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**Minutes**  
**Nexus Committee Meeting (Open Session)**  
**April 21, 2022**  
**Hotel Albuquerque at Old Town**  
**800 Rio Grande Blvd NW**  
**Albuquerque, New Mexico 87104**

List attendees:

Deanna Acres*	NH
Christina Hall	AL
Steven Alvarez	GA
Phillip Ashley	TX
Chris Barber	MTC
Derek Bell	MT
Kedejah Bethea*	
Karolyn Bishop	WA
Tracy Bjerke*	MN
Michael Bologna	Bloomberg
Krystal Bolton*	LA
Timea Boros	AL
Elissa Borges	DC
Sangita Bose*	NJ
Jarvis Bretton	ID
Gil Brewer	WA
Joyce Carhart*	NE
Jayne Carson*	ND
Cynthia Carpenter*	NE
Mark Chaiken	NM
Claudette Chavez	NM
Susanna Coburn*	RI
Daniel Coleman	NM
Christie Comanita	SSTGB
Wendy Conlin*	MN
Holly Coon	MTC

Clara Cooper*	
Elaine Corrow*	ME
Richard Cram	MTC
Brian D'Angelo*	KS
Cassandra Diemert*	MN
Lila Disque	MTC
Richard Dobson*	KY
Latonia Dooley*	KS
James Douglas*	MN
Steve Eiring*	WI
Nikki Elwood*	NE
Jesse Eisenmenger	Amazon
William Esmond	GA
Cathy Felix	MTC
Shannon Fleischer	ND
Bruce Fort	MTC
John Frasier*	NH
Scott Fryer*	AR
Leslie Fryxell*	AR
Petra Garcia*	AZ
Vicki Gardino	AL
Andrew Gidiere	AL
Felicia Gillis	AZ
Debra Guillory*	LA
Evelyn Gomez*	AR
Janelle Gonzales-Wessels	NM
Stacie Greaud*	LA
Michael Hale*	KS
Frank Hales	UT
Brian Hamer	MTC
Karin Harris*	MN
Aaishah Hashmi*	DC
Helen Hecht	MTC
Virgil Helton	Fast Enterprises
Angie Hillas	UT
Nathan Hoepner	KS
Debra Houck	PA
Ava Huynh*	
Jason Inman*	ME

Bruce Johnson	Tax Cloud
Nicole Johnson*	AZ
Priceless Johnson*	
Rusty Johnson*	TX
Victoria Johnson*	OR
Harold Jones*	TN
Bryan Kelly	WA
Erica Kenney	COST
Karla Koehler*	NE
Maria Koklanaris*	Law 360
Kurt Konek*	IA
Virginia Krueger*	AZ
Rebecca Kulekowskis	IL
John Lewandowski*	ME
Katie Lolley	OR
Mikey Lucas*	OR
Michael Mackiewicz*	ME
Charles Manchester*	ME
Roxanee Maston*	
Angela Matelski	MI
Jonathan May	PA
James McAndrews*	DC
Ashley McGhee*	NC
Perla Mejia	NM
David Merrien	MT
Teresa Miller*	IA
Kevin Milligan*	PA
John Mollenkamp	Intuit
Keyarrow Moore	AL
Deanna Munds-Smith*	AR
Renee Nacrelli	MD
Shannon Nelson*	MN
Victoria Nichols*	KY
Debra Nixon*	LA
Stacie Odom*	NE
Brian Oliner	MD
Manishaban Patel	AZ
Scott Pattison	MTC
Josh Pens	CO

