Multistate Tax Commission

~~Procedures of~~ Multi~~-~~state Voluntary Disclosure
Program Procedures

1. Definition~~s and Purpose of Multi-state Voluntary Disclosure~~

   1.1. The ~~Multistate Tax Commission National Nexus Program (NNP)~~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 ~~a state instrumentality to which member~~ states to encourage multistate taxpayer compliance through the MVDP ~~delegate enumerated, limited powers to act on their behalf~~. ~~The NNP's multi-state voluntary disclosure program (MVD) is one such limited delegation.~~

   ~~1.2.~~ The MVDP provides ~~is the~~ a process by which ~~whereby~~ a taxpayer that has not previously filed ~~a~~ returns for taxes administered by a participating state ~~of sales/use or business activity tax in one or more *states* may come into~~ 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~~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 the taxpayer's compliance as provided in the agreement ~~in a state~~, the state will waive ~~taxpayer receives a benefit from that state,~~penalties (unless otherwise indicated in the agreement) ~~usually relief of all penalty and~~, back taxes owed for time periods prior to the state's lookback period, and interest on such back taxes~~, except with respect to the *lookback period,* waiver of all back tax and all back interest~~. The state's *lookback period* ~~is the range of~~ includes past due tax filing periods for ~~with respect to~~ which the taxpayer must file returns and pay back taxes plus interest as part of the agreement ~~MVD~~. Each state

determines its own ~~L~~*lookback period*~~s vary~~. ~~However,~~ Collected but unremitted tax plus interest ~~sales and use tax collected from others~~ must be paid ~~surrendered in its entirety,~~ without regard to the *lookback* *p~~P~~eriod* *and if the agreement provides, without waiver of penalties*~~, and may in some *states* involve a small, non-waivable penalty. In most *states* interest is not waived~~.

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~~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 *Commission* and its *National Nexus Program* 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~~

~~1.4.4. Promoting fair and consistent state tax enforcement in the nexus area.~~

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1.2~~5~~. "*State*", refers to a state tax department of one of ~~as used in these procedures includes only~~ the fifty United States and includes the District of Columbia. ~~It includes political subdivisions only to the extent their taxes are administered and collected by the *state*.~~ A "participating state" refers to a state that has entered into an agreement with the Commission to participate in the NNP and MVDP.

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2. Role of the *Commission*

~~The National Nexus Program is a program of the Multistate Tax Commission available to *states* by subscription independent of membership in the Multistate Tax Commission itself~~. ~~To encourage participation in MVD, the *Commission*~~ NNP staff are employees of the Commission and represent participating states ~~seeks to play the role of a fair broker between *states* and~~ when communicating with taxpayers concerning processing applications and completion of agreements under the MVDP ~~as they seek to settle their nexus issues~~.

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~~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.~~

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4. Application ~~doption~~ of Procedures

4.1. As of the latest revision date of this document, ~~A~~all ~~member~~ participating states ~~of the NNP~~ apply ~~accept~~ these procedures to applications submitted and agreements entered into under the MVDP ~~as the state's procedure with respect to multi-state voluntary disclosure~~ except as set forth below:

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4.1.1. The 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. ~~4.1.1. The following *states* accept no part of these procedures: ______________________________; and~~

4.1.2 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. ~~4.1.2. A *state* may opt out of a particular section, which is noted by footnote where it occurs in the text.~~

4.1.3 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.

4.1.4 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.

4.1.5 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.

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

~~4.3. Except as a *state* may exempt itself per § 4.1.1 or 4.1.2, 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 agreements under the MVDP ~~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. Eligibility

5.1. ~~Generally, a~~ A taxpayer may submit an application and participate in the MVDP unless it is ineligible, as described in Paragraph 5.2. ~~However, a~~ The participating state has the discretion and ultimate authority to ~~is not required to~~ accept or reject a taxpayer's application ~~MVD offer even if it is otherwise eligible~~.

