


Indirect TAXES NEWS

A pack of cigarettes with a white body and a red top. Several cigarettes with orange filters are visible, protruding from the pack.

Thailand: time to “EXerCISE” some rationality

and more
current information

Newsletter
No. 03 | Autumn 2016

© 2016
GGI | Geneva Group International

U.S. State Taxation

Is the Repeal of Quill's Physical Presence Principle Unavoidable?

By **Pablo Garciga**

A major paradigm shift is on the horizon pertaining to sales tax nexus in the US. Historically, physical presence has been the lynchpin of a state's power in imposing taxes. States argue that in the modern business environment,

this concept of physical presence is obsolete.

On 22 March 2016, South Dakota (SD) enacted legislation requiring remote sellers that do not have a physical presence in SD to collect sales tax on sales made in the state. Certain remote sellers that sell tangible property

or services for delivery into SD will be required to collect and remit sales taxes as if they had physical presence in the state. Remote sellers will be subject to these new rules if they meet one of two thresholds in either the preceding or the current calendar year: sales to SD
...next page

customers exceed USD 100,000; or, seller engaged in 200 or more transactions with SD customers.

The law recognises that it is in opposition to current constitutional standards and says the remote sellers' obligations created by the law "until the constitutionality of this law has been clearly established by a binding judgment, including a decision from the Supreme Court of the United States abrogating its existing doctrine" [SB 106, Laws 2016, §8(10).] Practically speaking, until the physical presence nexus requirement is overturned, compliance with this law is voluntary. Voluntary compliance is not usually advisable as the automatic injunction does not protect sellers who have voluntarily complied.

The Government may act to codify the physical presence requirement. On 14 July 2016, the No Regulation without Representation Act of 2016 (H.R. 5893) was introduced in the U.S.

GGI member firm

Funaro & Co. PC

Advisory, Auditing & Accounting, Tax
New York, NY, USA

Pablo Garciga

E: pablo.garciga@funaro.com

T: +1 212 947 33 33

W: www.funaro.com



Pablo Garciga

Pablo specialises in state and local taxes (SALT), with an emphasis on multi-state corporate income/franchise taxes and sales and use taxes. He has over 20 years of cumulative SALT experience with Funaro and Big 4 Public Accounting firms. He is a CPA, JD with an LL.M. in Taxation.

Funaro & Co. PC provide a

wide range of services, including accounting and auditing, tax reporting and compliance, tax advisory, management consulting, and transaction advisory.

funaro & Co/pc

House of Representatives.

The bill seeks to codify Quill's physical presence requirement, without this or similar action, the requirement

could soon be overturned. For more information, please see the full article on GGI Forum.



Indirect TAXES NEWS

Contact

GGI | Geneva Group International AG

Schaffhauserstrasse 550
8052 Zurich, Switzerland

T: +41 44 256 18 18

E: info@ggi.com

W: www.ggi.com

W: www.ggiform.com

Let us know what you think about FYI – Indirect Tax News, we welcome your feedback. If you wish to be removed from the mailing list, please send an email to info@ggi.com

Responsible Editors in charge of the Indirect Taxes Content:

Steve McCrindle
Global Chairman of the
GGI Indirect Taxes Practice Group
GGI member firm

Haines Watts

New Derwent House,
69-73 Theobalds Road
London, WC1X 8TA, UK

T: +44 207 025 4656

E: smccrindle@hwca.com

W: www.hwca.com

Toon Hasselman
Global Vice Chairman of the
GGI Indirect Taxes Practice Group
GGI member firm

LIMES International B.V.

Voorschoterweg 23G, Valkenburg ZH
2300 AM Leiden, The Netherlands

T: +31 88 089 90 00

E: toon@limes-int.com

W: www.limes-int.com