Scott Peterson*	Avalara
Matthew Peyerl	ND
Nancy Prosser	MTC
Mike Ralston*	IN
Tim Reilly*	IA
Nicole Reynolds	AK
Will Rice*	Gen Tax
Katherine Rich*	NE
Shelley Robinson*	UT
Sharon Rogers*	PA
Joseph Royston*	OR
Maria Sanders	MO
Brian Sansoucie*	AR
Jennifer Sargent*	SC
Mark Schoenfeld*	MT
Tom Shaner	ID
Larry Shinder	MTC
Jeff Silver	MTC
Diane Simon-Queen*	MTC
PeTrina Sistrunk*	
Phil Skinner	ID
Drew Smith*	
Andrew Soubel*	Wolters Kluwer
Tiffany Southworth	UT
Scott Spilinek*	NE
Jay Starling*	AL
Kyle St Denny*	MD
Dave Steines*	WI
Connie Szocs*	KS
Matthew Tidwell	AL
Bridgette Thomas*	MS
Christy Vandevender	AL
John Vecchiarelli*	Fast Enterprises
Michaela Virchow*	NE
Charla Wagner*	KS
Anne Whipple*	GA
Jonathan White*	HI
Paul Williams*	Law 360
David Wilson*	AR

Dexter Wilson*	MN
John Wilson*	WI
Natalie Woodland*	ME
Steve Yang	MTC

\*attended by computer/teleconference

Christy Vandevender, Chair (AL), brought the meeting to order at 8:30 am MDT, introductions of attendees were made, and public comment was invited.

### Public Comment

No public comment was offered.

### Minutes

Frank Hales (UT) moved for approval of the minutes of the November 10, 2021 open session portion of the Nexus Committee meeting, and the minutes were approved without objection.

### Nexus Director's Report and Update on Recent Nexus Law Developments since November 10, 2021

Richard Cram, Director of the National Nexus Program, reviewed for the Committee his Update on Recent Nexus Law Developments since November 10, 2021 and the FY 2022 Nexus Program Director's Report to date (as of February 28, 2022). Back tax collections from agreements closed as of February 28, 2022 were \$20,795,503 with 100 executed agreements. Richard advised that an income tax Nexus School is tentatively being scheduled for Oregon in October 2022. He encouraged other states interested in hosting one to contact MTC training staff.

### Discussion and consideration of survey results concerning policy on prior state contact by voluntary disclosure applicants

Richard Cram presented the results of the survey of states participating in the Nexus Program concerning whether any change should be made to the current policy in the Procedures for the MTC Multistate Voluntary Disclosure Program (MVDP) on consideration of applications indicating that the applicant had any prior contact with the state. Currently those procedures provide as one of the eligibility criteria that the

applicant not have any prior contact with the state tax department concerning the tax type that the applicant is seeking voluntary disclosure for. That prior contact could be registration, filing returns, remitting taxes, responding to a nexus questionnaire, receiving an audit notice, etc. Richard Cram advised that currently, MTC staff screens applications that indicate prior contact with a state, advising those applicants with prior contact that they are ineligible to apply for voluntary disclosure through the MVDP with that state, but if the applicant wants to contact that state directly to see if the state will accept an application for voluntary disclosure, the applicant may do so.

The survey results are shown in the attached Memorandum. Of the 24 states responding, 16 indicated that they would not consider an application indicating such prior contact, 1 state indicated that it would, and 8 states indicated they would take a case-by-case approach to such an application. Nineteen states indicated that they would prefer that current policy be retained, and 5 states indicated that they would like to see the current policy changed. Some states also provided comments to their responses, which are shown in the attached Memorandum. Note: Arizona's response was received on the date of this meeting and has been incorporated in these results.

Steven Alvarez (GA) commented that if the prior contact was unrelated to the voluntary disclosure application, the Department would consider the application on a case-by-case basis. As an example, a taxpayer who registered 10 years ago and has not been contacted since then might be considered.

Matthew Peyerl (ND) commented that the Department considers the time length between the application submission date and the prior contact. For example, if the applicant had recently registered for sales tax using the Streamlined Sales Tax centralized registration system, or if the taxpayer responded to a nexus questionnaire and the Department found no nexus, then the Department might still be willing to consider the application. More flexibility on this could increase the number of applications.

Katie Lolly (OR) suggested that the policy could be modified to allow consideration of some types of prior contact.