5.2. A taxpayer who has had prior contact with a participating state concerning a tax type is ~~is generally~~ ineligible to participate in the MVDP with respect to that state and ~~a~~ tax type ~~and a *state* if it has at any time in the past~~ "Prior contact" includes at any time in the past registering, fil~~ed~~ing a tax return or ~~similar filing or made~~ making a tax payment with respect to that tax type and ~~that~~ *state*, or receiving a contact (as defined in§15) from ~~if it has been *contacted* by~~ that *state* (~~or~~ including such contact by 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, i~~If a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax. [1] ~~Each state may make its independent decision with respect to eligibility, taking into consideration extenuating circumstances, such as passage of time See §15 for the definition of *state contact*.~~[2] .

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5.3. A taxpayer who would ~~generally~~ be ineligible ~~for MVD~~ 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 ~~but nevertheless wishes to pursue it, should so advise *Commission* staff, who will inquire of the affected *states*~~ and inform the taxpayer ~~which, if any, care to receive an application~~of the results of the inquiry.

6. Anonymity and Disclosure

6.1. A taxpayer may, but need not, be anonymous to the *Commission* during the MVDP process up until execution of the agreement. ~~Because the *Commission* needs to easily communicate with a taxpayer (directly or through~~

~~its attorney or tax advisor) in order to conduct its business, t~~Taxpayers wishing to remain anonymous to the *Commission* may ~~approach~~ apply through a representative such as an attorney or tax advisor. A taxpayer choosing to remain anonymous ~~while approaching the *Commission*~~

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

[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.

~~directly should make arrangements to ensure timely communication by~~ must provide the Commission in the application taxpayer or representative contact information, including taxpayer or representative name, telephone number, e-mail address, US Postal Service address, and street address ~~private overnight delivery service, which will prevent delay in processing the application~~. ~~The *Commission* must know a taxpayer's identity after an MVD contract is executed in order to ensure proper processing.~~

6.2. In the event the *Commission* knows the taxpayer's identity, it shall not knowingly release it to any other party under any circumstance except:

6.2.1. To a *state* after an agreement ~~MVD contract has come into effect with respect to~~ with that *state* *has been signed by the taxpayer*;

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.~~; or~~

~~6.2.4. In accordance with § 12.~~

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6.3. Participating *states* agree to not require, whether by court order or otherwise, that the *Commission* release a taxpayer's identity except:

6.3.1. To a *state* after an agreement with that state~~MVD contract~~ has been signed by the taxpayer~~come into effect with respect to that *state*~~; or

6.3.2. To any other party with the taxpayer's written consent; ~~or~~

~~6.3.3. In accordance with § 12.~~

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7. Disclosure of Taxpayer's Identity

7.1. The Commission 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 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 ~~primarily~~ the taxpayer's responsibility.

7.2. Neither the *state* nor the ~~Multistate Tax~~ 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~~in accordance with § 12~~. Neither the *Commission* nor a *state* shall attempt to learn the identity of a taxpayer in the MVDP except:

7.2.1. When the taxpayer voluntarily discloses it as a result of executing an agreement ~~completing an MVD contract~~ or otherwise;

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7.2.2. 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

7.2.3. to confirm taxpayer representations made in the application or agreement~~In accordance with § 12~~.

7.3. Except to the extent that the taxpayer consents otherwise in writing or the state is acting pursuant to § 7.2.3~~12~~, if a state learns the identity of a taxpayer before the agreement with that state ~~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 not ~~never~~ been disclosed.

