Introduction

This practice guide was developed by the AICPA Tax Section to inform practitioners about state corporate income and franchise tax nexus issues. Practitioners should refer to the bundle of resources contained in the 2018 Annual Tax Compliance Kit for further guidance on nexus and state tax considerations.

This guide is intended to be a broad reference tool concerning state nexus issues. It is not intended to answer the question of whether a specific company has certain tax obligations in a particular state. The laws and policies of each state should be researched for application to each specific taxpayer’s situation.

Nexus

Nexus describes the amount and degree of a taxpayer’s business activity that must be present in a state in order for the taxpayer to become subject to the state’s taxing jurisdiction or taxing power. For example, if a taxpayer has income tax nexus in a state, it will be required to file returns and pay tax on income earned in that state. Similarly, if a taxpayer has sales and use tax nexus, it will be required to collect and remit sales and use taxes on sales made to purchasers in that state.

States exercise their power to tax through tax imposition statutes. The amount of activity in or connection with a state necessary to create a tax collection or tax return filing obligation under these state imposition statutes is defined by state statutes, case law or regulations and, consequently, vary from state to state. Generally, state imposition statutes are broadly written using phrases such as “doing business in” or “deriving income from” to describe the state connection (nexus) that triggers a business’ filing obligation.

Regardless of state law, there are federal limitations on a state’s power to tax which include federal constitutional limitations and federal statutory limitations. These federal limitations on state taxing power are interpreted by federal and state court rulings. Most of the following discussion assumes that the taxpayer has a filing obligation under the state imposition statute but is questioning where a federal limitation would trump the state imposition statute.

Determining where an entity with multistate presence may have nexus can be a challenge. Unless the imposition of taxation violates the U.S. Constitution or Public Law 86-272 (P.L. 86-272), an entity generally will have income tax nexus in states in which the entity has production activities, offices, facilities, employees or tangible property. Additionally, an entity may have nexus in states that have adopted economic nexus policies if the entity meets or exceeds the policy thresholds.

Constitutional nexus requirements

The U.S. Constitution’s nexus requirements are based on the Due Process and Commerce Clauses.1 While the language of these clauses does not directly address state taxing power, the clauses have been interpreted by the U.S. Supreme Court to protect taxpayers from the imposition of a state tax if the taxpayer lacks a sufficient connection or “nexus” with the taxing state. The Due Process Clause protects taxpayers from a state tax if the taxpayer lacks the required “minimum contacts” with the taxing state.2

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1 The Due Process Clause states “[N]o state [shall] deprive any person of life, liberty or property, without due process of law. . .” U.S. Constitution, Article XIV, Section 1. The Commerce Clause states “Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. . .” Constitution, Article I, Section 8, Clause 3.

2 Mobil Oil Corporation v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980). The Due Process Clause also requires a rational relationship between the income taxed by the state and the taxpayer’s in-state activities.
The Court has interpreted the Commerce Clause as prohibiting states from enacting laws that unduly burden or inhibit the free flow of trade among the states, and pursuant to that a taxpayer is only subject to tax if the taxpayer has "substantial nexus" with the taxing state.3

Physical presence and Wayfair

In Quill Corp. v. North Dakota, 504 U.S. 298 (1992), the U.S. Supreme Court ruled that the Commerce Clause mandated that, absent action by the U.S. Congress to the contrary, a taxpayer must have some physical presence in a state to be subject to collection responsibility for the state's use tax.4 Based on Quill, it was clear that a business must have an in-state physical presence to be subject to an obligation to collect a state's sales tax. The presence of the taxpayer's in-state customers, without more, did not create nexus and did not allow a state to impose a collection responsibility.

On June 21, 2018, in a 5-4 ruling, the U.S. Supreme Court handed down a historic decision in South Dakota v. Wayfair, Inc., No. 17-494 (U.S. 6/21/18). The ruling concluded that the physical presence rule of Quill was "unsound and incorrect." By overturning Quill, the Court opened the possibility for states to impose sales tax collection obligations without regard to a taxpayer's physical presence in a state. Further, states without current economic or factor presence laws for income tax purposes may assert income tax nexus more forcefully in the aftermath of Wayfair.


The Wayfair decision does not overrule P.L. 86-272. Congress passed P.L. 86-272 in 1959 to protect out-of-state corporations from state income taxes when the entity's activity in a state is limited to certain activities.5 Specifically, under P.L. 86-272, states are prohibited from imposing a net income tax on an out-of-state entity if the entity's only connection with the state is the solicitation of orders for tangible personal property, if such orders are accepted and shipped or delivered from outside the state.

