



**State of New Hampshire
Department of Revenue Administration**

109 Pleasant Street
PO Box 457, Concord, NH 03302-0457
Telephone 603-230-5005
www.nh.gov/revenue



TV
IE

John T. Beardmore
Commissioner

Kathryn E. Skouteris
Assistant Commissioner

November 3, 2015

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Executive Counsel
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to MOP 1200, I (D), authorize the Department of Revenue Administration (DRA) to pay membership dues to the Multistate Tax Commission (MTC), Vendor Code 169708, Joint Audit Program for the period of December 1, 2015 through June 30, 2018 in the amount of \$270,021. **100% General Funds.**

Funding is available in the following account, subject to continued appropriation in the next operating budget:

01-84-84-840510-1301, Audit Division, Department of Revenue Administration

026-500251 Membership Fees	FY 2016	\$27,426
	FY 2017	\$102,789
	FY 2018	\$139,806

EXPLANATION

In 2015, the Legislature established RSA 21-J:3, XXXI to authorize the DRA to enter into a participation agreement with the MTC for multistate business tax auditing through membership in its Joint Audit Program. Membership will authorize MTC auditors to conduct business tax audits of multistate taxpayers at the direction of and on behalf of the DRA, consistent with New Hampshire statutes. The MTC auditors will then forward their findings to the DRA's audit staff for review and the issuance of a final determination (no change, refund or assessment). The MTC Joint Audit Program audit facilitates the proper determination of state tax liability for a multistate taxpayer, including the equitable apportionment of tax bases and settlement of apportionment disputes, by conducting a single audit of the taxpayer on behalf of participating states.

In addition, MTC Joint Audit Program membership will afford DRA Audit Division staff significant training opportunities to collaborate with and learn from peers in other states, including discounted training in corporate tax auditing not available elsewhere.

Listed below are answers to standard questions required for Governor and Executive Council organizational dues and membership approval submissions.

1. How long has this organization been in existence and how long has this agency been a member of this organization?

The MTC was created by the Multistate Tax Compact in 1967. The MTC is an intergovernmental state tax agency that provides audits of multistate taxpayers on behalf of participating states. This is the first year New Hampshire has sought to join the Joint Audit Program. The State is currently a member of the MTC Nexus Program.

2. Is there any other organization which provides the same or similar benefits which your agency belongs to?

No.

3. How many other state's belonging to this organization and is your agency the sole New Hampshire state agency that is a member?

48 states and the District of Columbia participate in MTC and its meetings and programs, and 24 states participate in the corporate tax side of the Joint Audit Program. DRA would be the sole New Hampshire state agency to obtain membership in the MTC Joint Audit Program.

4. How is the dues structure established? (Standard fee for all states, based on population, based on other criteria, etc)

Fees for participation in the Joint Audit Program are set on a reimbursement basis to cover the costs of operating the program. Responsibility for reimbursement is divided among the states by a schedule approved by the Executive Committee.

States participating in both income and sales tax audits pay a base fee amount that is equal for each state and is based on a cost reimbursement method. States participating in only income or sales tax audits pay an amount equal to 60% of the base fee amount for participating in both types of audits. States that are not compact or sovereignty members also pay an additional 20% general operations support fee.

There is a progression or "ramping up" of the program fee spread over the first three years a state participates. Since audits typically take from one to two years to complete from start to finish, it takes three years for a state to become fully integrated into the program. In the first year, a state pays 35% of the base fee (in New Hampshire's case, the first year is pro-rated to recognize the seven months starting on December 1st). In the

second year, 75% of the base fee is paid, and finally, the full, annual program fee is paid beginning in the third year.

Because New Hampshire is among the ten smallest states (including D.C.) by population, a 10% reduction in the base fee is applied every year.

5. What benefit does the state receive from participating in this membership?

Participating in the Joint Audit Program allows for more efficient tax administration and enhanced compliance with New Hampshire's tax laws. New Hampshire's participation in the MTC Joint Audit Program would benefit taxpayers by avoiding duplicative audits conducted separately by non-member states. By joining the Program, New Hampshire does not surrender or delegate its taxing authority. DRA staff will authorize MTC to conduct specific audits on behalf of New Hampshire, and MTC staff will conduct audit fieldwork on behalf of the DRA. Once fieldwork is complete, MTC staff will share the results of fieldwork, as well as proposed adjustments of taxpayers' New Hampshire tax returns, to the DRA. DRA staff will then review the results of MTC audits and determine whether to issue tax assessments, refunds or make no change.

6. Are training or educational/ research materials included in the membership? If so, is the cost included? Explain in detail.

There is no formal training included as part of the Joint Audit Program, though informal training can occur as part of Audit Committee meetings.

