US State Physical Presence Requirement is Out of Date

On the 21st of June, 2018, the US Supreme Court ruled that the US physical presence requirement, as previously established for imposing a use tax collection responsibility on out-of-state retailers, is not reflecting the current business operation of companies.

With the new law, a state may impose nexus by virtue of economic presence, and a company's lack of physical presence may no longer be the only condition to avoid use tax collection responsibilities.

This new US tax physical presence test has a huge impact on Canadian companies doing business in the United States.

Canadian taxpayers must now monitor their state activities more closely to determine if they fall under the new economic nexus threshold by state. Canadian companies operating in multiple states must reconsider their current policies on sales tax collection, as they may now be required to register and remit tax on all transactions deemed taxable based on their destination states.
Physical presence of a company is no longer the Constitutional standard under the Commerce Clause for sales and use tax nexus, as it is out of date with today’s economy. The US Supreme Court ruled that state taxes would be sustained if they pass a four-part test. A tax on interstate commerce is Constitutional if it:

1. Applies to an activity with a substantial nexus with the taxing state
2. Is fairly apportioned
3. Does not discriminate against interstate commerce
4. Is fairly related to the services provided by the state(s)

If you need further information or assistance regarding multi-state nexus analysis, please contact the Manning Elliott Tax Team. We also invite you to subscribe to our mailing list so we can keep you up to date on all future tax related articles.

\(^1\)Quill Corp. vs. North Dakota (1992)

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