

### States Expanding Tax Return Filing Requirements

*As the economic downturn continues to affect State and local government deficits, many States are struggling to enact innovative tax policies to increase tax revenues.*

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#### Sales Tax

In *Quill Corp. v. North Dakota*, the U.S. Supreme Court has imposed a physical presence requirement before States can impose sales tax collection compliance burdens on businesses.

Despite *Quill*, New York has recently enacted the “Amazon tax” requiring out-of-state retailers (such as Amazon) to collect sales tax from in-state consumers if the retailers have marketing affiliates in the state which produce at least \$10,000 in sales. At least sixteen other States have considered passing a similar tax.

While sales taxes have traditionally applied to sales of tangible property, a number of States are expanding the applicability of sales taxes to sales of services and digital downloads.

#### Income Tax

The U.S. Supreme Court has not addressed whether physical presence is required before States can impose income taxes on businesses.

Recently, a number of States (e.g., California, Colorado, Connecticut, Maryland, Maine, Michigan) have introduced “Economic Nexus” tests that impose an income tax return filing requirement even in the absence of traditional physical presence of property or employees within the State. Economic Nexus can be met, for example, if sales to customers within the State exceed a specified dollar amount.

The U.S. Congress, with Public Law 86-272, has prohibited States from subjecting businesses to income taxes where their only connection with a State is the presence of salespersons, but there are a number of limitations to the protection of this law, including the following:

- It does not apply to non-income based taxes, such as sales tax and taxes computed on bases other than income (e.g., taxes on gross receipts or capital/net worth).
- It does not apply to service businesses or licensors of intangibles.

# STATE TAX ALERT

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## Gross Receipts, Capital/Net Worth Taxes

Similarly, certain States (e.g., Ohio, Michigan, Texas) have been expanding their tax reach by applying Economic Nexus to taxes that are measured on items other than income, such as gross receipts, capital or net worth. A number of these taxes have survived the scrutiny of their State courts and, absent a U.S. Supreme Court review, it is unclear whether they would survive the standards set by the U.S. Constitution.

Businesses should strongly consider performing a nexus study to determine whether they may be subject to sales, income, gross receipts, capital/net worth or other tax requirements in various States, based on their specific sales generated, tangible and intangible assets employed and functions performed.

**For more information please contact:**

**Luigi Perin, Partner**  
[luigi.perin@funaro.com](mailto:luigi.perin@funaro.com)

**Alessandro-Adelchi Rossi, Principal**  
[adelchi.rossi@funaro.com](mailto:adelchi.rossi@funaro.com)

**Michael Goldberg, Director**  
[michael.goldberg@funaro.com](mailto:michael.goldberg@funaro.com)

**Norma Han, Director**  
[norma.han@funaro.com](mailto:norma.han@funaro.com)

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