It is important to note that P.L. 86-272 only protects certain taxpayers (those selling tangible personal property). P.L. 86-272 applies only to a "net income tax" and does not provide protection against the imposition of an obligation to collect sales tax on sales to in-state customers or use tax on property acquired outside of the state but used within the state.6 Furthermore, P.L. 86-272 does not apply to gross receipts taxes, such as the Washington Business and Occupation tax (B&O) or the Ohio Commercial Activity Tax (CAT). Under P.L. 86-272, the only immunity accorded is for the solicitation of orders for the sale of tangible personal property. Thus, the solicitation for the sale of real property, intangible property or services is not provided immunity under P.L. 86-272 and may cause a taxpayer to have nexus in a state where such solicitation occurs.

For example, the New Jersey Tax Court held that P.L. 86-272 does not protect a vendor against the corporate minimum flat tax because the tax is not based on net income.7 For years beginning on or after 2001, taxpayers pay the highest of the minimum flat tax, tax on net income, or the alternative minimum assessment (AMA), which is based on New Jersey gross receipts or New Jersey gross profits. Although of questionable constitutionality, the New Jersey law provides that P.L. 86-272 does not apply to the AMA.8 The AMA sunset for tax periods beginning after June 30, 2006 for corporations not claiming immunity from the New Jersey net income tax under P.L. 86-272. However, corporations protected under the public law continue to be subject to the AMA, unless they consent to the jurisdiction of New Jersey to impose the net income tax.

The term "solicitation" is not defined by P.L. 86-272. The Supreme Court defined "solicitation of orders" as requests for purchases and any other activity that is entirely ancillary to requests for purchases in Wisconsin Dept. of Rev. v. William Wrigley, Jr. Co., 505 U.S. 214 (1992). The clear line is the one between those activities that serve no independent business function apart from their connection to the solicitation of orders, and those that the company would have reason to engage in any way but chooses to perform through its in-state sales force.9

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3 Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). The Commerce Clause also requires that a state tax be fairly apportioned, not discriminate against interstate commerce, and be fairly related to the services provided by the state.

4 Quill at 317-318.

5 Quill at 311-312.


8 N.J.S.A. 54:10a-5a; New Jersey Regulation 18:7-18.2.

9 Wisconsin Dept. of Rev. v. William Wrigley, Jr. Co., 505 U.S. 214 (1992). In finding Wrigley’s activities in Wisconsin exceeded the protection of P. L. 86-272; the Court held that the solicitation of orders includes "any explicit verbal request for orders and any speech or conduct that implicitly invites an order."
In *Wrigley*, the Court affirmed the de minimis principle of P.L. 86-272 in holding that, to lose the immunity afforded by P.L. 86-272, the activity must establish a nontrivial additional connection with the taxing state. In aggregate, though minimal in comparison to *Wrigley’s* total solicitation activities in the state, the non-immune activities exceeded the de minimis standard. Practitioners should consider whether activities other than solicitation are more than de minimis in a particular state.

Examples of in-state activities that are generally considered protected by P.L. 86-272 include the following:[10]

- Carrying samples and promotional materials for display or distribution without charge
- Furnishing and setting up display racks of the company’s products without charge
- Providing automobiles, computers, fax machines and other personal property to sales personnel for use in soliciting orders
- Maintaining a display room for 14 days or fewer at a location within the state
- Checking of customers’ inventories without a charge therefor (for re-order, but not for other purposes such as quality control)

Examples of in-state activities that are generally not protected by P.L. 86-272 include:

- Investigating credit worthiness
- Installation or supervision of installation at or after shipment or delivery
- Making repairs or providing maintenance to property sold
- Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation
- Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise
- Repossessing property

Although legislation has to date been unsuccessful, the Business Activity Tax Simplification Act (BATSA) or similar legislation has been introduced in each of the last several years as an update or modernization of P.L. 86-272. The legislation seeks to, among other things, prevent the taxation of businesses that have no or minimal presence in a particular state by establishing a “brightline” physical presence standard for the imposition of state and local business activity taxes. Business activity taxes are defined as “any tax in the nature of a net income tax or tax measured by the amount of, or economic results of, business or related activity conducted in the state.” Many states and the Multistate Tax Commission (MTC) have opposed BATSA as a costly and intrusive federal limitation on their sovereignty. They have argued that the bill would create tax-planning opportunities to allow taxpayers to avoid a state’s net income tax despite a large physical presence and substantial business activity in the state.

