

OHIO BRIGHT-LINE NEXUS PROVISION FOR COMMERCIAL ACTIVITY TAX UPHeld

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Today, in three separate opinions, the Supreme Court of Ohio upheld the bright-line nexus provision in the Ohio Commercial Activity Tax (“CAT”) law, which subjects a person to the CAT if that person has at least \$50,000 in payroll, \$50,000 in property, or \$500,000 in taxable gross receipts during a calendar year. The constitutionality of the \$500,000 in taxable gross receipts provision has been frequently challenged on audits and appeals because it authorized Ohio to impose the CAT on taxpayers who did not have a physical presence in the state.

The argument by out-of-state direct marketers that physical presence is required for non-sales taxes has been based on the 1992 United States Supreme Court opinion in *Quill v. North Dakota*. In *Quill*, the United States Supreme Court held that North Dakota could not impose a sales tax collection requirement upon Quill, an out of state company, because Quill did not have a physical presence in the state. Over the years, there has been much debate between states and tax practitioners on whether the physical presence requirement is limited to the context of sales tax, since *Quill* was a sales tax case, or if it applied to other taxes, including business activity taxes, such as the CAT.

In *Crutchfield Corporation v. Testa*, and its companion cases, the Supreme Court of Ohio held that the physical presence requirement affirmed in *Quill* is limited to the context of sales and use tax. The Court concluded that the CAT is a business privilege tax and therefore physical presence is not required in order for Ohio to meet the substantial nexus prong of the Commerce Clause of the United States Consti-

tution. The Court also held that the \$500,000 in taxable gross receipts threshold was sufficient to meet the substantial nexus prong of the *Complete Auto* Commerce Clause test.

The taxpayers have ninety days to appeal the case to the United States Supreme Court through a petition for a writ of certiorari. The United States Supreme Court is not required to accept the appeal and will either grant or deny certiorari. So far, the United States Supreme Court has denied certiorari in several cases where other states' courts have ruled that physical presence is not required for non-sales taxes.

If you or your company is not in compliance with the CAT, you may want to consider completing a voluntary disclosure or CAT managed audit to address outstanding CAT liability.

If you have any questions about CAT nexus, voluntary disclosures, or CAT managed audits please contact Adam Garn, Rich Farrin, or any other professional at Zaino Hall & Farrin LLC.

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