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Minutes
Nexus Committee Meeting (Open Session)
July 24, 2023
Omni Austin Hotel Downtown
700 San Jacinto, E. 8th Street
Austin, TX 78701

Listed below are the attendees (*virtual or telephone):

Alabama	Cameran Clark, Derrick Coleman, Vicki Gardino, Christina Hall, Lee Ann Rouse, Matt Tidwell
Alaska	Michael Williams
Arkansas	Rob Allen, Tommy Burns*, Chanda Chadwick, Scott Fryer, Eileen Henderson, Deanna Munds-Smith, Drew Smith
Arizona	Pamela Beebe*, Petra Garcia*, Virginia Kreuger*, Ana Ocampo*, Manisha Patel*, Rebecca Wanda*
Colorado	Sarah Roberts*, Kathy Mui*, Kathleen Wood*
District of Columbia	Henry Ajagbawa, Perry Akwilina, Robert Kindred, Keith Richardson, John Swanidoss, Sherri Weithers
Georgia	Johns Abraham*, Nicole Contant*, Mike Edwards*, Rondenet Mwangi, Lauri Owens*, Pamela Shulterbrand*, Rashad Smith*, Arlethia Thomas*
Idaho	Amber Kauffman*, Amber Ortiz, Karl Patton*, Tom Shaner*, Aaron Yost
Indiana	Larry Molnar*
Iowa	Teresa Miller*
Kansas	Brian D'Angelo*, Cindy Frenchers*, Nathan Hoepfner*, Charla Wagner*
Kentucky	Richard Dobson*, Latonia Dooley*, Victoria Nichols*
Louisiana	Krystal Bolton*
Michigan	Angela Matelski
Minnesota	Tracy Bjerke*, Cassie Diemert*, James Douglas, Cynthia LaBarge, Shannon Nelson*, John Weiser*
Missouri	Don Lazo, Sal Tomaselli
Montana	Mark Schoenfeld*
Nebraska	Joyce Carhart*, Cynthia Carpenter*, Nicholas Doucet*, Nikki Elwood*, Mary Hugo*, Karla Koehler*, Stacie Odom*, Katherine Rich*, Patricia Schmidt*, Scott Spilinek*
New Hampshire	Barbara Beelle*, Fred Coolbroth*
New Jersey	Mariane Lyczak*, Chris Valimont*
New Mexico	Jenelle Gonzales-Wessels*
North Carolina	Ashley McGhee*
North Dakota	Shannon Fleischer*, Matthew Peyerl
Oregon	Victoria Johnson*, Katie Lolley, Michael Lucas, Joseph Royston

Pennsylvania	Jonathan May
Rhode Island	Susanna Coburn*
South Dakota	Kathy Smith*
Tennessee	Joan Cagle*, Hal Jones, Nicholas Reich
Texas	Phillip Ashley, Christina Heath, Rusty Johnson
Utah	Kathryn Bleazard*, Frank Hales, Angie Hillas, Shelley Robinson
Vermont	Kelly Bain*
Washington	Bryan Kelly
Wisconsin	Steve Eiring*, Amber Herman*, Tracey Mueller*
Multistate Tax Commission	Susan Carlson, Holly Coon, Richard Cram, Cathy Felix, Bill LoCascio*, Scott Pattison, Ian Peacock*, Lawrence Shinder, Jeff Silver, Diane Simon-Queen*, Steve Yang, Ki Yun*
Avalara	Brian Smith
Avoir	Jamal Elsaadi
Bloomberg Tax	Michael Bologna, David Sweetland*
Connecticut Law School	Professor Richard Pomp
COST	Stephanie Do*
Deloitte Tax LLP	Jacob Shin*
Fast Enterprises, LLC	Virgil Helton
Federation of Tax Administrators	Sharonne Bonardi
Greenberg Traurig LLP	Nikki Dobay*
IRS	Amanda Bresteyard, Harry Chavis
Law360	Paul Williams
Pfizer	Susan Courson
Ryan	Sandy Farquharson
Sales Tax Institute	Diane Yetter
SSTGB	Craig Johnson, Christie Comanita
Tax Cloud	Bruce Johnson
Walmart	Jesse Hereford
Others attending	Bill Burkett*, Scott Clark*, Alynn Hamilton*, Ally Kinasz*, Stephen Moffatt*, Marc Pfeiffer*

Bryan Kelly, Chair (WA), brought the meeting to order at 1:45 pm CDT, introductions of attendees were made, and public comment was invited.

Public Comment

The Chair asked if Penny Sweeting was in attendance but there was no response and no further public comment was offered.

Minutes

Lee Ann Rouse (AL) moved for approval of the minutes of the April 26, 2023 open session portion of the Nexus Committee meeting, and the minutes were approved by unanimous voice vote.

Nexus Director's Report and Update on Recent Nexus Law Developments since April 26, 2023

Richard Cram, Director of the National Nexus Program, reviewed for the Committee his Update on Recent Nexus Law Developments since April 26, 2023 and the FY 2023 Nexus Program Director's Report. Back tax collections from agreements closed between July 1, 2022 and June 30, 2023 were \$25,846,276 with 391 executed agreements. Richard advised that an income tax Nexus School was held in Salem, Oregon on October 6-7, 2022 and a sales/income tax Nexus School was held in Boise, ID on June 29-30, 2023. He encouraged other states interested in hosting one to contact MTC training staff.