With respect to the sales and use tax, to date, there have been several unsuccessful attempts legislatively to expand a state’s jurisdiction to tax an out-of-state retailer. The Marketplace Fairness Act (MFA), most recently introduced into Congress in 2017, would grant states that meet minimum sales tax simplification requirements the authority to compel remote sellers with a sufficient amount of sales tax at the time of a transaction holding those retailers to the same standard as local “brick and mortar” retailers.[12] In addition to the MFA, the Remote Transactions Parity Act (RTPA, H.R. 2193, 115th Congress (2017–18)) is another bill which has been reintroduced. Both the MFA and the RTPA would allow states to require sales and use taxes be collected for sales into a specific state by remote sellers if the specific jurisdiction was a member of the Streamlined Sales and Use Tax Agreement (SSUTA) or had adopted and implemented minimum simplification requirements related to the administration and filing of taxes. In Aug. 2016, a discussion draft of The Online Sales Simplification Act of 2016 was circulated but was not formally introduced in Congress. This draft was a revision of a previous draft circulated in 2015. The 2016 version of the Act allowed for the collection of applicable sales and use taxes on remote sales, if that state was deemed to be the state of origin for the sale. The tax would have collected from the seller by the origin state and remitted to the destination state via a clearinghouse to be established by participating states. Each member state of the clearinghouse would establish a single statewide rate for all sales destined for that state.

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In July 2017, the No Regulation Without Representation Act of 2017 was introduced which would codify the physical presence requirement in Quill (now deemed “unsound and incorrect” by Wayfair). The proposed legislation seeks to define physical presence and prohibits a state from taxing or regulating a person’s activity in interstate commerce unless the person is physically present in the state during the period in which the tax or regulation is imposed.

Evolution of economic nexus

In Quill, the U.S. Supreme Court did not address whether the physical presence test applied to nexus for income tax purposes. Be that as it may, some states assert that physical presence is not required before an income-based tax can be imposed. Nexus standards that do not take into account physical presence as commonly called “economic nexus” standards. They often look to a business’s economic, or non-physical, connections with the taxing state’s market or customers. In recent years, several state courts have validated this state-asserted nexus standard and held that Quill did not apply to income taxes. The highest courts in some states ruled that an economic presence was sufficient to create income tax nexus, despite the lack of physical connection between the state and the taxpayer. Several states enacted statutes establishing an economic nexus standard for income tax purposes. Common situations in which states have asserted the principle of economic nexus include out-of-state trademark holding companies that derive income from transactions from licensing intangibles in the state, and out-of-state credit card banks that derive income from transactions involving state residents and merchants.

History of economic nexus cases in the state courts

Economic nexus cases originated with the landmark 1993 South Carolina Supreme Court ruling in Geoffrey, Inc. v. South Carolina Tax Commission (Geoffrey), which held that a Delaware holding company that owned only intangible property used in South Carolina and other states was subject to income tax. The court rejected the appellant’s (Geoffrey, Inc.) claim that it had not purposefully directed its activities toward South Carolina's economic forum and held that by licensing intangibles for use in the state and receiving income in exchange for their use, the appellant had the minimum connection and substantial nexus with South Carolina required by the Due Process Clause and the Commerce Clause of the U.S. Constitution. In addition, the appellant’s receivables were found to have a business situs in South Carolina. The U.S. Supreme Court subsequently denied certiorari in Geoffrey, making the case binding only in the state of South Carolina, but allowing the decision and the imposition of nexus to stand. Many states have subsequently adopted through statute, regulation or other guidance the principles of economic nexus outlined in Geoffrey regarding intangibles in the nature of trademarks and trade names.

Other cases that have reached similar results to Geoffrey include: Kmart Corporation v. Taxation and Revenue Department, 139 N.M. 172, 131 p.3d 22 (New Mex. 2005); A&F Trademark, Inc. v. Tolson, 605 s.e.2d 187 (N.C. Ct. app. 2004), cert. denied, 546 U.S. 821 (2005); Geoffrey, Inc. v. Commissioner of Revenue, 453 Mass. 17, 899 N.E. 2d 87 (Mass. 2009); Lanco, Inc. v. Director, Division of Taxation, 379 N.J. super. 562 (2005), aff’d 908 a.2d 176 (N.J. 2006), cert. denied. 551 U.S. 1131 (2007); Bridges v. Geoffrey, Inc., 984 s.e.2d 115 (La. app. 2008); KFC Corp. v. Iowa Dept. of Revenue, 792 N.W.2d 308 (Iowa 2010), cert. denied, 132 s. Ct. 97 (2011); Spring Licensing Group, Inc. v. Dir., Div. of Taxation, No. 010001-2010 (N.J. tax Ct. 2015).

