

From: Robert Feinschreiber, Reporter (Phone: 305-361-5800, Fax: 305-361-7722)

Re: A Sales and Use Tax Nexus Guideline: **Task Force IV**

Date: **July 9, 1997 Minutes**

1. Determination of Nexus – Property Interests

The working group addressed continuum of interests as a whole, from contingent security interests to outright ownership of property.

a. security interest

Extention of nexus to security interests may be problematical because of competing interests between the states themselves and from other creditors. The consensus viewed the filing of an interest in the state as not creating nexus in the state. Further, the consensus is that secondary, non-primary, mortgages do not create nexus, and that security interest nexus does not apply to holders of third-party interests such as banks. The consensus was that we create a negative example.

However, whether purchase money mortgages rise to the level of creating nexus remained an issue. Task Force IV will address nexus in the context of purchase money mortgages for the second session on July 15.

b. lease related interest

The consensus was that nexus applies to leasing only if the lease is operational. The participants discussed operational as opposed to financing leases, but the delineation remains to be discussed by Task Force IV on July 15.

c. consignment related interest

The consensus of Task Force IV is that consignment related interests can establish nexus.

2. Definition of 'representative'

Issues concerning 'representative' were not resolved by Task Force IV. Issues are the impact of marketing enhancement, the treatment of leased employees and independent contractors, and the treatment of full-time and part-time representatives. The Task Force examined principles II.C.5. an II.C.9. and determined that II.C.9. may need to be changed to eliminate the reference to representatives.

3. Liability

The time period for liability could be one quarter of the year or could be annual. The consensus was that the timing for liability purposes is uncertain, as it is policy oriented rather than Constitutional.