



Voluntary Compliance Options

Clifford Turner


Vice President—Professional Services

Clifford Turner is an industry veteran with 20 years of sales and use tax experience. He has built and managed sales and use tax compliance operations for two of the “Big Four” accounting firms.

He is supported by a team of seasoned tax professionals including former state tax auditors, attorneys and accountants specializing in sales and use tax compliance matters.

- ▶ **Areas of Non-Compliance**
- ▶ **Overview of Voluntary Compliance Options**
- ▶ **Tax Registration Options**
- ▶ **Voluntary Disclosure Agreements**
- ▶ **Amnesty Programs**
- ▶ **SSTP VDA Program**
- ▶ **Nexus and Tax Registration and Reporting Requirements**
- ▶ **How States Discover Nexus Offenders**
- ▶ **What To Do When Nexus Exists**
- ▶ **Monitoring Nexus Creation**

Areas of Non-Compliance

A dark silhouette of a palm tree is positioned on the right side of the slide, extending from the bottom towards the top. The background is a dark gray gradient.

Areas of Non-Compliance

- ▶ **Unsupported exempt sales and deductions**

- ▶ Sales for resale
- ▶ Exemption certificates

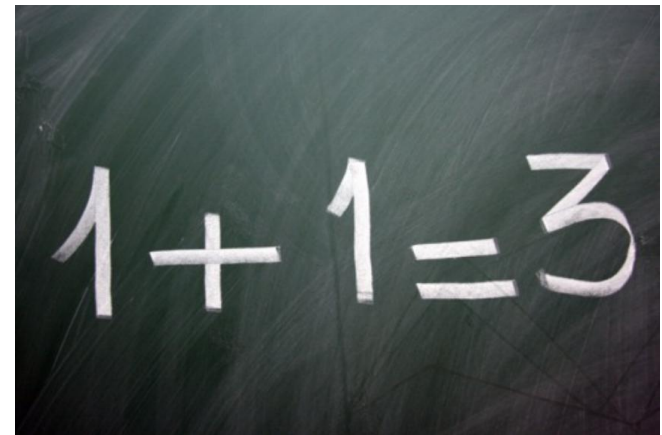
- ▶ **Unreported use tax**

- ▶ Ex-tax purchases
- ▶ Self-consumption

- ▶ **Unreported taxable sales**

- ▶ **Incorrect tax charged**

- ▶ **Accounting and clerical errors in reporting**



- ▶ Failing to Register and Report Activity in a State or Local Taxing Jurisdiction
- ▶ *Nexus* creation requires tax registration and reporting
- ▶ Tax registration **authorizes tax collection** (i.e. the ability to collect *tax reimbursement* from customers)

Areas of Non-Compliance

The sales & use tax Cardinal Sin

- ▶ Tax collected and not reported
- ▶ Civil and criminal penalties
- ▶ Misdemeanor and/or felony



Voluntary Compliance Options

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Voluntary Disclosure Options

- ▶ **Standard Registration**
- ▶ **Registration with 'Disclosure' of Prior Activity**
- ▶ **Formal Voluntary Disclosure Agreement**
- ▶ **Publicly Available Amnesty Program**
- ▶ **Amended Returns**



Tax Registration Options

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Standard Tax Registrations

▶ Tax Registration Application

- Required or 'Voluntary'

▶ Effective Date of Tax Collection

- 'Start of Business Activities'
- 'Date of First Sale' or 'Date First Sales Made'
- 'Starting Date' or 'Effective Date'
- 'Beginning Date of Operations for Sales and Use Tax'
- 'Beginning Date for this Business'
- 'When will you begin providing taxable sales in the state of____?'

▶ Seller's Permit or Tax Registration Certificate is Issued

Registration with Disclosure of Prior Activity

- ▶ **Tax Registration Application**
- ▶ **Cover Letter of Explanation and Penalty Abatement Request**
- ▶ **Schedule of Tax Liability**
 - Prior Period Returns if required
- ▶ **Payment of Unremitted Tax**

Voluntary Disclosure Agreements

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Voluntary Disclosure Agreements (VDA)

- ▶ Typically Anonymous
- ▶ Done through a third-party 'facilitator'
- ▶ Limited look back period (often 3 - 4 years)
- ▶ Penalty abatement and interest reduction
- ▶ Company agrees to register, collect and remit sales tax in the future



Voluntary Disclosure Agreements (VDA)

- ▶ Designed by tax administrators
- ▶ Authority granted by specific legislation or through the general powers given by the legislature
- ▶ Encourages businesses to file and to pay their back taxes
- ▶ Penalty abatements
 - ▶ May reduce or eliminate penalties
 - ▶ May reduce interest