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

8. Opening A Voluntary Disclosure *Case*

(see also § 19 for definitions of Case *and* File*)*

8.1. ~~A taxpayer opens a~~ 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. ~~writing that:~~

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~~8.1.1. *States* that the taxpayer "applies for voluntary disclosure" (or other words to that effect);~~

~~8.1.2. Lists the *state*(s) to which the taxpayer wishes to voluntarily disclose;~~

~~8.1.3. Lists the type(s) of tax sought to be voluntarily disclosed; and~~

~~8.1.4. Provides the last digit of the taxpayer's federal employer identification number (FEIN) or last digit of its taxpayer identification number (TIN).~~

~~8.2. Providing the FEIN or TIN information allows the *Commission* to positively distinguish the applicant from other taxpayers without compromising its anonymity.~~

~~8.3. A writing may be presented in any way, including Postal Service, fax, and e-mail. It need not be signed.~~

8.~~2~~4. Having an open *case* means that the taxpayer is *protected from discovery* *(as defined in* § 14.1) ~~in~~ as to the ~~listed~~ participating *states* *applied to* beginning 12:01 AM (Eastern ~~Washington, D.C.~~ time) on the calendar day following the *Commission*'s receipt of the electronically submitted application ~~writing~~ and ending on the calendar day following expiration of a time limit (deadline) as set forth in §16. ~~Unless the *case* is *closed*, *protection from discovery* in that *case*'s *state* resumes at 12:01 AM (Washington, D.C. time) on the calendar day after the taxpayer takes the required action. See § 14.1 for the definition~~

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~~of *protected from discovery*.~~

9. 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 *State*~~

~~9.1. If a *state* receives notice or otherwise becomes aware that it mistakenly received a return, filing, or payment, the *state* shall:~~

~~9.1.1. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received; and~~

~~9.1.2. Apply a mistaken payment (or payments) to the tax owed, apply any remainder to interest, and refund any further remainder to the taxpayer.~~

~~9.2. The *state* shall not be required to refund a mistaken payment except to the extent it exceeds a taxpayer's total tax liability at the end of the MVD process.~~

~~9.3. Notwithstanding §9.1.1, the *state* may process a mistakenly received registration or filing.~~

10. Mistaken Filing or Payment to *Commission*

10.1. If the *C*ommission receives notice that it mistakenly received a return, filing, or payment ~~other than of a collected fiduciary tax~~, the *Commission* shall:

~~10.1.1.~~ a~~A~~t the applicant's option, either return, destroy, or retain for future use the mistaken return, filing or payment.~~;~~

~~10.1.2. Make no use of mistakenly received information except as the taxpayer permits; and~~

~~10.1.3. Permit the applicant to complete the MVD process as if the return, filing or payment had not been received.~~

~~10.2. However, without regard to the applicant's preference, the *Commission* 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.~~

~~11. Premature or Incomplete Filing or Payment to the *Commission*~~

~~11.1. A signed MVD contract, returns, registration forms (sales/use tax only) and payment are generally due to the *Commission* from the applicant at the end of the MVD process (the MVD contract governs this).~~

~~11.2. If the *Commission* receives one or more, but not all, required items, the *Commission* shall hold the received items pending receipt of the rest. However, if the *Commission* has not received all items within 60 days of their due date (see §16 for time limits on taxpayer), The *Commission* may return the received items to the sender.~~

~~11.3. Standard deadline procedures apply, as indicated in § 16, including the deadline to close an inactive *case* or *file*.~~

~~12. Material Misrepresentation~~

~~12.1. A *material misrepresentation* is a false or misleading statement by a taxpayer (or its representative), made in good faith or otherwise, about a fact, which successfully induces a state to take a position to its substantial detriment with respect to acceptance of a voluntary disclosure contract (or significant terms in it) with that taxpayer.~~

~~12.2. If the *Commission* has clear and convincing evidence that a taxpayer has made a material misrepresentation, the Commission shall present the evidence thereof to the taxpayer and invite it to show good cause why the *Commission* should not take action pursuant to this section 12.~~

~~12.3. If the taxpayer cannot otherwise be contacted after a good faith effort, the *Commission* shall send a certified letter to the contact person and address of record of both the taxpayer and its tax practitioner, if any.~~

~~12.4. If 10 days after the later of presenting the evidence to the taxpayer and mailing a certified letter the taxpayer has not shown good cause, the *Commission* shall:~~

