

## Memorandum

To: Christy Vandevender, Chair, Nexus Committee

From: Richard Cram

Date: November 10, 2021

Re: Sales/use Tax Economic Nexus Lookback Periods Over Three Years After *Wayfair*

The Nexus Program publishes on its website the lookback periods that states use in Multistate Voluntary Disclosure Program (MVDP) agreements. Attached as Exhibit A is the current lookback period chart for participating states published on the MTC website. States' lookback periods generally range from the prior 3 to 5 tax years and are stated in months for tax types that have monthly filing periods. After *South Dakota v. Wayfair*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 2080 (2018) overruled the *Quill Corp. v North Dakota*, 504 U.S. 298 (1992) physical presence nexus rule and states implemented sales tax economic nexus thresholds, the MVDP commenced using lookback periods for such states reflecting start dates that coincided with the state's sales tax economic nexus implementation date when the taxpayer applied only for sales/use tax and the application indicated only sales tax economic nexus with the state (no physical presence). This was done to address any concerns that sales tax economic nexus was being applied retroactively. Attached as Exhibit B is the list of sales tax economic nexus lookback period start dates for states implementing sales tax economic nexus (also published on the MTC website).

More than three years has now passed since the *Wayfair* decision. For some states that normally use a 36-month lookback period for sales/use tax and that have also implemented sales tax economic nexus, the regular 36-month lookback period may result in a later start date for the lookback period than would occur if the state's sales tax economic nexus implementation date is used for the lookback period start date. For example, Vermont's regular sales/use tax lookback period is 36 months, as shown on Exhibit A. Vermont's sales tax economic nexus implementation date is shown on Exhibit B as July 1, 2018. If the taxpayer applied to the MTC MVDP on November 1, 2021 for voluntary disclosure with Vermont for sales/use tax only and has only economic nexus with the state, then using the July 1, 2018 date as the start of the lookback period would provide a longer lookback period than would result if the

regular lookback period (36 months) were used. Minnesota and North Dakota use regular sales/use tax lookback periods of 36 months as shown on Exhibit A, and their sales/use tax economic nexus implementation dates are shown on Exhibit B as October 1, 2018. Taxpayer applications for these states submitted going forward for sales/use tax voluntary disclosure when the taxpayer has only economic nexus could also result in longer lookback periods than the regular 36-month lookback period, if the state's sales tax economic nexus implementation date is used.

Unless any concerns are raised, MTC staff plans to remove states from Exhibit B, once their sales tax economic nexus implementation dates would result in longer lookback periods than would result if the state's regular sales/use tax lookback period shown on Exhibit A were used in determining the applicant's lookback period. Also, MTC staff requests that all states review the lookback period charts shown in Exhibits A and B and notify me if there are any errors that need to be corrected.

Exhibit A

## Lookback Periods for States Participating in National Nexus Program

The lookback period includes the prior complete tax filing periods for which a taxpayer applying for voluntary disclosure relief must generally file returns and pay the past-due tax liability plus interest in return for the state's waiver of tax liability for periods prior to the lookback period and penalties. The lookback period also includes the current incomplete tax filing period, the return for which must be timely filed and tax paid when due. The prior and current tax filing periods are determined based on the date that the application is received by National Nexus Program staff. Each state determines its own lookback period. Lookback periods may vary between states. The lookback periods published below are provided for guidance purposes only to assist taxpayers seeking voluntary disclosure relief in estimating the amount of past-due tax liability payment that may be required. For a state that has implemented sales/use tax economic nexus, if the taxpayer has only sales/use tax economic nexus and no physical presence in that state, the sales/use tax lookback period would not commence earlier than the state's sales/use tax economic nexus implementation date. For states that have adopted sales/use tax economic nexus, please see the chart entitled "Sales/Use Tax Lookback Periods for Taxpayers With Economic Nexus Only." As each state makes the final determination of the lookback period, following review of the taxpayer's application, the guidance below does not constitute specific advice and accordingly should not be relied upon without further confirmation from the state(s). Please note that withholding tax retained from employee salaries and sales and use tax collected from others must be remitted in its entirety, without regard to the lookback period, and may involve non-waivable penalties.