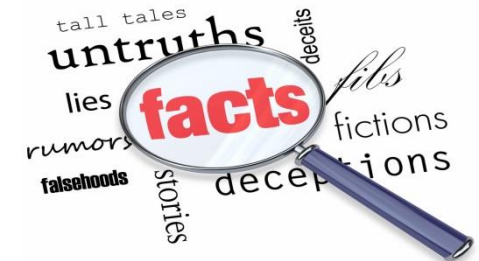
Voluntary Disclosure Agreements (VDA)



- ▶ Qualifying for penalty abatements
- ▶ Before the program's deadline the taxpayer must pay:
 - ▶ Taxpayer must pay the entire amount of all taxes due
 - All taxes collected and not remitted
 - All taxes that should have been collected during limited look back period
- ▶ Taxpayer must pay any interest not abated
- ▶ Taxpayer may have to sign a settlement agreement agreeing to file and to pay all taxes on time in the future

Voluntary Disclosure Agreements (VDA)

- ▶ Ineligibility:
 - ▶ If taxpayer has received a letter from the state...
 - ...asking to complete a nexus questionnaire
 - ...requesting that a return be filed
 - ...with a bill for taxes owed
 - ▶ If taxpayer is under audit
 - ▶ If taxpayer is under criminal investigation
 - ▶ If taxpayer is disclosing certain tax avoidance transactions (tax shelters)



Voluntary Disclosure Agreements (VDA)

▶ Sample VDA Agreements

➤ Ohio

➤ Oklahoma

➤ Arkansas

Amnesty Programs



▶ Amnesty Programs

- ▶ Sporadically offered; may also be available for participating states in the Streamlined Sales and Use Tax Agreement (SST)
- ▶ Clawback provision—State follows amnesty taxpayer for three years and can seek amnesties penalties and interest if sales tax is not remitted

AMNESTY PROGRAM



Voluntary Compliance Options – Amnesty Programs

▶ **Amnesty Programs—Current and recently offered:**

- ▶ **Arkansas—September 1, 2013 – December 31, 2013**
- ▶ **Connecticut—September 16, 2013 – November 15, 2013**
- ▶ **Louisiana—September 23, 2013 – November 22, 2013**
- ▶ **Nebraska—October 1, 2013 – December 31, 2013**
- ▶ **North Carolina—January 1, 2014 – Ongoing**
- ▶ **Vermont—August 1, 2013 – May 1, 2014**

**AMNESTY
PROGRAM**

Connecticut
Amnesty 2013



The SSTP Amnesty Program

- ▶ Streamlined Sales Tax Project (SSTP) Amnesty – The SSTP is a group of states that have joined together to “simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance.”
- ▶ Currently, 24 states are participating; 23 as full members and one as an associate member.
- ▶ States have to apply to and be accepted in order to become members. As part of the process of becoming a member a state has to offer a **true sales tax amnesty** from the time they are accepted as an associate member until 12 months after they become a full member. The amnesty waives all past due uncollected or unpaid sales tax, penalty, and interest. The states currently offering a full sales tax amnesty through the SSTP are: Ohio and Tennessee. Utah did but that benefit expired October 1 2013.

The SSTP Amnesty Program

► There are four major drawbacks of the SSTP Amnesty Program:

- The first is that it **only applies to sales tax**, which means you may still have to do a VDA for other taxes.
- The second is that it is an all-or-nothing program. You **must register for all the SSTP states** even if you do not have any revenues in those other states in order to take advantage of the amnesty.
- The third is one of **timing**. Because you register for all the SSTP states at once, you will need to complete VDAs in those states you have exposure in prior to using the SSTP amnesty program. This can become complicated.
- The fourth is the **‘clawback’** for tax relieved under the amnesty program should you not maintain an active registration for the following 36 months.

► Despite the drawbacks of this amnesty, if your exposure is large enough in Ohio or Tennessee (or Utah before Oct 1 2013) it may make this option your logical choice.

