
DEPARTMENT OF STATE REVENUE**Revenue Ruling #2013-08 ST
December 3, 2013**

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Indiana Sales Tax – "Substantial Nexus"

A company ("Taxpayer") is seeking an opinion as to whether storing its clients' catalogs at its Indiana facilities prior to the distribution of those catalogs to recipients throughout the United States, including in Indiana, constitutes "substantial nexus" such that its clients would have an obligation to collect and remit sales tax on transactions sourced to Indiana.

Authority: [IC 6-2.5-2-1](#), Quill Corp. v. North Dakota By and Through Heitkamp, 504 U.S. 298 (1992).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is located in Indiana, is in the business of producing, storing, and distributing catalogs for its clients. In particular, Taxpayer asks:

Does storage by an out-of-state retailer of catalogs at Taxpayer's facilities in Indiana, prior to the distribution of those catalogs by Taxpayer to recipients throughout the United States, including Indiana, constitute "substantial nexus" for the retailer in the state or otherwise require the out-of-state retailer to collect, remit, or report Indiana sales/use taxes or business activity taxes?

DISCUSSION

Indiana imposes an excise tax, known as the state gross retail tax (i.e., "sales tax"), on all retail transactions made in the state. I.C. 6-2.5-2-1(a). The person who acquires the property in a retail transaction is liable for the tax on the transaction, which is paid to the retail merchant. In a typical situation, the retail merchant is statutorily required to collect and remit the tax as an agent for the state. I.C. 6-2.5-2-1(b).

However, the United States Constitution places limits upon Indiana's ability to compel merchants to collect and remit sales tax. These limitations stem from both the 14th Amendment's Due Process Clause as well as the Commerce Clause, both of which were discussed, distinguished, and explained by the United States Supreme Court in Quill Corp. v. North Dakota By and Through Heitkamp, 504 U.S. 298 (1992).

Particularly relevant (and dispositive) in this instance are the Court's comments with regards to the Commerce Clause. The Court has determined and reaffirmed that with regards to a tax imposed by a state, such a tax will be sustained against a Commerce Clause challenge so long as the "tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State." Id. at 311. (Emphasis added.) And in Quill, the Court reaffirmed that, at the very least, "substantial nexus" with a state for Commerce Clause purposes must include some kind of physical presence in that state. Id.

In the situation herein at issue, as presented by Taxpayer and as understood by the Department, Taxpayer's clients' only presence here in Indiana is their advertising catalogs. Without more, the Department finds this to fall short of the physical presence requirement contemplated by Quill and its progeny. And without more, Taxpayer's clients lack the physical presence required for a finding of substantial nexus with Indiana. Accordingly, Indiana cannot compel Taxpayer's clients to collect and remit sales tax on their transactions sourced to Indiana absent more of a physical presence in the state.

RULING

Taxpayer's clients lack the physical presence required to find that they have substantial nexus with Indiana. Accordingly, Taxpayer's clients are not required to collect and remit sales tax on their transactions sourced to Indiana absent more of a physical presence in the state.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 12/25/2013 by Legislative Services Agency
An [html](#) version of this document.