Frank Hales (UT) recommended that the current policy be kept in place for administrative efficiency. If the applicant has had prior contact with the state, the applicant should contact the state directly concerning that, rather than submitting an application through the MVDP.

Bruce Johnson (Tax Cloud) stated that taxpayers would prefer that the MTC handle through the MVDP those applications that may include prior contact with a state, rather than the taxpayer having to deal directly with the state.

James Douglas (MN) agreed with Frank Hales that the current policy should be maintained.

Scott Spilinek (NE) suggested that the policy could be modified to say that if the applicant is not eligible due to the prior contact with the state, that state may still offer incentives, such as informal penalty waiver, for coming forward should the applicant contact the state directly.

Josh Pens (CO) asked: which is better, have MTC staff screen the applications for prior contact with the state, or have MTC staff forward to the state all those applications?

Frank Hales (UT) responded that MTC staff should continue to screen the applications for prior contact with the state. Frank Hales opposed the idea of stating in the policy that the state could still offer incentives to those with prior contact because that might give the applicant false hope that the applicant would be eligible for voluntary disclosure relief.

Matt Peyerl (ND) asked how MTC staff would differentiate the varieties of prior state contacts.

Tom Shaner (ID) agreed with Frank Hales that the policy should not be modified to say that there still might be some benefit even if there is prior state contact.

Bruce Johnson (Tax Cloud) responded that it would be helpful if the results of this survey were posted on the MTC website and made publicly available.

Jay Starling (AL) asked what is considered a prior contact that would bar eligibility for voluntary disclosure?

Bryan Kelly (WA) responded that for the Department, it would be enforcement contact (notice of audit or assessment). The Department wants to expand eligibility for voluntary disclosure relief to applicants with prior registrations and did so in a recent pilot project that has been successful.

Christie Comanita (SST) stated that the Streamlined Sales Tax Governing Board website currently provides a “disclosed practices” matrix on how prior registration with a state affects eligibility for voluntary disclosure. She indicated that the 24 Streamlined Sales Tax states have disclosed their policy on this in that matrix.

Christy Vandevender (AL) stated that unless there were any objections to the suggestion by Frank Hales that the current policy in the MVDP Procedures should be maintained, making an application ineligible for the MVDP if the applicant has had prior contact with the state. No objections were raised to Frank’s suggestion.

Richard Cram stated that he would review the MTC Nexus Program webpage concerning the information posted on this policy and update it if necessary.

#### Presentation on state tax issues concerning nonfungible tokens (NFTs)

Richard Cram gave a Powerpoint presentation (posted on the MTC website) on state tax issues concerning nonfungible tokens (NFTs).

#### New Business

Chair Christy Vandevender asked if there was any new business, and none was proposed.

#### Closed Session

The committee entered closed session at 11:05 am MDT to discuss matters protected from disclosure.

#### Open Session



Frank Hales (UT) moved for adjournment and with no objection, Chair Christy Vandevender adjourned the meeting at 12:00 pm EDT, with nothing to report from the closed session.

MEMORANDUM

To: Christy Vandevender, Chair, Nexus Committee

From: Richard Cram

Re: State Survey results on eligibility requirement that taxpayer not have prior contact with state concerning tax type for which voluntary disclosure relief is sought

Provided below are the survey questions presented to states participating in the MTC Nexus Program and their responses:

Currently the Procedures for the MTC Multistate Voluntary Disclosure Program (MVDP) provide as one of the eligibility criteria that the applicant not have any prior contact with the state tax department concerning the tax type that the applicant is seeking voluntary disclosure for. That prior contact could be registration, filing returns, remitting taxes, responding to a nexus questionnaire, receiving an audit notice, etc. We are finding that some states appear to be willing to accept and process voluntary disclosure applications even when the taxpayer has had prior contact with the state concerning the tax type applied for.