~~12.4.1. With respect to states that have executed a contract with the taxpayer based on the *material misrepresentation*, the *Commission* shall identify the taxpayer and inform each state of the evidence regarding the material misrepresentation.~~

~~12.4.1.1. The state may in this case void the voluntary disclosure contract, or any part of it that was the result of the material misrepresentation, within ninety calendar days of receiving notice regarding the material misrepresentation. In such case, it will be as if the contract (or excised terms) never existed; the state may keep all revenue paid to it as a result of the voluntary disclosure and may pursue additional remedies as permitted by law.~~

~~12.4.2. With respect to states that received an offer from the taxpayer containing a material misrepresentation but have not accepted it, the *Commission* shall withdraw without comment the pending voluntary disclosure offer. An offer is considered pending until it has been either rejected, withdrawn or signed by both state and taxpayer (accepted and fully executed). The *Commission* shall not disclose the existence of the material misrepresentation or the identity of the taxpayer to these states.~~

~~12.4.3. With respect to states that did not receive a voluntary disclosure offer containing a *material misrepresentation* from this taxpayer, the *Commission* shall not disclose the existence of the *material misrepresentation* and shall not disclose the identity of the taxpayer to these states.~~

13. Withdrawal

13.1. A taxpayer may withdraw an application to ~~from~~ a state *without prejudice* at any time before the state receives ~~*the Commission* sends~~ the taxpayer-signed agreement~~contract~~, return, or payment to that *state*. ~~*Without prejudice* means the taxpayer may apply again by submitting all new materials.~~ The taxpayer will be required to submit a new electronic application if the taxpayer later decides to re-apply.

13.2. An application withdrawal requested by a taxpayer shall be in writing to NNP staff and shall ~~enumerate~~ identify 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 Commission*.~~

13.3. *Protection from Discovery* per §14 ceases at 12:01 AM (Washington, D.C. time) on the calendar day immediately following withdrawal.

14. Protection from Discovery

14.1. *Protection from Discovery* means that, upon receipt of a properly completed and electronically submitted application ~~notice per §15.2~~, the Commission and the participating *state~~s~~* *applied to* shall suspend with respect to an eligible taxpayer (see § 5.2) so protected, all inquiry and other enforcement activity (except criminal enforcement activity), with respect to that taxpayer's non-filer status and the type of tax it seeks to voluntarily disclose, pending that taxpayer's timely completion of ~~its MVD~~ an agreement in accordance with ~~the time limits set forth in~~
§16 or an extension granted by the state or the Commission.

14.2. Provided that the *state* (or the *Commission* on behalf of the *state*) has not already *contacted* (see §15.1 for definition) the taxpayer, it is *protected from discovery* in a state with respect to a type of tax beginning at 12:01 AM (Eastern ~~Washington,~~
~~D.C.~~ 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 pursuant to~~its request for MVD that meets the requirements of~~ § 8

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14.3. *Protection from discovery* ends at 12:01 AM (Washington, D.C. time) on the day following the last day available to a taxpayer to meet a deadline as set forth in §16 or an extension granted by the state or the Commission ~~these procedures~~. ~~For example, given a seven day deadline and time period beginning on July 1, *protection from discovery* ceases at 12:01 AM~~

~~(Washington, D.C. time) on July 9. *Protection from discovery* resumes at 12:01 AM (Washington, D.C. time) on the calendar day after the taxpayer takes the required action.~~

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15. *State Contact* While *Protected From Discovery*

15.1. *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 *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. [3] A *state contact* is deemed received when e-mailed, mailed or sent. If a *state contact* does not specify a specific type of tax it is construed to be with respect to all types of tax.[4]

15.2. For purposes of §15, a *person* means either a natural person or entity ~~a juristic person~~. 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, of a group filing on a consolidated basis, or of a group otherwise affiliated, are a single *person* for purposes of §15 without regard to whether the *state* was aware of the existence of such entity or of its relationship to its constituent entities.

