

CHARTER OF THE NATIONAL NEXUS PROGRAM

*Adapted and updated from the Nexus Program Plan as
Adopted by the National Nexus Advisory Committee
and Multistate Tax Commission Executive Committee
May 10, 1990*

I. Statement of Purpose and Desired Results

The National Nexus Program has been created by the Signatory States and the Multistate Tax Commission in furtherance of the following purposes:

- A. Fostering increased state tax compliance by business that is engaged in multi-jurisdictional commerce.
- B. Establishing national cooperation in the administration of state tax issues arising in the nexus area, including possible development of a uniform nexus standard which satisfies requisite constitutional standards, the identification of businesses involved in multi-jurisdictional commerce which are not now in compliance with applicable state tax laws, the establishment of a national information network with uniform confidentiality standards, and similar activities.
- C. Facilitating taxpayer compliance through education as to a taxpayer's state tax reporting responsibility when it becomes involved in the systematic development of a market in a specific state and providing cooperative services to multistate taxpayers to reduce compliance burdens and to simplify the compliance process.
- D. Promoting fair, even-handed and consistent state tax enforcement in the nexus area.

II. General Description of Committee Activities

The Nexus Committee meets three times a year to accomplish the following activities in support of the Nexus Committee goals:

- A. Give guidance on complex nexus issues to MTC Nexus Program.
- B. Recommend nexus projects to the MTC Executive Committee.
- C. Provide educational opportunities to member states and taxpayers.
- D. Provide forum to taxpayers to resolve nexus issues.
- E. Coordinate nexus issues with MTC Audit Program.
- F. Use state and taxpayer feedback to continuously improve Nexus Program.

III. Description of Program Activities

Introductory Note: The following activities are meant to be illustrative of those activities in which the Program engages to meet the program purposes set forth in the Statement of

Purpose and Desired Results. Subject to available funding and the approval of the Executive Committee, the Program may undertake additional or different activities that are consistent with the Statement of Purpose and Desired Results.

A. Central Clearinghouse.

Program staff, under the direction of the Executive Committee and with the guidance of the Nexus Committee, maintains a Central Clearinghouse of nexus information pursuant to applicable state confidentiality and information sharing laws and policies.

The Central Clearinghouse provides support to states to assist them in audit selection and compliance efforts regarding their sales/use and corporate tax laws. All states benefit from the centralized gathering of nexus information. On a regular basis, the Clearinghouse staff obtains reports on standardized formats from the states regarding audits they have conducted of taxpayers meeting certain parameters.

B. Taxpayer Education and Awareness.

Using modern technology program staff communicates with tax practitioners and others to assist Program states in communicating the content of the Program as well as state registration and filing responsibilities to the affected business community.

C. Central Registration and Taxpayer Assistance.

1. Registration Processing.

Program staff will create and maintain a centralized electronic registration system to facilitate the registration process for multistate taxpayers, thereby reducing the burdens of compliance.

No inquiry or effort to determine whether the business has any historical or retrospective tax liability will be made as a part of this function.

2. Voluntary Disclosure for Multistate Tax Purposes.

A component of the Central Registration and Taxpayer Assistance portion of the Program is designed to obtain sales/use tax and corporate tax registration of those multistate businesses that have nexus in Program states. The fact that activities have already occurred in the states raises the potential that an unregistered business owes a tax liability for past activities.

The Project staff informs the business or its representatives of the general compliance policy of the particular states involved and seeks to obtain the cooperation of the business in processing its registration on terms that are consistent with each state's policies. The business prepares a written statement of

facts ("Representations and Warranties") on an anonymous basis that describes its contacts with each interested state over the past few years. The states review these representations to determine whether a prospective only approach is appropriate under their respective laws and policies or whether and to what extent a retrospective liability is required. No state is asked to deviate from its own requirements or policies in any manner.

Program staff circulate a standardized agreement appropriate for the resolution of the matter for execution by the states should they desire to accept the proposal of the business. No state is obligated to accept a Voluntary Disclosure agreement. Each state is free to accept an agreement as proposed, to condition its acceptance on the inclusion of additional terms or the removal of proposed terms, or to reject an agreement in its entirety.

D. Litigation Support.

Within available resources, Program staff provides legal support to the state participants in the area of tax nexus. This support includes legal research, consultation and a limited amount of representation in given cases should the participating state desire such support.

The Program legal staff monitors litigation in the nexus area and develops a network of resources within all of the states of those attorneys working in this area. The Program provides other types of direct assistance through the Program legal staff, as directed by the Executive Committee and with the guidance of the Nexus Committee.

For example, the Litigation Support effort also involves the use of Program staff legal resources to assist in the development and representation of the states in the Program's Joint Nexus Investigations as described in paragraph E. below.

E. Cooperative Nexus Enforcement.

The States believe that authority exists for the States to conduct audits of multistate taxpayers whose targeted economic activities in the taxing state establish sufficient minimum contacts to support jurisdiction under the Due Process Clause as articulated by the Supreme Court in the Quill case. The purpose of such audits is, in the first instance, to determine whether the taxpayer has Commerce Clause nexus with the taxing state. Accordingly, Program staff provides support to states that seek to enforce requests for nexus information from out-of-state companies that regularly and systematically solicit sales in member states.

In addition, Program staff, utilizing public sources of information, conducts research to identify multistate companies that may have compliance issues in member states, evaluates the results of that research and takes appropriate action as a result of the research. Appropriate actions can range from no further action, to referrals to

individual states, to referral to the Nexus, Audit and/or Executive Committees to authorize cooperative enforcement in select cases.

Depending on the availability of resources, Program staff can refer an audit to the Audit Program, the purpose of which will be to determine whether a multistate business has established nexus in Program states. The Program finances the costs of such audits, through the determination of whether or not nexus exists. Assuming nexus exists, assessments may be issued for those participating states that are members of both the Nexus and the Audit programs.

IV. Reporting Relationships

The Nexus Committee shall report three times a year to the Executive Committee and annually to the Commission. The Nexus Committee will establish priorities and goals for approval or further direction from the Executive Committee. The committee shall regularly communicate with the other committees of the Commission on issues of common concern.