Nexus Committee Survey Responses

Survey Questions

1. Can a unitary group apply for voluntary disclosure relief in your state as a unitary group, with each member of the unitary group listed as a party to the voluntary disclosure agreement? Yes_____ No_____

2. If a unitary group is seeking voluntary disclosure relief in your state, must a separate voluntary disclosure agreement be executed with each member of that unitary group? Yes____ No_____

3. Does your state require that a taxpayer seeking voluntary disclosure relief for income tax waive any net operating losses that have accrued in a tax year prior to the lookback period? Yes____ No_____

4. Does your state require that a taxpayer seeking voluntary disclosure relief for income tax waive any net operating losses that have accrued during the lookback period? Yes____ No_____

5. Does your state place any other restrictions on a taxpayer's claims of net operating loss deductions from net operating losses accruing prior to or during the lookback period? Yes____ No____

6. If the answer to No. 5 is "yes," please explain:____

7. Would your state support including a provision in the standard voluntary disclosure agreement (attached for reference) placing any restrictions on a taxpayer's ability to claim deductions for net operating losses that have accrued prior to or during the lookback period, when the taxpayer is seeking voluntary disclosure relief for income tax? Yes___ No___

8. If the answer to No. 8 is "yes," please describe what those restrictions should be:____

9. Is your state's policy in allowing or not allowing a taxpayer seeking voluntary disclosure relief for income tax to claim a net operating loss deduction in tax years included in the lookback period determined by statute or administrative policy? Yes___ No___ Please identify the statute or administrative policy:____

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
State									
AL	NO.	YES.	YES. Unless taxpayer files returns back to point of nexus (NO lookback period.)	NO.	NO.	Unanswered	NO.	May support provision if NOL restrictions applied only to years prior to lookback period	Informal policy (Guidelines).
AZ									
AR									
CO	YES.	NO.	YES.	NO.	Unanswered	Unanswered	YES.	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.	Voluntary Disclosure Administrative policy
CT									
DE									
D.C.									
FL									
GA	No.	YES.	YES.	YES.	NO.	Unanswered	YES.	The Company waives all rights to net operating	NO.

								losses for all periods prior to tax year 20XX (first year after the lookback period).	
HI	NO.	YES.	YES.	NO.	NO.	Unanswered	NO.	Unanswered	NO.
ID	YES. We had a one page affiliate list attached to the one VDA agreement	NO.	NO. The answer could be YES, unless they file returns for those prior periods. If they do Not file the NOL year return, then we do Not accept the NOL	NO.	YES.	Must file returns to claim the NOL and apply Idaho Code applicable to NOL s	YES.	Must file returns to claim the NOL and apply Idaho Code applicable to NOL s	Idaho State Tax Commission decisions have upheld the disallowance of a net operating loss carry forward when the taxpayer did Not file the loss year Idaho tax return. Docke t #s 15376 and 19975 are two examples. Th ese cite federal court decisions that place the burden of proof on the taxpayer to establish entitlement to

									deductions.
IA									
KS	Yes.	NO.	NO.	YES.	NO.	Unanswered	YES.	Deny any loss forwards prior to lookback period	NO.
KY	YES.	NO.	NO.	NO.	YES.	Taxpayer must file returns reporting nols before they can claim them. ___If no returns are filed showing the nols then no nols can be claimed	YES.	**Same as question 6**	NO.
LA	NO.	YES.	NO.	NO.	NO.	Unanswered	Unanswered	Unanswered	YES. LRS-47:287.86. Louisiana does Not allow a taxpayer to carry back net operating losses.
MD									
MA									
MI									
MN									
MO	YES.	NO.	YES.	YES.	YES.	A return filed in	YES.	We would support	NO.

						accordance with the voluntary disclosure cannot later be amended to claim a net operating loss. Our agreement states, “NO. loss carry forward for losses realized in any year prior to 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		including restrictions similar to what is described in answer 6.	

						after the periods covered by this agreement will be allowed for such periods.			
MT	YES.	NO.	YES.	NO.	NO.	Unanswered	YES.	A taxpayer waives all net operating losses accrued prior to the lookback period	NO.
NE	YES.	NO.	NO.	NO.	YES.	The allowable Nebraska net operating loss carryover is based on the loss previously reported to Nebraska, therefore, a return for the loss year(s) must be filed to claim the carryover.	NO.	Unanswered	YES. Statute 77-2734.07
NH	YES.	NO.	YES.	YES.	YES.	NOL Deduction subject to limitations under RSA	YES.	Unanswered	Rev 2910.07