1. Would your state consider an application for voluntary disclosure that indicates the applicant had prior contact with the state tax department concerning the tax type for which that applicant is applying for voluntary disclosure relief?
  - a. No **AL AZ CO IA ID KY MN MO OR RI SD TN TX VT WA WV (16)** \_\_\_
  - b. Yes **HI** \_\_\_
  - c. We would consider it on a case-by-case basis **GA HI KS MA MD ND NE UT (8)** \_\_\_ (please describe in the comment area below the prior contact circumstances making the applicant ineligible for voluntary disclosure and the prior contact circumstances where the applicant would still be considered eligible for voluntary disclosure in your state)

AZ Comment: VDA applications from taxpayers that have been contacted by collections, audit, or Auditor General would generally not be considered, however, if the taxpayer underreported or underpaid for the period, the application may be reviewed on a case by case basis and moving forward would be dependent on the facts of the case.

CO Comment: We have had cases where a taxpayer registered within the prior 60-90 days then approached us to join the program. We have been willing to work with these on a case by case basis, especially if they do not have any activity on their account yet.

GA Comment: Georgia currently accepts Voluntary Disclosure Agreement (VDA) applicants with prior contact concerning the tax type applied for if the contact is: previous/current registration, previous/current return filing, or receiving a notice unrelated to the reason for the VDA (e.g., payment for a previously filed return). For example, Georgia accepts VDA applications from applicants that are registered and filing returns, but did not report or pay all tax that was due.

Georgia would not accept VDA applicants with prior contact concerning the tax type applied for if the contact is related to registering or filing of returns, an audit notice or nexus questionnaire, or any other contact from the Department regarding the reason for the VDA.

ND Comment: For income taxes, the current answer would be generally be “no” to a formal VDA agreement. However, based on the circumstances, we may agree to accept only 3 years and waive penalty, so the results are similar to a VDA, but just without the agreement. For sales taxes, we would consider the same if the company was previously registered or had a prior contact.

HI Comment: Hawaii would allow MTC VDAs (for taxpayers with prior contact with the State) for business activities that taxpayers can show reasonable cause for failure to pay the tax on a case by case basis.

KS Comment: If the applicant has been contacted by the MTC or by the Department regarding the tax to be disclosed the applicant would not be eligible. If the applicant has been contacted for an audit or is under audit, the applicant would not be eligible for the program, or if the failure to file is due to fraud or gross negligence on the applicant’s part.

MA Comment: We would consider an application for voluntary disclosure on a “case by case” basis where there has previously been contact with Massachusetts DOR. Two recent examples where we still accepted a VDA with prior contact are listed below. We feel strongly that any determination should be made on a case by case basis using the particular set of facts and circumstances as it relates to each taxpayer.

Example #1

Company A is a internet vendor with no physical presence in Massachusetts. They have no history of filing or paying sales tax in Massachusetts. During an internal review at the end of December 2021 they realize as a result of strong internet sales during the quarter that they may have exceeded the “economic nexus” threshold requiring them to collect sales tax in Massachusetts along with several other states. The previous nexus threshold of \$500,000 in sales to customers was reduced to \$100,000 towards the end of 2019. Their accountant suggests that they immediately begin to file and collect sales tax once they discover they have met the nexus threshold for filing and that they will do an analysis for Massachusetts and each other state depending on their own nexus standards to see exactly if and when the thresholds were met. Massachusetts is notified in February 2022 that the company discovered they should have filed and remitted sales tax back to October of 2019 and requests waiver of late pay and late file penalties for all delinquent periods. In this case they discovered they had a filing responsibility December 2021 and began collecting sales tax. Further analysis revealed they also had a filing responsibility back to October 2019 and contacted us two months after registering and filing sales tax returns for January and February of 2021. Technically they do not meet the requirements for the voluntary disclosure program because of prior registration for sales tax. In this and similar cases, however, we have let them into the program and waived associated penalties for the lookback period. Two months after registration and subsequent to their analysis they realize that they met the filing threshold for years prior as well and have made a good faith effort to file for those delinquent back periods.