15.3. 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:

15.3.1. Inform the *Commission* of the *state contact*, including ~~if possible~~ 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

[3] 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.

4 A State Contact with Texas may at the state's option be construed to be with respect to any type of tax, without regard to whether that type of tax 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.

15.3.2. Provide the *Commission* this, or a similar, written statement: "MTC Anonymous # ___ ~~YY-XXX~~ 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 ~~Procedures of~~ Multi~~-~~state Voluntary Disclosure Program Procedures." ~~YY-XXX stands for the taxpayer's voluntary disclosure identification number.~~

15.4. Upon proper notice, the *Commission* shall timely inform the *state* ~~in question~~ that the taxpayer has submitted an application under the MVDP ~~is involved in MVD with respect~~ to that *state* and the type(s) of tax 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 ~~normal and usual terms of the~~ MVDP~~D with respect to that *state* and that (those) type(s) of tax~~.

15.5. If a taxpayer fails to meet a time deadline of the MVDP process after *contact* by the *state*, then *protection from discovery* shall ~~thereupon~~ cease and the *state* may~~, at its option,~~ continue its *state contact*, inquiry, or compliance-related action. ~~The *Commission* shall not grant an extension of time after *state* contact.~~ The *state* should ~~at this time~~ advise the *Commission* whether it is willing to further consider the MVDP application and the taxpayer should advise the *Commission* whether it wishes to continue the MVDP application. ~~If both taxpayer and *state* choose to continue, The *Commission* shall continue to process the MVD.~~ If either the taxpayer or the *state* chooses to not continue, The *Commission* shall close its *case* on the taxpayer with respect to that *state*.

16. Time Limits: Taxpayer

16.1. 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*.

16.1.1. The *Commission opens* a *file* (see § 8) ~~until the *Commission*~~ *upon* receipt of a properly completed and submitted electronic ~~receives a properly prepared~~ Application~~: 14 days~~.

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16.1.2. Taxpayer receives ~~draft~~ standard agreement form from the Commission ~~contract~~ until taxpayer responds to ~~draft~~ standard agreement form ~~contract~~ by either approving ~~accepting~~ or requesting changes: 28 days. Once approval is received, the Commission will prepare t~~T~~he draft agreement ~~contract is the text the *Commission* will~~ and send it to the indicated *states* along with ~~as part of~~ the taxpayer's redacted application ~~MVD proposal~~.

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16.1.3. Taxpayer responds to state counter-offer to the draft agreement~~contract~~: 28 days.

Taxpayer has 28 days to respond to each subsequent counter-offer.

16.1.4. Taxpayer responds to request for information from *state* or the Commission: 14 days. Taxpayer has 14 days to respond to each subsequent request for information from the *state* or the *Commission*.

16.1.5. From taxpayer receipt of a state-signed agreement ~~contract (or other expression of intention to enter into the voluntary disclosure agreement)~~ until the ~~*Commission* receives it back from~~ 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: 60 days.

16.1.6. Notwithstanding the requirement of § 16.1.5, an ~~MVD draft contract~~agreement signed by a *state* shall remain a valid offer to the taxpayer for the period of time stated in the state-signed agreement ~~contract the state signed~~ or, if no period is stated,
90 days from the day it was e-mailed, mailed or sent to the taxpayer or its representative ~~(protection from discovery is lost 28 days after it was mailed or sent)~~. 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 payment, after which time it shall be void, unless the *Commission* or *state* issues an extension in writing.

16.2. The *Commission* 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 discovery*. *Closing the file* means that the taxpayer must ~~apply from the beginning~~ submit a new electronic application online if it wishes to pursue the MVDP.

16.3. Except when the *Commission* closes a taxpayer's *file* due to inactivity for 90 or more days after loss of *protection from discovery*, ~~the taxpayer is free to miss any deadline it chooses without consequence other than temporary loss of *protection from discovery*. Therefore,~~ 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~~, but only~~ upon demonstration of extreme hardship that the taxpayer could not have reasonably prevented.