In a smaller number of cases involving whether the mere issuance of credit cards to customers who live in the taxing state creates nexus, the courts held for the state. See Tax Commissioner of W. VA. v. MBNA America Bank, N.A., 153 W. VA. 197, 448 s.e.2d 193 (W. VA. 2006), cert denied sub nom.; FIA Card Services, N.A. v. Tax Commissioner of West Virginia, 551 U.S. 1141 (2007); Capital One Bank v. Commissioner of Revenue, 453 Mass. 1, 899 Ne2d 76 (Mass. 2009), cert denied, 557 U.S. 919 (U.S. 2009); MBNA America Bank v. Indiana Dept. of Rev., 895 N.e.2d 140 (Indiana Tax Ct. 2008); Capital One Financial Corp. v. Hamer, 2012-tX-0001/02 (Ill. Cir. Ct. 2015).

In contrast, the courts have ruled that out-of-state businesses were not subject to a state income/franchise tax due to lack of nexus in several situations. For example, the Tennessee Court of Appeal considered whether Tennessee could impose its franchise and excise taxes upon J.C. Penney National Bank (JCPNB) based upon JCPNB's extension of credit card lending services to Tennessee residents. JCPNB had between 11,000 and 17,000 credit card accounts with Tennessee residents, but did not have employees or offices within the state.
Tennessee residents could not apply for JCPNB credit cards in the J.C. Penney stores nor could the customers make a payment on their account at the stores. The Tennessee Court of Appeal rejected the Commissioner of Revenue’s position that JCPNB’s economic presence within Tennessee by itself satisfied the Commerce Clause’s substantial nexus requirement.

Two more recent cases in West Virginia\(^{15}\) and Oklahoma\(^{16}\) found that, in certain instances, an out-of-state licensor of intangible property did not have nexus in that state. In the Oklahoma case, the Oklahoma Supreme Court held that Oklahoma could not impose corporate income tax on an out-of-state licensor as a result of its licensing of intellectual property to a related party. The licensor was organized as an insurance company under the laws of Vermont and licensed intellectual property to Wendy’s International Inc., which then sublicensed the intellectual property to Wendy’s restaurants, including restaurants located in Oklahoma. The Oklahoma court held that “due process is offended by Oklahoma’s attempt to tax an out-of-state corporation that has no contact with Oklahoma other than receiving payments from an Oklahoma taxpayer . . . who has a bona fide obligation to do so under a contract not made in Oklahoma.”\(^{17}\)

Economic nexus in state statutes and the factor presence nexus standard

As discussed above, while physical presence had been the constitutional standard for sales tax nexus purposes under the now overturned *Quill* decision, many states took the position that it was not directly applicable to income tax purposes. Several state legislatures have taken a more aggressive stance in recent years in enacting legislation that adopts an economic nexus or factor presence nexus standard.

Factor presence nexus is determined by the amount of property, payroll or sales a business has within a state. The MTC’s model statute entitled the “factor presence nexus standard for business activity taxes” asserts nexus based on a certain amount of economic activity alone, or a certain amount of physical presence alone. Each factor is an indicator of a business’ contact with a state. A number of states have either adopted the MTC’s model statute or similar imposition statutes.

Ohio was the first state to incorporate factor presence into its law. Upon its adoption of the CAT, Ohio incorporated the MTC’s factor presence standards into its statutory nexus requirements.\(^{18}\) Michigan was another state that incorporated factor presence principles into the nexus standards of the Michigan Corporate Income Tax (CIT). A taxpayer has substantial nexus in Michigan and is subject to the CIT if the taxpayer has a physical presence in Michigan for a period of more than one day during the tax year or if the taxpayer actively solicits sales in Michigan and has gross receipts of $350,000 or more.

