To: Nexus Committee

From: Richard Cram

Date: April 24, 2019

Re: Results from Survey dated November 28, 2018

MTC Nexus Program staff sometimes receives voluntary disclosure applications in which one pass-through entity merges into or is purchased by another pass-through entity (such as an LLC, S corporation, partnership or limited partnership). The owners (be they members, shareholders, partners or general/limited partners, and which may include individuals, C corporations, or other pass-through entities), along with the pass-through entities, want to be included in the voluntary disclosure agreement. Owners who are nonresident individuals may request that the state accept composite income tax returns filed by the pass-through entities. In preparing draft agreements for the above situations, it will be helpful for MTC staff to have current guidance from each participating state on how they answer the questions below.

Please respond by email (sent to rcram@mtc.gov) to the following survey questions for your state (one response per state) by December 14, 2018:

1. Is your state willing to include both pass-through entities and their owners within one voluntary disclosure agreement concerning income tax?

Yes: WI GA OR ID KY KS WV UT

No, a separate agreement is required for each pass-through entity and each owner: CT MI MT ND WA

Additional comments:

WI: Any partners/shareholders, trusts, or trust beneficiaries do not qualify for VDA treatment if the pass-through entity has been contacted by WDOR, as shown on our website:

https://www.revenue.wi.gov/Pages/Publications/voldis.aspx

CT: The Department would accept the PE and member's disclosure at the same time and would recognize any withholding that would flow from the PE to the member, but the final agreements would have to be separate.

GA: We would not separately list each owner in the agreement, but will accept Composite Returns & include a waiver of filing requirements for periods prior to the lookback for income derived from the pass through entity.

MN: *It depends on the tax type of the owners of the pass-through entities. If all owners of the pass through are individuals, yes. If the owners are a Corporation, S Corporation, or Partnership, no.*

TX: Texas does not have an income tax. Franchise tax VDA agreements with Texas are with the reporting entity of a combined group. The pass-through entity may or may not be included as an affiliate in the combined group depending on the circumstances. The VDA agreement only covers the entities that were part of the combined group for the specific periods each entity was part of the combined group. If an affiliate should have been reported under a different reporting entity or should have filed as a single entity during any part of the period, then a separate agreement would be required to address the additional returns.

WA: The state of Washington does not have an income tax but we are a single entity state. Therefore, generally we would require individual voluntary disclosure agreements.

2. If your state's answer to Question #1 was "yes," must the owners, in addition to the pass-through entity, also sign the agreement?

Yes: OR KY KS UT

No, the owners must be listed but do not need to sign the agreement: WI (but depends on facts) GA ID WV

Additional comments:

WI: see comment #1

MI: NA

MN: see comment #1

MT: NA

ND: NA

3. Will your state accept composite individual income tax returns filed by a pass-through entity on behalf of its individual nonresident owners?

Yes: WI (but depends on facts) CT GA MI MN MT OR ID KY ND KS WV

No: UT

Additional comments:

WI: see comment #1

GA: We will also accept flow-through and C-Corp nonresident owners on the Composite Return.

MN: *Yes. However, the electing individuals must not have any Minnesota source income other than the income from the pass through entity and other entities electing composite filing.*

TX: Texas does not have an individual income tax. The pass-through entity would be required to file a franchise tax return if the entity type was subject to franchise tax.

WA: NA

4. If the entity applying for voluntary disclosure is a disregarded entity for federal income tax purposes, will your state enter into a voluntary disclosure agreement concerning income tax with such an entity?

Yes: MN

No, the agreement must be with the owner(s) of the disregarded entity, and would also need to encompass any other disregarded entities of such owner: WI CT GA MI MT OR ID KY ND KS WV UT WA

Additional comments:

WI: see comment #1

MN: *The application for a VDA would be allowed, however, if a parent or affiliated company files/filed, the application would be denied.*

GA: However, we would enter into a Net Worth (Franchise Tax) agreement if it's required (e.g., a QSSS).

WV: As indicated, the agreement is with the owner of the disregarded entity. The agreement does not need to include other disregarded entities not operating or receiving West Virginia source income.

TX: The disregarded entity and the owners would likely need to file a combined franchise tax return. If they are not required to file a combined report for state purposes, they would need to file separate franchise tax returns and would need to enter into separate VDA agreements.