						77-A:4, XIII and Rev 303.03			
NJ	NO.	YES.	NO.	NO.	YES.	A NJ return must be filed and any tax paid for the NOL to accrue	NO.	Unanswered	NO.
NM									
NC									
ND	YES.	NO.	YES.	NO.	YES.	See response to #3. Neither the state Nor the taxpayer can make assertions related to the filing of returns for years prior to the lookback period	YES.	We would support a provision to Not allow a deduction for a NOL that accrued prior to the lookback period	YES. Administrative policy: NO written documentation exists that specifically addresses the NOL policy. Because prohibiting or limiting NOL deductions for those generated during the lookback period is Not expressly addressed in our VDA guideline or agreement, it would

									currently be allowable. N O. statutory changes would be needed to modify our policy. The treatment could just be stated in the agreement
OK	NO.	YES.	YES.	NO.	Unanswered	Unanswered	NO.	Unanswered	NO.
OR	YES.	NO.	YES.	NO.	NO.	Unanswered	YES.	Can only claim a loss for years they file an Oregon return	NO. The Statute that permits the agency to enter into a closing agreement is very broad ORS 305.150 and the Administrative rule does not address NOL D, or carryforward. It is department policy to not allow a carry forward from a period that is not included

									in the closing agreement. The NOL statute for Oregon that allows a carry forward is ORS 317.476. In addition to NOL, Oregon does not allow capital losses or credit carry overs from years prior to the VDA years. The language in Oregon's closing agreement is – The Taxpayer shall not claim any deduction for capital losses, net operating losses, credit carryovers, or other carryover items from

									taxable years prior to (oldest year of VDA entered). Net operating losses for (oldest year of VDA entered) and subsequent may be carried forward as provided by ORS 317.476. If the Taxpayer determines that a capital loss is incurred, it can be carried back to a year that a return was filed and that would otherwise be allowed under Oregon statute
SC	As a separate entity state, all members of	We wouldn't require an agreem	YES. We only allow NOL's for the years of the	NO. If a year within the agree	NO.	N/A	If the MTC feels that the language is needed	See #7	This is not in writing by statute or administrative policy. Simply

	the group would have to have nexus with the state in order to come in under one agreement. While we don't have anything in place, we would work with the taxpayer in order to resolve in the most efficient manner.	ent for each member. Simply modify the current agreement with an addendum outlining the taxpayer's that are part of the agreement.	agreement. The assumption is that Nexus began with the first year of the agreement.	ment is a loss year we would accept it.			within the agreement I would most likely support. However in order to keep the agreement from being overly lengthy, I would place in the addendum and only if that state is a state in which the taxpayer is seeking a VDA.		put, if the taxpayer had nexus during the lookback period, and we are limiting the number of years to the lookback period for the benefit of the taxpayer, then we are stating as part of the Voluntary Disclosure that nexus began during the first period of the lookback. Therefore only NOL's earned from that period forward could be carry forward.
SD									
TN									
TX	NO. A reporting entity can enter into a voluntary	NO., only the reporting entity enters	N/A As we discussed I will only be able to	N/A	N/A	N/A	N/A	N/A	N/A

	disclosure agreement to file unitary combined returns; however each member of the unitary group is not listed separately in the agreement.	into a voluntary disclosure agreement.	provide answers to the first 2 questions since the last 7 refer to net operating losses. The Texas franchise tax does not have a net operating loss component so those questions are not applicable to Texas.						
UT	YES.	NO.	YES. **The taxpayer may claim losses prior to the lookback period if**	NO.	NO.	Unanswered	YES.	YES. **That the taxpayer cannot claim a loss carry forward unless the returns are filed for those years**	NO.

			they file the returns to claim those losses.						
VT									
WA	No. Note: Washington is a separate legal entity state. Each corporation must file a separate excise tax return. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations	Yes. Note: Washington considers each business to be a person liable for reporting of its own tax obligations due upon "gross proceeds of sales" and/or "gross proceeds of business	No. N/AP, see note in section 2.	No. N/AP, see note in section 2.	Yes. N/AP, see note in section 6	Note: Washington is a gross receipts state, not a net income tax state. Washington's Business and Occupation (B&O) tax is measured by the value of products, gross proceeds of sales, or gross income of the business, as the case may be. There is no deduction for expenses paid or accrued and no deduction on the account of	No. N/AP, see note in section 2.	Unanswered	Unanswered

						losses			
WV	YES.	NO.	YES.	NO.	NO.	Unanswered	YES.	Taxpayers seeking voluntary disclosure relief for income tax waive any net operating losses that have accrued in a tax year prior to the lookback period.	YES. Taxpayers must file a tax return with West Virginia in the year of the loss to have a West Virginia loss. West Virginia's voluntary disclosure program limits the look back period to three years. Adding language to the standard agreement that states taxpayers waive any net operating losses prior to the look back period will taxpayers and tax professionals understand expectations of the VDA.

WI	YES.	NO.	NO.	NO.	YES.	The company had to have had a WI tax filing requirement (for example, because the company had nexus in Wisconsin and apportioned sales). The company must file for all years in question establishing the losses being carried forward. The company is not a tax-option (S) corporation or an insurer to which s. 74.45(4) applies. The NOL is within the 20-year carryforward period open under our statute of limitations.	NO.	No restrictions, however, the department considers all facts and circumstances relating to a taxpayer's Wisconsin tax liability when determining whether to enter into an agreement.	The following doesn't specifically relate to voluntary disclosure, but applies regardless of a VDA or NO.t: Statues – Section 71.26(4) Wis. Stats. (2011-12) https://docs.legis.wisconsin.gov/statutes/statutes/71/IV/26/4. Policy – Wisconsin Tax Bulletin 178 January (2013) page 10 https://www.revenue.wi.gov/ise/wtb/178.pdf (NO.w carryforward is 20 years, Not 15 as indicated in the bulletin.