Wisconsin enacted legislation that incorporates an economic nexus standard into its law by expanding its “doing business” definition.\(^{19}\) Colorado also adopted factor presence principles in 2010 by the finalization of its regulations.\(^{20}\)

Washington enacted legislation that creates a factor presence nexus standard for tax periods beginning after May 31, 2010. The factor presence nexus standard differs from the MTC model language in that receipts (indexed annually for inflation) of $286,000 (in 2018) or more, versus $500,000, creates nexus in the taxing state.\(^{21}\) Washington’s factor presence nexus standard has historically applied only to companies subject to the B&O tax "services and other activities" classification, but effective Sept. 1, 2015, it will also apply to companies subject to the "general wholesaling" B&O tax classification.\(^{22}\) Washington’s new rule also provides that if nexus is established in one year, it will also exist for the subsequent year.\(^{23}\) California ($500,000 in sales indexed for inflation)\(^{24}\), Connecticut ($500,000 in sales)\(^{25}\), and New York ($1,000,000 in sales)\(^{26}\) are examples of states that have recently adopted factor presence nexus standards. During 2015, Alabama and Tennessee have each adopted economic nexus for income tax purposes ($500,000 in sales), where Alabama’s rule is first effective for tax years beginning after Dec. 31, 2014,\(^{27}\) and Tennessee’s rule is first effective for tax years beginning after Dec. 31, 2015.\(^{28}\)

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17 Id.
18 Ohio Rev. Code Ann. Sec. 5751.010 ($500,000 in sales).
19 Wis. Stat. Sec. 71.22(1)(h) (no minimum sales threshold).
22 Rev. Code Wash. 82.04.066.
24 Cal. Rev. and Code Sec. 23101(b).
26 N.Y. Tax Law Sec. 209.1(b).
Practitioners with clients licensing intangibles or otherwise deriving income where the activities are not protected by P.L. 86-272 in states where the client does not otherwise have a physical presence should review any recent changes in the applicable state laws and regulations, as well as recent court decisions in this area. In 2015, nexus determinations based on bright-line presence were upheld in Ohio in two decisions issued on the same day by the State Board of Tax Appeals (BTA). Both taxpayers appealed these decisions to the Ohio Supreme Court. In Nov. 2016, the Ohio Supreme Court affirmed the decisions of the BTA in both cases and the taxpayers were held liable for the tax.

**Affiliate nexus**

Companies may establish nexus with a state through relationships with third parties that are neither employees nor independent contractors. Often termed "representation nexus" by states and "attributational nexus" by taxpayers, nexus is "attributed" to the taxpayer through the actions of third parties that establish and maintain a market for that taxpayer. For example, during 2015 California ruled that two bankruptcy-remote special purpose entities with no physical presence in the state were considered to have nexus there by virtue of the in-state activities conducted through a financing subsidiary.

Affiliate nexus statutes have been enacted by many states and provide that the in-state presence of an affiliated company can create nexus for a separate out-of-state entity, such as a mail order or online vendor. These statutes generally impose a filing obligation (sales/use tax) for remote sellers with an in-state bricks and mortar affiliate. The primary threshold for nexus is based on affiliated relationships between an out-of-state seller and an in-state business that maintains at least one in-state location. An entity is considered affiliated if the related entity promotes the affiliate’s business.

Older affiliate nexus statutes require a minimum common ownership between the in-state affiliate and the remote seller. However, the more recent affiliate nexus statutes have no such common ownership requirement. The leading example of this newer style of affiliate nexus statute is the New York law which requires out-of-state vendors to collect and remit sales/use tax if the seller enters into an agreement with a resident of the state under which the resident, for commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller. In addition, the cumulative gross receipts from such referred sales to New York customers must exceed $10,000 during the preceding four calendar quarters.

Amazon.com and Overstock.com challenged the constitutionality of New York’s law. After making its way through the trial court and initial appellate court, the New York Court of Appeals (the state’s highest court) recently held that the statute did not violate the U.S. Constitution on its face, and the U.S. Supreme Court declined to review the decision.

The Court found that it was reasonable to impose sales/use tax collection burdens on out-of-state retailers, such as Amazon.com and Overstock.com, which have effectively established an in-state sales force through affiliate programs. Since New York passed its so-called “Amazon Law” in 2008, many other states have been publicly and diligently pursuing compliance through similar practices. In 2016, there were forty-two bills introduced in sixteen states which had as their focus sales tax nexus. During 2016 and 2017, multiple states (Wyoming, Alabama, Tennessee, Massachusetts, Louisiana, Oklahoma, North Dakota, South Dakota, Maine, Vermont, Minnesota, and Washington) enacted some form of sales tax nexus legislation. Many others are considering similar types of legislation, especially now given the recent Wayfair decision.