Nexus and Tax Reporting Obligations

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- ▶ 45 states and the District of Columbia require that sales tax be collected and remitted for businesses that have nexus with the state
- ▶ 5 states do not collect sales tax (NOMAD)
 - ▶ New Hampshire
 - ▶ Oregon
 - ▶ Montana
 - ▶ Alaska
 - ▶ Delaware

- ▶ What creates physical presence?
 - ▶ Owning buildings or property
 - ▶ Renting property
 - ▶ Having employees within state
 - ▶ Providing services within state
 - ▶ Maintenance, installation, training
 - ▶ Deliveries
 - ▶ Attending trade shows

- ▶ What creates economic presence?
 - ▶ Affiliate nexus through ‘related parties’
 - ▶ ‘Click-through’ nexus through in-state marketing affiliates

▶ Affiliate Nexus Laws



- ▶ State asserts that nexus exists based on the existence of common ownership between an in-state taxpayer and an out-of-state corporation
- ▶ Parent or other affiliate physically present and operating in the state will create nexus for the out-of-state affiliate

- ▶ Nexus is asserted on the out-of-state retailer on the basis of the retailer's relationship with an entity doing business in the state, not based on common ownership or control
- ▶ Example: A seller is presumed to be soliciting business through an in-state resident if:
 - ▶ The seller enters into an agreement with an in-state resident to refer potential customers to the seller in exchange for consideration, through a link on an Internet website.

How States Discover Nexus Offenders



- ▶ **Nexus questionnaires from taxing authorities**
- ▶ **Multistate Tax Commission (MTC)**
- ▶ **Nexus task forces**
- ▶ **Audits performed on a company's vendors**
- ▶ **Company visibility**

▶ Nexus questionnaires from taxing authorities

- ▶ Information could be used to prove nexus
- ▶ Answers could produce additional inquiries or requests for clarifications
- ▶ Failure to return a questionnaire likely eliminates any settlement options (VDA, etc.)
- ▶ Companies are strongly advised to utilize experienced tax advisors



How States Discover Nexus Offenders

234 002 Discovery

3560 (Rev. 06-12)



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

ANDY DILLON
STATE TREASURER

Letter of Inquiry Concerning Michigan Taxes

January 25, 2013



2nd Request

Dear Controller, Tax Manager or Tax Director:

On **September 21, 2012** we contacted your company concerning Michigan's nexus standards for Corporate Income Tax (CIT), Michigan Business Tax (MBT) and Sellers Use Tax. Your company has been identified as issuing 1099 MISC payments for non-employee compensation to one or more Michigan individuals or businesses. The nature of 1099 MISC payments may make your company liable for Michigan taxes, if the payees were soliciting sales or performing services in Michigan on behalf of the company.

Nexus for CIT, MBT and Use Tax may be established through solicitation of sales with a resident or non-resident employee, agent, representative, independent contractor, broker or others acting on behalf of the company, or through performance of services. Both CIT and MBT nexus may also be established by mere physical presence or active solicitation of sales in Michigan with Michigan gross receipts of \$350,000 or more. In addition, CIT nexus is established through ownership or beneficial interest in a flow-through entity (directly or indirectly through one or more flow-through entities) that has nexus with Michigan. These standards are explained in Revenue Administrative Bulletins (RABs) 1999-1(Use), 2007-6 (Actively solicits) and 2008-4(MBT) which can be obtained at www.michigan.gov/taxes.

GOVERNOR!
Under voluntary disclosure, qualifying companies can look back (period) to no more than four years and pay only the tax and interest amounts. The failure to file penalty is waived. In addition, voluntary disclosure provides the assurance that the department will not pursue taxes or bring any criminal action against the company for failure to report or remit a required tax for years prior to the lookback period. Voluntary disclosure applies to all taxes administered by the department.

To date, your company has not responded to our letter. To resolve this issue, please complete and submit a *Michigan Department of Treasury Nexus Questionnaire* (Form 1353) to the address below. If you are interested in participating in voluntary disclosure, please submit a *Voluntary Disclosure Request* (Form 4133) with the completed Form 1353. Copies of Form 1353 and Form 4133 can be obtained at www.michigan.gov/taxes by clicking on the far left button, entitled "Business Information" and then selecting "Discovery and Voluntary Disclosure". The forms will be listed at the bottom of the page.

This letter is being sent as a reminder that failure to respond will disqualify your company from the benefits of Michigan's voluntary disclosure program. This letter does not guarantee or provide immunity from actions resulting in the company's inability to qualify for voluntary disclosure. As a courtesy, we will extend the response date to **March 11, 2013**. If no response is received by that date, a Final Letter of Inquiry may be issued, which will make your company ineligible for voluntary disclosure. Additional action such as the issuance of a tax assessment in accordance with Public Act 122 of 1941 as amended, or assignment to our Audit Division may be initiated.

If you have any questions, please contact **Patty Lifford** at 517-636-4179 or by e-mail at LiffordP@michigan.gov.