Course fees for various MTC schools and other training programs are set on a full cost recovery basis in accordance with the direction of the Executive Committee. Joint Audit or National Nexus Program states pay a reduced fee than what other states or non-state government participants pay for MTC training courses.

7. Is the membership required to receive any federal grants or required in order to receive or participate in licensing or certification exams? Explain.

No.

8. Is there any travel included with this membership fee? Explain in detail any travel to include the number of employees involved, the number of trips, destination if known and purposes of membership supported trips.

There is no travel included in the membership fee.

There are no registration costs or fees to attend meetings of the Commission or its various committees. As an intergovernmental state tax agency, meetings of the Commission, its various committees, or its other working groups and teams are open to the public unless in closed session (because confidential taxpayer information or litigation or personnel related matters will be discussed), and there is no charge to attend.

The Audit Committee meets three times per fiscal year: during the Commission's annual meeting week (at or near the end of July), during the fall committee meetings (typically set sometime during the first full week of December), and during the winter committee meetings (set sometime during the first two weeks of March). It is anticipated that one or more DRA staff will attend each of the annual MTC meetings, and the cost of the travel will be paid for by the DRA.

9. Which state agency employees are directly involved with this organization? (Indicate if they are members, voting members, committee members, and/or officers of the organization.)

DRA employees directly involved with the MTC Joint Audit Program will include Commissioner John Beardmore, Assistant Commissioner Kate Skouteris, Audit Director Kathy Sher, Assistant Audit Director Kerrin Rounds, Chief Multistate Auditor John Frasier, and Multistate Auditor Donna Whitcomb.

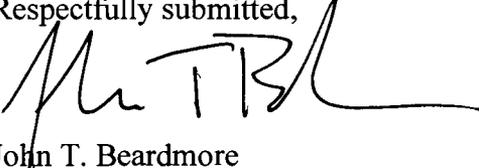
10. Explain in detail any negative impact to the State if the Agency did not belong to this organization.

If membership is not approved the State will forgo additional business tax compliance activities performed by MTC auditors, will forgo likely additional business tax revenue to the State General Fund, and will forgo additional training and professional development available to the DRA's Audit Division staff.

A copy of the 2015-2018 invoice statement is attached for your review.

Your consideration of DRA's request is appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John T. Beardmore', written over a horizontal line.

John T. Beardmore
Commissioner

Enclosure

NEW HAMPSHIRE JOINT AUDIT PROGRAM PARTICIPATION AGREEMENT AND CONTRACT FOR AUDITING SERVICES

This Joint Audit Program Participation Agreement and Contract for Auditing Services (“Agreement”) is between the State of New Hampshire, through the Commissioner and the Department of Revenue Administration, and the Multistate Tax Commission (“Commission”), through its Executive Director.

Background

- The Commission is an intergovernmental state tax agency created by the Multistate Tax Compact (“Compact”), an interstate compact enacted in substantially similar form by each of the states that are a party to the Compact.

- The Compact enumerates four purposes, each relevant to the operation of the Commission’s Joint Audit Program:

1. To facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
2. To promote uniformity or compatibility in significant components of tax systems;
3. To facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and
4. To avoid duplicative taxation.

- The Commission operates the Joint Audit Program on behalf of states that are a party to the Compact pursuant to Article VIII of the Compact.

- The Commission has the power to compile and publish information that would, in its judgment, assist the states that are a party to the Compact in implementation of the Compact and taxpayers in complying with state and local tax laws. The Commission also has the power to do all things necessary and incidental to the administration of its functions pursuant to the Compact.

- The Commission has determined that efforts to achieve the purposes of the Compact are furthered through its Joint Audit Program; and that its effectiveness in

achieving its purposes is increased by its performing audits for as many states at one time as practicable, including states that are not parties to the Compact.

- The Commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

- The Compact requires the Commission to charge fees for taxpayer compliance activities on a cost basis only. Accordingly, the Commission is prohibited from and will not accept fees from states contingent on the taxes assessed to or paid by taxpayers to states. Further, the Commission will not compensate employees on the basis of taxes assessed to or paid by taxpayers to states.

- New Hampshire is not a party to the Compact.

- New Hampshire law authorizes the commissioner of revenue administration to contract with the Multistate Tax Commission to participate in audits under RSA 21-J:3, XXXI.

- The Joint Audit Program consists of two major components: one for multistate income and franchise tax audits and one for multistate sales and use tax audits.

- New Hampshire would like to participate in and contract for the audit services provided through the Commission's Joint Audit Program ("Program"). Specifically, New Hampshire would like to participate in and contract for audit services related to multistate income and franchise tax audits.