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32 Harley-Davidson, Inc. & Subs. v. Franchise Tax Bd., No. d064241, 187 Cal.Rptr.3d 672 (Cal app. 2015).
34 New York Tax Law Sec. 1101(b)(8)(v).
In the area of income tax, the Maryland Court of Appeals, that state's highest court, determined that two out-of-state intangible holding companies had corporate income tax nexus with Maryland because they were considered to have no real economic substance as separate business entities apart from their Maryland parent corporation. In addition, the court upheld the Comptroller's discretionary use of an alternative apportionment formula. With respect to the nexus issue, the court applied the "real economic substance as a separate entity" test developed in Comptroller of the Treasury v. SYL, Inc. and The Classics Chicago, Inc. v. Comptroller of the Treasury, finding that neither the out-of-state patent holding company nor the out-of-state investment management company had substantial activity apart from their Maryland parent. The court reasoned that the taxpayer's activity generated the subsidiaries income and that the operations of the entities were so intertwined as to make them inseparable; therefore causing the out-of-state subsidiaries to meet the "substantial nexus" requirements of the Commerce Clause and being subject to tax in Maryland. In 2015, the Maryland Tax Court upheld nexus over an intangible holding company for similar reasons in ConAgra Brands, Inc. v. Comptroller of the Treas. No. 09-IN-00-0150 (Md. Tax Ct. 2015).

Notice and Reporting laws

Notice and report laws require retailers who do not have nexus in a state (often referred to in statutes as "non-collecting retailers") follow specific reporting requirements to ensure their buyers pay use tax.

For example, Colorado has enacted a law that requires remote sellers to provide notice to their customers that sales/use tax may be due to the state on purchases they have made through the seller. Colorado's law requires that all sellers that make sales over a certain threshold in the state to either collect the tax or inform the consumers of their potential tax liability and inform the state of the sale. The U.S. Supreme Court found the law to be constitutional.

States respond to Wayfair

Whether physical presence is necessary for the imposition of income taxes has been the subject of uncertainty for the last several decades. States are continuing to issue guidance or statements following the 2018 Wayfair decision, notably in the area of sales and use tax. Currently, at least 30 states have enacted a form of economic nexus for sales tax purposes with varying enforcement dates and sales/transaction thresholds. Other states have issued nexus guidance suggesting that economic nexus policies may be enacted. For example, several states, such as Iowa, Kentucky, Louisiana, Maine, Michigan, North Carolina, North Dakota and Wyoming, to name a few, have all enacted similar statutes to the South Dakota law. While Wayfair does not directly address income tax nexus, state activity in the sales and use tax environment may indicate changes for income tax nexus.

Multistate Tax Commission (MTC) voluntary disclosure

Through its National Nexus Program (NNP), the MTC also assists businesses involved in multistate commerce in voluntarily resolving potential state sales/use and income/franchise tax liabilities where nexus is the central issue. The program acts as a coordinator through which companies may simultaneously approach multiple states which participate in these programs anonymously to negotiate a settlement and seek resolution of potential liabilities arising from past activities using a uniform procedure coordinated through the NNP staff of the MTC. It is the strict policy of the MTC and the NNP that they will not reveal the identity of a taxpayer to any state that does not accept the voluntary disclosure agreement. Further information on this

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41 Iowa S.F. 2417.
42 Kentucky H.B. 487.
43 Louisiana H.B. 17.
44 Maine L.D. 1405.
45 Michigan MI RAB 2018-6.
46 N.C. Directive #0C-18-6.
47 North Dakota SB 2298.
48 Wyoming H.B. 119.
program can be found on the MTC’s webpage ([www.mtc.gov](http://www.mtc.gov)) or by contacting the NNP at (202) 695-8140 or nexus@mtc.gov. Experience has shown that, in some cases, taxpayers may be able to negotiate a better arrangement directly with individual states; however, the time or cost of doing so may exceed the benefit of negotiating with just one person via the NNP. For additional information, see the MTC webpage.

**Conclusion**

The issue of nexus for income, franchise/net worth, sales/use and other tax purposes is a complex one and there is a tremendous degree of inconsistency among the states. The large number of court cases in this area highlights the fact that the Due Process and Commerce Clause analysis is largely dependent on the specific facts and circumstances of each case. Among the state court systems, emerging issues, such as representational nexus, affiliate nexus and economic nexus evolve in the ever-changing market place. In 2018, the landscape of nexus was significantly altered in the *Wayfair* decision, and states are reacting to the decision within their own jurisdictions. This guide is meant as a broad reference tool to be used to highlight those areas that may warrant a more in-depth study.