#### Example #2

Company B is organized in New Jersey and operated a small manufacturing operation in Massachusetts from 2008 until 2014. They had a physical presence in Massachusetts and filed corporation excise tax and withholding tax during that period. In 2015 they closed the Massachusetts location and cancelled their corporate excise and withholding registrations because they no longer had a filing responsibility with Massachusetts. This same New Jersey corporation (same FID) in 2021 realizes that they now have a corporate excise tax obligation with Massachusetts again starting in 2019 even though they closed up shop there in 2015. They no longer have a physical location in Massachusetts but because of recent legislation they now have “economic nexus” because sales made to customers located in the state have exceeded the \$500,000 threshold. They file their 2021 corporate excise return with Massachusetts and request that they be able to file their delinquent 2020 and 2019 returns through the VDA program. Once again, technically they would be disqualified from participating in the VDA program because of prior registration (2014) and they

just filed a 2021 return. In this case based on the circumstances we would waive related late pay and late file penalties for 2019 and 2020 corporate excise tax returns.

MD Comment: As long as the taxpayer hasn't been contacted for an audit or a bill has already been sent out or a letter has been mailed demanding a return be filed, etc. Basically anything that you would put a taxpayer in a work queue for audit or collections would disqualify them from a VDA. A prior contact such as registration, filing returns, remitting taxes, responding to a nexus questionnaire would not be disqualifying acts. However, receiving an audit notice would be a disqualifying act.

NE Comment: Nebraska would consider any applicant ineligible for a voluntary disclosure if we have had prior contact for an audit or have sent them a nexus questionnaire. Any other type of prior contact would be judged based on the facts.

RI Comment: Rhode Island may offer a different program, such as the "Managed Audit" program, to an entity currently registered for a tax type, who does not qualify for voluntary disclosure.

TX Comment: Texas will not allow a taxpayer to come into a VDA if they were previously contacted. However, if a taxpayer came forward on their own to register and/or file returns and very quickly requested a VDA, then we would allow the VDA since they recently came forward on their own.

UT Comment: We would consider it on a case by case basis depending on what the contact was. However, if the contact was an audit or non-filing notices we would not accept the application.

2. Does your state support retaining the current requirement that an applicant for voluntary disclosure through the MTC MVDP must not have had prior contact (registration, filing returns, paying taxes, responding to a nexus questionnaire, receiving an audit notice, etc.) with the state concerning the tax type applied for?

- A. Yes AL AZ CO IA ID KS KY MA MN MO OR RI SD TN TX UT VT WA WV (19)
- B. No GA HI MD ND NE (5)

3. If your answer to #2 was “no,” please state how your state would like to see this eligibility requirement modified:

GA Comment: We recognize that most states do not accept VDAs from applicants that have been registered or filed returns for the tax type of their VDA request. However, we would prefer if MTC could communicate that some states allow prior contact if the contact is completely unrelated to the reason for the VDA, and list the states that will consider VDA applicants with prior contact.

MD Comment: Prior contact is fine as long as it isn't the kind mentioned in response to question 1. We greatly appreciate all attempts by taxpayers to come into compliance with Maryland's tax laws and make payment for taxes due. A prior contact such as registration, filing returns, remitting taxes, responding to a nexus questionnaire would not be disqualifying acts. However, receiving an audit notice would be a disqualifying act.

ND Comment: We would be agreeable to modifying the restriction on previous registration or prior contact, or both. We are open to alternatives, but a case-by-case basis may be difficult to define within the MTC VDA program. But perhaps we could come up with a few bright-line tests that would allow for more applicants to be eligible.

Some of the case by case considerations we use are –

- Nature of in-state activity
- Years since prior contact
- Information provided pursuant to the prior contact
- Ownership changes
- Changes in the business' activities
- Relevant law or administrative changes

NE Comment: As outlined in #1 above, Nebraska would consider each VDA on a case-by-case basis.