17. Time Limits: *State*

17.1. ~~The *state* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult.~~ 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.

17.2. The state will endeavor to adhere to following time limits~~ apply~~:

17.3. From *state* receipt of draft contract until it sends its response to the *Commission*: 42 days (6 weeks);

17.4. *State* responds to counter-offer: 42 days (6 weeks);

17.5. *State* sends bill for interest to taxpayer: 42 days (6 weeks)

18. Time Limits: *Commission*

18.1. ~~The *Commission* endeavors to, and in most cases will, process voluntary disclosure applications faster than stated here. However, an application may from time to time take longer, particularly when unusual terms are sought or the facts are difficult.~~ 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.

18.2. The Commission shall endeavor to adhere to the following time limits ~~apply to the *Commission*~~:

18.3. From *Commission* receipt of application for voluntary disclosure to sending standard agreement form ~~draft contract~~ to taxpayer: 7 days;

18.4. From *Commission* receipt of taxpayer's approval of standard agreement form ~~draft contract~~ to sending draft agreement and application ~~contract~~ to *state*: 7 days;

18.5. Forward~~s~~ requests for information, counter offers, and other communications: 2 business days;

18.6. Forward~~s~~ *state*-signed agreement ~~contract~~ to taxpayer: 7 days;

18.7. Forward~~s~~ taxpayer signed agreement~~contract~~, returns and payment to *state*: 7 days.

19. ~~Definitions and~~ Miscellaneous ~~Time~~ Procedures

19.1. *Days* are calendar days unless the text clearly states otherwise.

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

19.3. *Days* are counted using ~~thus:~~ the first day to be counted ~~is~~ as the calendar day immediately after the day in which the initiating action took place.

19.4. 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.

19.5. 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.

19.6. *File* means the total number of state *cases* existing with respect to an applicationapplicant. It is assigned a six-digit *file* number in the format MTC # 000000~~YY-XX, such as MTC 09-40 or MTC 09-99~~.

19.7. *Case* means that subset of a *file* that applies to only one state and one taxpayer, e.g., MTC # 000000 ~~09-40~~ ND ~~or MTC 09-99 MA~~.

~~19.8. *Commission* means the Multistate Tax Commission.~~

~~19.9. *NNP* means the National Nexus Program, a division of the Multistate Tax Commission. *States* may subscribe to NNP independently of their membership in the *Commission* itself and any other program of the Commission.~~

19.10. The MVDP process is complete ~~ends~~ with respect to a *state* when:

19.10.1. that *state* and the taxpayer have each signed the agreement ~~MVD contract;~~ and

19.10.2. the *state* has received all tax returns (or spreadsheets for sales/use tax if acceptable to the state), payment and other required documents ~~material~~ due under the agreement, including but not limited to any interest ~~and non-discretionary fees~~ or other amounts that the state billed in accordance with the agreement ~~MVD contract after receipt of the tax returns~~.

20. Electronic Communications

20.1. ~~Unless the text clearly states otherwise, c~~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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20.2. ~~MVD contracts shall be signed with ink on paper unless the state and taxpayer each agrees to substitute one or more facsimile signatures.~~ 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. ~~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.~~

20.3. The *Commission* may communicate with *states* and taxpayers through the internet, including ~~its~~ the world wide web and electronic mail ~~features~~. 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~~, such as a taxpayer's name, taxpayer identification number, telephone number, address, amount owed, factual circumstances, et cetera~~.

~~21. Non-Member States~~

~~21.1. If sufficient resources are available, the *Commission* 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 the *Commission*'s voluntary disclosure services.~~

~~21.2. A *state* that participates in the multi-state voluntary disclosure process as a non-member *state* of the National Nexus Program 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, but it is encouraged to abide by them voluntarily.~~