STATE LOOKBACK PERIODS			
Nexus Program States	Income/franchise tax	Sales/Use Tax	NOTES
	Lookback Period (complete prior tax years)	Lookback Period (complete prior months)	
Alabama	3	36	
Arizona	4	48	Lookback period for TPT/use tax is 48 months.
Arkansas	3	36	
Colorado	4	36	
Connecticut	3	36	
D.C.	3	36	Lookback period for franchise tax is 3 prior tax years.
Delaware	5	n/a	Lookback period is normally current year plus 5 previous years, greater in some circumstances.
Florida	3	36	Lookback period includes the 3 years immediately preceding the postmark date of the VDA request.
Georgia	3	36	Lookback period may be reduced/eliminated if no liability or refunds/losses exist.
Hawaii	3	n/a	The lookback period for both the general excise (gross income) tax and corporation net income tax is 3 complete prior tax years plus the current year.
Idaho	3	36	Lookback period may vary depending on the specific facts and circumstances of each request.
Iowa	5	60	Lookback period is one-half the periods normally due, with maximum of 5 years (20 quarters, 60 months).
Kansas	3	36	Kansas will consider allowing a longer lookback period if requested.
Kentucky	4	48	
Louisiana	3	36	Look-back period is 36 months plus any months due for the current calendar year.
Maryland	4	48	
Massachusetts	3	36	Lookback period can be 7 years for an in-state entity.
Michigan	4	48	
Minnesota	4	36	Lookback-period for Minnesota corporate franchise tax, S corporation tax, and partnership tax is generally 4 years (3 lookback years and 1 current year that is ready and available to be filed).
Missouri	4	48	For franchise tax years beginning on or after 1/1/2016, no franchise tax is imposed under RSMO 147.010.
Montana	5	n/a	Montana has no state sales/use tax.
Nebraska	3	36	
New Hampshire	3	36	
New Jersey	4	48	
New Mexico	SEE MANAGED AUDIT PROCEDURES		
North Carolina	3	36	
North Dakota	3	36	While the general lookback period is 3 years, a longer lookback period may apply to circumstances where it is clear a significant taxable presence in the state existed prior thereto.
Oklahoma	3	36	
Oregon	3	n/a	Oregon has no sales/use tax.
Rhode Island	3	36	3 years for income/franchise and 36 months for sales/use.
South Carolina	3	36	
South Dakota	3	36	Lookback period is 3 prior tax years for bank franchise tax.
Tennessee	3	36	Lookback period is 3 prior tax years plus the current year. For both taxes, it could be up to 4 years or 48 months.
Texas	4	48	
Utah	3	36	
Vermont	3	36	
Washington	4	48	Lookback period is the prior 4 calendar years plus the current year through the end of the last completed calendar quarter.
West Virginia	3	36	The franchise tax ceased for taxable years beginning on or after January 1, 2015, under W. Va. Code Section 11-23-6(b)(11).
Wisconsin	4	48	

**Sales/Use Tax Lookback Periods for Taxpayers with Economic Nexus Only**

The states below participate in the National Nexus Program and have adopted sales/use tax economic nexus. If the taxpayer has only economic nexus in the state and does not have physical presence nexus, then the state's sales/use tax lookback period would begin as of the date that the state has implemented sales/use tax economic nexus. The beginning dates for the sales/use tax lookback periods for taxpayers with sales/use tax economic nexus only in the state are shown below. The lookback periods published below are provided for guidance purposes only to assist taxpayers seeking voluntary disclosure relief in estimating the amount of past-due tax liability payment that may be required. As each state makes the final determination of the lookback period, following review of the taxpayer's application, the guidance below does not constitute specific advice and accordingly should not be relied upon without further confirmation from the state(s).

Nexus Program States	Sales/Use Tax
	Economic Nexus Lookback Period Start Date
Alabama	10/1/2018
Arizona	10/1/2019
Arkansas	7/1/2019
Colorado	12/1/2018
Connecticut	12/1/2018
D.C.	1/1/2019
Florida	7/1/2021
Georgia	1/1/2019
Hawaii	7/1/2018
Idaho	6/1/2019
Iowa	1/1/2019
Kansas	10/1/2019
Kentucky	10/1/2018
Louisiana	7/1/2020
Maryland	10/1/2018
Massachusetts	10/1/2019*
Michigan	10/1/2018
Minnesota	10/1/2018
Nebraska	1/1/2019
New Jersey	11/1/2018
New Mexico	See Managed Audit
North Carolina	11/1/2018
North Dakota	10/1/2018
Oklahoma	7/1/2018
Rhode Island	7/1/2019
South Carolina	11/1/2018
South Dakota	11/1/2018
Tennessee	10/1/2019
Texas	10/1/2019
Utah	1/1/2019
Vermont	7/1/2018
Washington	10/1/2018
West Virginia	1/1/2019
Wisconsin	10/1/2018

\*10/1/2017 if 830 CMR 64 H.1.7 applied for period beginning as of that date