposes of Section 12.1, "person" means either a natural person or entity. With regard to a state whose laws allow for unitary, combined, or consolidated filing of returns, all constituent entities of a unitary or combined group, a group filing on a consolidated basis, or a group otherwise affiliated, are a single person for purposes of Section 12.1 without regard to whether the state was aware of the existence of such entity or of its relationship to its constituent entities.

12.3 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: (1) inform the Commission of the state contact, including the name and contact information of the state person who made the state contact and a copy of any writing that was part of the state contact; and (2) provide the Commission this, or a similar written statement: "MTC 000000 gives the Commission permission to disclose its identity to the state of [state name] for the purpose of protection from discovery as described by the Multistate Tax Commission Multistate Voluntary Disclosure Program Procedures."

12.4 Upon proper notice, the Commission shall timely inform the state that the taxpayer has submitted an application under the MVDP to that state and the tax type(s) and the state shall suspend its inquiry or other compliance-related activity pending the taxpayer's timely completion of an agreement or timely withdrawal of the application under the MVDP.

12.5 If a taxpayer fails to meet a time deadline of the MVDP process after contact by the state, then protection from discovery shall cease and the state may continue its state contact, inquiry, or compliance-related action. The state should advise the Commission whether it is

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

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

willing to further consider the MVDP application and the taxpayer should advise the Commission whether it wishes to continue the MVDP application. If either the taxpayer or the state chooses not to continue, the Commission shall close the case for that state.

13. Time Limits: Taxpayer

13.1 The following time limits (deadlines) apply to the taxpayer for the purpose of determining whether the taxpayer is protected from discovery. Except to the extent that the Commission or state grants a written extension, failure to meet a time limit shall suspend the taxpayer's protection from discovery until the action in question is completed and, in some cases as noted, result in closure of the file.

13.1.1 The Commission opens a file (see Section 7) upon receipt of a properly completed and submitted electronic application.

13.1.2 Taxpayer has 28 days from receiving the standard agreement form from the Commission until taxpayer responds to the standard agreement form by either approving or requesting changes. Once approval is received, the Commission will prepare the draft agreement and send it to the indicated states along with the taxpayer's redacted application.

13.1.3 Taxpayer has 28 days to respond to a state counter-offer to the draft agreement. Taxpayer has 28 days to respond to each subsequent counter-offer.

13.1.4 Taxpayer has 14 days to respond to a request for information from a state or the Commission. Taxpayer has 14 days to respond to each subsequent request.

13.1.5 Taxpayer has 60 days from receipt of a state-signed agreement until the taxpayer sends to the state pursuant to instructions provided by the Commission the taxpayer-signed agreement together with all required completed registration forms, filings, returns and payment.

13.1.6 Notwithstanding the requirement of Section 13.1.5, an agreement signed by a state shall remain a valid offer to the taxpayer for the period of time stated in the state-signed agreement or, if no period is stated, 90 days from the day it was e-mailed, mailed or sent to the taxpayer or its representative. It may be returned to the state signed by the taxpayer at any time within that period together with all required completed registration forms, filings, returns and payments, after which time it shall be void, unless the Commission or state issues an extension in writing.

13.2 The Commission may at is 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 submit a new electronic application online if it wishes to pursue the MVDP.

13.3 Except when the Commission closes a taxpayer's file due to inactivity for 90 or more days after loss of protection from discovery, the Commission will normally refer requests for extension to the state, but may, without specific state authorization, grant one or more short extensions of time to a taxpayer upon demonstration of extreme hardship that the taxpayer could not have reasonably prevented.

14. Time Limits: State

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

14.2 The state will endeavor to adhere to the following time limits.

14.2.1 The state has 42 days from receipt of draft contract until it sends its response to the Commission.

14.2.2 The state has 42 days to respond to a counter-offer.

14.2.3 The state has 42 days to send bill for interest to taxpayer.

15. Time Limits: Commission

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

15.2 The Commission shall endeavor to adhere to the following time limits.

15.2.1 Commission has 7 days from receipt of application for voluntary disclosure to send standard agreement form to taxpayer.

15.2.2 Commission has 7 days from receipt of taxpayer's approval of standard agreement form to send draft agreement and application to state.

15.2.3 Commission has 2 business days to forward requests for information, counter-offers, and other communications.

15.2.4 Commission has 7 days to forward state-signed agreement to taxpayer.

15.2.5 Commission has 7 days to forward taxpayer-signed agreement, returns and payments to state.

16. Miscellaneous 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 using the first day to be counted as the calendar day immediately after the day in which the initiating action took place.

16.4 A filing or document mailed via U.S. mail or sent via delivery service by a taxpayer shall be construed to have been received by a state or by the Commission on the date of actual receipt, without regard to its postmark and the date it was mailed or sent.

16.5 No return, filing, or payment that was returned to the sender shall count with respect to any time deadline of these procedures.

16.6 "File" means the total number of state cases existing with respect to an application. It is assigned a six-digit file number in the format MTC 000000.

16.7 "Case" means that subset of a file that applies to only one state and one taxpayer, e.g., for a North Dakota case: MTC 000000 ND.

16.8 The MVDP process is complete with respect to a state when that state and the taxpayer have each signed the agreement and the state has received all tax returns (or spreadsheets for sales/use tax if acceptable to the state), payments and other required documents due under the agreement, including but not limited to any interest or other amounts that the state billed in accordance with the agreement.

17. Electronic Communications

17.1 Communications by fax machine, electronic mail (e-mail), and similar technological means shall count as written communications for purposes of these procedures.

17.2 Agreements may be signed in counterparts, each one of which is considered an original, and all of which constitute one and the same instrument. An electronically scanned and transmitted version (e.g., PDF version) of an original signature, or a verifiable digital signature shall be considered a valid signature.

17.3 The Commission may communicate with states and taxpayers through the internet, including the world-wide web and electronic mail. However, unless authorized in writing by the taxpayer or adequate encryption or reasonable safeguards are used, neither the Commission nor a state shall transfer over the internet in a manner susceptible of interception by an unauthorized person any confidential taxpayer information.