

To: Michael Mazerov, MTC. Tel: 202-624-8699; Fax 202-624-8819
From: Robert Feinschreiber: Tel 305-361-5800; Fax 305-361-7722
Re: A Sales and Use Tax Nexus Guideline: Task Force IV
Date: July 2, 1997

1. Determination of Nexus - Property Interests

a -security interest

The nexus standard for property should be limited to tangible property, a property interest that is indicative of possession or forbearance of possession, and reflected by title. Security interests should be disregarded for nexus purposes unless and until the security interest is converted to a tangible interest in property, i.e. through execution of a lien.

In St. Louis Cotton Compress Co. v. State of Arkansas, 260 U.S. 346 (1922), the Supreme Court considered the constitutionality of an Arkansas premium tax imposed on premiums paid to an unlicensed insurer. A Missouri company placed its insurance coverage under a multistate policy that covered property in Arkansas. The insurer conducted no business in Arkansas. The Court concluded that Arkansas statute was invalid under the due process clause.

b. lease related interest

A lease-related interest creates sufficient nexus to lessor. A lease-related interest creates sufficient nexus to the lessee if the lease itself, plus prior or subsequent leases, is permanent as opposed to temporary. Temporary leases for office space or for residential facilities or hotel accommodations do not, in and of themselves, create nexus. The duration of "temporary" could be defined as no more than one month.

c. consignment related interest

Consigned property is owned by the consignor and the presence of the goods in the state in sufficient quantities creates nexus to the consignor. The presence of property in the state by the consignee does not, in and of itself create nexus. However, sales of the consignment property in the taxing state does create nexus in the taxing state.

2. Definition of "representative"

Activities of a representative of an organization in a taxing state create nexus for the organization if the representative is exclusive and represents or portrays himself or herself as being a part of that organization, whether through business cards, the internet, office space, telephone listing, use of the corporate

logo or the like. A non-exclusive representative that represents more than one unrelated company is presumed not to create nexus for either company.

3. Liability

Liability should cease as promptly as liability arose. The state should provide a form for abrogation of nexus. The taxpayer should have the responsibility of filing this form with the state, giving the state the opportunity to review whether the abrogation of nexus requirements have been complied with.