- The taxing authority of New Hampshire remains inviolate. New Hampshire does not surrender, delegate, or contract away in any manner or extent its taxing authority, including its authority to determine and assess taxes due from taxpayers subject to its jurisdiction by participating in the Program. The activities of the Program do not impair, diminish, or interfere with New Hampshire exercising its taxing authority. To the contrary, the Program's activities support and strengthen the ability of New Hampshire to exercise fully and effectively such authority.

- The Commission operates on a fiscal year basis, each year beginning on July 1st and ending on June 30th of the succeeding year.

With this background in mind, the parties agree as follows.

Terms and Conditions

1. Term

1.1 Initial Term and Renewal. The initial term of this Agreement begins on December 1, 2015, and continues through June 30, 2018. The Agreement may be renewed by the parties in writing for successive one-year terms thereafter.

1.2 No Obligation to Renew. Nothing in this Agreement creates any express or implied obligation on either party to renew or extend the Agreement or any right to continue the Agreement on the same terms and conditions contained in the Agreement.

1.3 Termination. Either party may terminate this Agreement by providing at least 30 days' notice to the other party.

1.4 Effect of Termination of Agreement on Audits in Progress. The Commission will continue work on New Hampshire's portion of audits in progress until New Hampshire's portion is completed even after termination of this Agreement unless New Hampshire specifically terminates each audit in writing. This Agreement will be considered in effect for purpose of any audits in progress until New Hampshire's portion is completed.

2. Grant

2.1 Program Fee. New Hampshire grants to the Commission the amount of \$270,021, subject to adjustment under paragraph 2.3, which shall be paid in three annual installments as described below:

(A) For the seven remaining months of fiscal year 2016 beginning December 1, 2015, the amount of \$27,426, which will be paid on or before February 15, 2016;

(B) For fiscal year 2017, the amount of \$102,789, subject to adjustment pursuant to paragraph 2.3, one-half of which will be paid on or before September 15, 2016, and the other one-half of which will be paid on or before February 15, 2017; and

(C) For fiscal year 2018, the amount of \$139,806, subject to adjustment pursuant to paragraph 2.3, one-half of which will be paid on or before September 15, 2017, and the other one-half of which will be paid on or before February 15, 2018.

2.2 Prepayment Allowed. New Hampshire may, in its discretion, pay in any fiscal year amounts otherwise due under this contract for subsequent fiscal years.

2.3 Fee Reduction. The amounts in 2.1(B) and (C) reflect a projected increase in Program fees and may be reduced if the Commission does not actually approve the fee increases in those fiscal years, or otherwise reduces the Program fee for those fiscal years. The Commission will provide New Hampshire with a notice of such adjustments within 45 days of any budget action by the Commission or its Executive Committee which causes such adjustments.

2.4 Enhancements. During any time this Agreement is in force, the Commission enhances the Program in a manner that results in an increased Program fee for states participating in the program, New Hampshire may participate in the enhanced program by paying an increased amount reflecting the increased Program fee plus the applicable administrative charge. If New Hampshire chooses not to participate in the enhanced features of the Program, the Commission will provide audit services comparable to those available without such enhanced services.

2.5 Changes in Status. If New Hampshire becomes a party state to the Compact or a sovereignty member state (affiliated membership pursuant to Commission bylaw 13(a)) during the term of this Agreement, and is therefore liable for the membership assessment defined in Article VI.4(b) of the Compact during any fiscal year, the amounts to be paid under this Agreement for that fiscal year shall be limited to the base Program fee for the fiscal year and shall not include the applicable general operating program support fee increase.

3. Scope of Work and Conduct of Audits

3.1 Program Components. This Agreement is for the multistate income and franchise tax audit component only.

3.2 Audit Committee. New Hampshire will be a fully participating member of the Commission's Audit Committee, the body charged with oversight of the Program.

3.3 Audit Selection. For the components of the program designated in paragraph 3.1, New Hampshire will participate in the nomination and selection process to the same extent as any other state participating in the Program.

3.4 Authority to Audit. The Commission, its agents, and its employees are agents and representatives of New Hampshire for the purpose of performing professional services under the terms and conditions of this Agreement, but are not employees of New Hampshire. The Commission is thus authorized to audit taxpayers for which New Hampshire has provided the audit authorization described in paragraph 3.5. The normal audit period to be reviewed shall be up to four years to the extent of the applicable statute of limitation unless otherwise agreed to by the parties.

(A) Audits shall be conducted substantially in accordance with the Commission's audit procedure manuals, which have been reviewed and are hereby approved by New Hampshire for the purpose of this Agreement.

