

# Multistate Tax Commission



## Resolution 01-07

### Resolution Regarding Federal Legislation Affecting State Jurisdiction to Tax

Repealed 8/2/02 by MTC Policy Statement 02-02

**WHEREAS**, a core attribute of State sovereignty is the ability to raise the necessary revenues to fund State government programs and services; and

**WHEREAS**, State and local government provide services that benefit the national economy through public education, university research, transportation and other infrastructure, commercial law, the protection of public health and safety, environmental, resource and energy management, and other services; and

**WHEREAS**, interstate commerce should pay its fair share of taxes to support services of benefit to the national economy; and

**WHEREAS**, several bills have been introduced in Congress that unduly limit a State's ability to assert taxing authority over multistate businesses; and

**WHEREAS**, these bills establish a new and undefined requirement that a business have a "substantial physical presence" in a State before it can be subjected to State jurisdiction to tax; and

**WHEREAS**, "physical presence" is an out-dated concept ill-suited for the modern economy; and

**WHEREAS**, the U.S. Supreme Court held in *Quill v. North Dakota* that

1. physical presence in a State is not required to establish State jurisdiction over a person under the Due Process Clause;
2. "substantial nexus" under the Commerce Clause requires physical presence only for purposes of imposing an obligation to collect use taxes;
3. even for use tax collection purposes, Congress is free under the Commerce Clause to allow the States to impose collection obligations on remote sellers that do not have any physical presence within a particular taxing jurisdiction; and

**WHEREAS**, the U.S. Supreme Court has upheld numerous times a nexus standard for business activity taxes that is not based upon a concept of physical presence, but instead is based on the privilege of engaging in business in the State, and has never ruled that a business must have "substantial physical presence" in a State before it can be subjected to State taxing jurisdiction; and

**WHEREAS**, a change in federal law further limiting State taxing authority by requiring an untested level of physical contacts by a taxpayer will inevitably lead to lengthy and expensive litigation to determine the full meaning of such laws; and

**WHEREAS**, nexus standards for the imposition of business activity taxes based on physical presence discourage the flow of investment across State boundaries and subvert national economic growth and balanced economic development among all geographic regions of the Nation; and

**WHEREAS**, setting new nexus limitations in federal law would upset the tenets of federalism and the system of shared authority and responsibilities long practiced by the federal and State governments; and

**WHEREAS**, States enacting the Multistate Tax Compact have delegated to the Commission the task of developing uniform recommendations concerning the jurisdiction of States to tax; now, therefore, be it

**RESOLVED**, that the Multistate Tax Commission opposes any proposed nexus standards for business activity taxes based on physical presence; and be it further

**RESOLVED**, that the Multistate Tax Commission commits itself to educating Congress and requests that Congress support and not undermine, directly or indirectly, the U.S. Supreme Court's "doing business" nexus standard for business activity taxes; and be it further

**RESOLVED**, that if any clarification of business activity tax nexus is needed for ease of compliance, such clarification should recognize and reflect the economic realities of modern commerce and business enterprise; and be it further

**RESOLVED**, that if a clarification of business activity nexus is necessary, the best way to address this need is for the States to develop, in consultation with business, those clarifications as a uniformity recommendation to the States under the procedures and authority of the Multistate Tax Compact and that Congress should defer to the States on this subject.

Adopted this 27<sup>th</sup> day of July, 2001 by the Multistate Tax Commission.

---

Dan R. Bucks. Executive Director

This resolution shall expire at the Annual Business Meeting of the Multistate Tax Commission in 2006.