THIS INFORMATION IS PROVIDED TO MICHIGAN UNDER AUTHORITY OF THE INTERNAL REVENUE CODE (IRC), SECTION 6103(D)

P.O. BOX 30140 • LANSING, MICHIGAN 48909-7640
www.michigan.gov/treasury • FAX (517) 636-4156

How States Discover Nexus Offenders



Dave Heineman
Governor

December 21, 2011

STATE OF NEBRASKA
DEPARTMENT OF REVENUE
Douglas A. Ewald, Tax Commissioner
PO Box 94818 • Lincoln, NE 68509-4818
Phone: 402-471-5729 • www.revenue.ne.gov

RE: Nexus Questionnaire

Dear Owner, CEO, or Controller:

This letter is to notify you that the Nebraska Department of Revenue has sufficient information in its possession to begin an examination of your books and records, and business activities regarding potential tax liability in the state of Nebraska.

You must complete the enclosed questionnaire and return it in the enclosed self-addressed envelope within 15 days from the date of this letter. If necessary, after our review of your information, we will contact you for any additional information.

If you have any questions, you may visit our website at www.revenue.ne.gov, or feel free to give me a call at (402) 471-5418, or toll free at (877) 339-0631, ext 5418.

Thank you for your cooperation.

FOR THE TAX COMMISSIONER

Sincerely,

A handwritten signature in cursive script that reads "Deb Clark".

Deb Clark
Revenue Agent-Nexus Unit
Fax Number (402) 471-5929
Deb.Clark@nebraska.gov

How States Discover Nexus Offenders



Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF REVENUE
Douglas A. Ewald, Tax Commissioner
PO Box 94818 • Lincoln, NE 68509-4818
Phone: 402-471-5729 • www.revenue.ne.gov

1. Describe your company's business:
2. Do you have Nebraska customers? What year did you begin in Nebraska?
3. Does your company have employees, or representatives working in Nebraska?
Describe their activities:
4. Does your company make sales, or provide a service within Nebraska? Describe the service:
5. If you are making sales of tangible personal property into Nebraska, are the sales to an end-user, dealer, retailer or wholesaler?
GOTCHA!
PLEASE ANSWER THE FOLLOWING QUESTIONS YES OR NO:
6. Do you receive income from services performed in Nebraska?
If so, please be sure to indicate the service in questions 1 and 3 above.
7. Do you have Real Property, or warehouses located in the state of Nebraska?
8. Do you lease or rent equipment in Nebraska?
9. Do you perform maintenance or repair services in Nebraska?
Indicate whether on personal (including software) or real property:
10. Do you erect or install tangible personal property (including software) in Nebraska?
11. How are deliveries of your product made? Do you pick up product?
12. Do you supply displays or display cabinets? Do you stock those displays?
13. Do you provide support or monthly maintenance agreements?
14. **Is your company reporting income taxes through a parent, or affiliated company?**
15. Please indicate a contact person, phone number, and email address:

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Printed with soy ink*

▶ **Multistate Tax Commission (MTC)**

- ▶ **Intergovernmental tax agency**
- ▶ **National Nexus Program is designed to foster tax compliance**
- ▶ **36 states and the District of Columbia participate**
- ▶ **Joint audit program is available to participating member states**



▶ Nexus task forces

- ▶ Task forces identify companies doing business in a jurisdiction but not filing sales tax returns
- ▶ Attend trade shows, visit construction sites and mall kiosks
- ▶ Perform Internet research to locate unregistered businesses operating in a jurisdiction

▶ Audits performed on a company's vendors

- ▶ Auditors may review vendor invoices and collect information about companies
- ▶ Vendors may be sent nexus questionnaires to confirm that companies had nexus
- ▶ Companies may never receive a nexus questionnaire and nexus is verified through a vendor's audit



What To Do When Nexus Exists



- ▶ **Must register and collect and remit tax**
 - ▶ **Recent nexus establishment**
 - ▶ **Register and begin collecting/remitting**
 - ▶ **Nexus previously existed**
 - ▶ **Voluntary Disclosure Agreements (VDA)**
 - ▶ **Amnesty Programs**
 - ▶ **Previously paid use tax**



Monitoring Nexus Creation



- ▶ A company should monitor nexus-creating activities
 - ▶ In-house
 - ▶ Third-party tax administrator



▶ Avalara Tax Registration Monitoring Service

- ▶ The Avalara Tax & Professional Services team will periodically monitor a company's account activity and will notify it when tax is collected in a previously unregistered taxing jurisdiction.
- ▶ Avalara can then timely register the company in the new taxing jurisdiction and report the tax collected or the company can self-register and report the tax directly.

Questions?



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VICE PRESIDENT - PROFESSIONAL SERVICES

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