Panel discussion by Professor Richard Pomp and Richard Cram on purposeful availment conduct by internet sellers

Professor Richard Pomp and Richard Cram discussed the "stream of commerce" theory applied by the U.S. Supreme Court in three products liability cases (*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1986); and *J. McIntyre Machinery Ltd. v. Nicaastro*, 564 U.S. 873 (2011)) to determine whether personal jurisdiction existed over out-of-state defendants for due process purposes. They related that theory to the determination of whether an out-of-state internet seller has shown "purposeful availment" conduct sufficient to establish due process personal jurisdiction for state tax purposes in the taxing state.

Presentation by Harry Chavis, Internal Revenue Service

Mr. Chavis, Acting Director, Global OPS, Financial Crimes, IRS Criminal Investigation, gave a Powerpoint presentation reviewing the history, background and current status of the Internal Revenue Service voluntary disclosure program, which is administered in the Criminal Division.

Approval of Amendment to Nexus Committee Charter

The Committee considered a proposed amendment to the Nexus Committee Charter (attached), in order for the Charter to be consistent with other amendments being proposed for other Committee Charters concerning procedures to follow when the Chair of the Committee steps down. The amendment provides that the Vice Chair will become the Chair of the Committee upon the Chair stepping down and will

remain so until a new Chair is appointed. Also, the Vice Chair will act as the Chair whenever the Chair is unable to fulfil the Chair duties. Aaron Yost (ID) moved to approve the amendment, and the motion passed unanimously by voice vote.

New Business

Chair Bryan Kelly asked if there was any new business, and none was proposed. The Chair then reminded everyone and encouraged attendance at the upcoming 2023 Fall Committee Meetings to be held November 13 – 16, 2023 in Montclair, New Jersey.

The Chair recessed the open session portion of the meeting at 4:10 pm CDT in order for the Committee to commence the closed session.

Closed Session

The committee entered closed session at 4:15 pm CDT to discuss matters protected from disclosure.

Open Session

Frank Hales (UT) moved for adjournment that was approved unanimously by voice vote, and Chair Bryan Kelly adjourned the meeting at 4:52 pm CDT, with nothing to report from the closed session.



MULTISTATE TAX COMMISSION

Charter for the MTC National Nexus Program and Nexus Committee

Introduction

The National Nexus Program is a program of the Multistate Tax Commission (MTC) created by and composed of member states. The Nexus Committee was formed under Article VI.2 of the Multistate Tax Compact and bylaw 6(b) to oversee the National Nexus Program.

Responsibilities

The National Nexus Program was created to encourage and facilitate compliance with nexus laws by those engaged in interstate commerce; cooperation among states regarding development and enforcement of nexus law; education of taxpayers and state staff about nexus; and fair and consistent enforcement of nexus law.

The MTC has charged the Nexus Committee with the responsibility to administer the National Nexus Program. The committee oversees the MTC National Nexus Program; considers potential nexus audits to be recommended to the Audit Committee; and provides direction to the MTC National Nexus Program on state policy regarding nexus. The committee will establish priorities and goals for approval or further direction from the Executive Committee.

Membership and Voting

Each state that participates in the MTC National Nexus Program is represented on the MTC Nexus Committee. A state may have multiple employees who participate in meetings; however, in any matter requiring a vote, each state will be entitled to only one vote. Committee members who participate in training or informational sessions or in any session in which confidential taxpayer information may be discussed must be authorized by their state to disclose and receive such information.

A quorum is established by the number of National Nexus Program member states that are present at any meeting. Official committee decisions are made by motion, with no need for a second. Motions may be offered by any member, with or without an invitation of the Chair. Member states may vote yes, no, or abstain. A motion passes when a majority of member states present vote in favor of the motion. For example, assume 15 member states are present and eligible to vote. A vote of 8 yes, 3 abstain, and 4 no means the motion passes. A vote of 7 yes, 4 abstain, and 4 no means the motion does not pass. No voting by proxy is allowed.

The chair has the option to limit which member states may vote on a motion when it affects some member states and not others.

Except where inconsistent with the provisions of the Compact or the MTC bylaws and Public Participation Policy, *Mason's Manual of Legislative Procedure* is the parliamentary authority for all meetings of the committee.

Committee Activities

The committee meets at the call of the chair, generally at least three times per year, and meetings are conducted in a manner consistent with the MTC's [bylaws](#) and [Public Participation Policy](#). The committee's primary responsibilities are:

- Administering a multi-state voluntary disclosure program in which non-filers may, through a confidential and substantially uniform process, and single point of contact, limit back-tax and penalty liability
- Sponsoring educational programs and presentations regarding nexus law and the availability of multi-state voluntary disclosure
- Providing a public forum for comment on nexus law and the National Nexus Program

Governance

Consistent with bylaws 13(b)(4), (c)(1) and (3), and (d), the Nexus Committee may elect, or the MTC's Executive Committee may appoint, employees from National Nexus Program member states to serve as chair and vice chair. Analogous to bylaws 3(c) and (e), the vice chair will become chair of the committee until a new chair is selected if the office of the chair becomes vacant for any reason and will serve as chair whenever the chair is unable to perform the chair's duties.

The chair and vice chair will assist MTC staff in planning and carrying out the activities and functions of the Nexus Committee and may also appoint members to assist or serve in such other functions as necessary to carry out its responsibilities or activities.

Amendments

The committee will review this charter every year during the annual meetings of the MTC and may adopt policies consistent with this charter to guide the performance of its duties and responsibilities. The committee may, with the approval of the Executive Committee, amend this charter. See Article VI, paragraph 2(b) and (c), of the Compact, and bylaw 6(b).

Approved by the Executive Committee August 5, 2021.