(B) Notwithstanding (A), New Hampshire is entitled to supervise and direct the conduct of any and all aspects of audits authorized. If, in the exclusive judgment of the Commission, New Hampshire's supervision or direction interferes or threatens to interfere with the audits with respect to the other participating states, the Commission may elect, upon five days written notice, to terminate its agency relationship with respect to the audits so affected or to take other action as may be required to protect the interests of the other states participating in the audits. In the event of such termination, the Commission shall take reasonable efforts to assist New Hampshire in continuation of the affected audits by New Hampshire's own employees or other agents.

3.5 Audit Authorization. When New Hampshire intends to participate in any particular audit, it will execute and deliver to the Commission its written

authorization for the Commission to audit a particular taxpayer on its behalf. This written authorization will be substantially in the form attached as Exhibit A. Failure to provide authorization for a particular audit will preclude New Hampshire from participating in that particular audit.

3.6 Feasibility of Audit. After initial contact with a taxpayer subject to audit under this Agreement, the Commission may determine that it is not feasible to complete the audit. This determination shall be made by the Commission after consultation with a representative of New Hampshire. Upon making such a determination, the Commission shall notify New Hampshire, and, at New Hampshire's request, the Commission shall take reasonable efforts to assist New Hampshire in continuation of the affected audits by New Hampshire's own employees or other agents.

3.7 Audit Termination before Completion. Notwithstanding paragraphs 3.4(B) and 3.6, either party may terminate the conduct of any one or more audits commenced under this Agreement for any reason whatsoever upon the giving of at least 30 days' notice to the other party.

4. Confidentiality and Disclosure of Audit Information

4.1 Confidentiality of Information. The Commission and its agents and employees, as authorized by New Hampshire with respect to services provided under this Agreement, are required to comply with the applicable laws of New Hampshire, specifically RSA 21-J:14, regarding the confidentiality of information received during and after the term of this Agreement. A copy of RSA 21-J:14 is attached to this Agreement as Exhibit B.

4.2 Disclosure. All taxpayer information derived from the audit services conducted by the Commission under this Agreement belongs to New Hampshire and is subject to New Hampshire's laws, policies, and procedures with respect to information sharing and disclosure.

4.3 Consent to Limited Information Sharing. New Hampshire consents to limited sharing of its audit information, e.g., taxpayer name, audit progress, and status, to other states participating in the Program and states that are parties to the Compact during closed sessions of the Commission's Audit and Executive Committees which provides oversight and direction to the Commission's auditors.

5. Miscellaneous Clauses

5.1 Entire Agreement. This Agreement constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties. It may not be modified except in a writing signed by the parties.

5.2 Waiver. If either party fails to require the other to perform any term of this Agreement, that failure does not prevent the party from later enforcing that term. If either party waives the other's breach of a term, that waiver is not treated as waiving a later breach of that term.

5.3 Notices. All notices and other communications required or permitted under this Agreement must be in writing and must be sent to the party at that party's address set forth below or at whatever address other address the party specifies in writing.

5.4 Severability. If any part of this Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

5.5 Headings. Headings are for convenience only and do not affect the interpretation of this Agreement.

5.6 Applicable Law. New Hampshire law applies to this Agreement without regard for any choice-of-law rules that might direct the application of the laws of any other jurisdiction.

5.7 Counterparts. This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

Executed on the dates shown below by the following parties:

MULTISTATE TAX COMMISSION
444 North Capitol Street, N.W., Suite 425
Washington, D.C. 20001

By: 

Gregory S. Matson
Executive Director

Date: October 16, 2015

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
109 Pleasant Street
Concord, New Hampshire 03301

By: 

John T. Beardmore
Commissioner

Date: 10/26/15

EXHIBIT A

AUDIT AUTHORIZATION

TO: [Name and Address of Taxpayer]

Pursuant to the Authority provided by RSA 21-J:3, XXXI, I hereby constitute and appoint the Multistate Tax Commission, including its Executive Director, its auditors and its employees, as my true and lawful agent and representative and request it to obtain access to and to examine and audit the tax information of the above-named taxpayer and any and all affiliated, subsidiary, and parent companies thereof, wherever situated, for the purpose of determining the correctness of any income or franchise tax liability of said business entity or entities to the State of New Hampshire for the tax periods of _____.

The Multistate Tax Commission is hereby authorized to do all things necessary and proper to conduct said examination and audit, including, without limitation, the authority to:

1. Accept and/or execute on behalf of this State any waiver or waivers in a form agreed upon by the undersigned for the purpose of extending any statute of limitation of this State for the making of assessments or for the filing of claims for refunds.
2. Take such further action as may be necessary and incidental to the performance of the activities set forth above.

Dated this _____ day of _____, 20_____

State of New Hampshire

By: _____

Title: _____