

MEMORANDUM

Nexus Committee Meeting July 25, 2016

Agenda item under “New Business”:

Should a provision to the Standard Voluntary Disclosure Agreement be added to require the taxpayer to waive the ability to carry forward net operating losses incurred in any tax year prior to the lookback period?

Currently, the Standard Voluntary Disclosure Agreement form does not expressly require a taxpayer to waive net operating losses incurred in any tax year prior to the lookback period—even though the state agrees not to assess tax for those earlier tax years. However, three states (Arizona, Georgia and Missouri) do require the addition of special provisions to the voluntary disclosure agreements that they enter into. These special provisions are shown below:

For **ARIZONA CORPORATE TAX** only, add new Subsection 5.6 and further subsections that read:

- 5.6. *With regard to net operating losses in Arizona, MTC [XX-XXX] shall:*
- 5.6.1. *waive the carry-forward option on all net operating losses generated in tax years before the start date;*
- 5.6.2. *suspend the deduction of net operating losses for periods beginning after [Lookback Date] through the Effective Date; and*
- 5.6.3. *agree that net operating losses generated in periods beginning after [Lookback Date] through the Effective Date may be utilized, pursuant to statute, for tax years beginning after the first year ending after Effective Date.*

For **GEORGIA** [Tax Type] only, add new Subsection 5.6 that reads:

- 5.6. *In consideration for the Department waiving all applicable penalties and filing requirements for prior periods, [MTC XX-XXX] waives all rights to net refunds for all periods included in this agreement. Anonymous [MTC XX-XXX] also forfeits all NOL carryovers and waives its right to all net refunds for all periods included in this voluntary disclosure agreement.*

For **MISSOURI INCOME/FRANCHISE TAX** only, add new Subsection 5.6 that reads:

- 5.6. *No loss carry forward for losses realized in any year before the first year filed pursuant to this agreement will be allowed for any filing period covered by this agreement or periods after this agreement. No loss carry back for losses realized in any year after the periods covered by this agreement will be allowed for such periods.*

Recently, the Wisconsin Department of Revenue inquired whether the Standard Voluntary Disclosure Agreement form requires taxpayers to waive the ability to carry forward net operating losses incurred during any tax year prior to the lookback period, and if not, should such a provision be added.

The rationale for requiring such waiver would be that if the state is giving up any ability to assess income tax for any tax year prior to the lookback period, then the taxpayer should not be able to claim losses incurred during any such tax year against otherwise taxable income received in later tax years.