Crowe Horwath.

Smart decisions. Lasting value.™

State and Local Tax Nexus

Managing Your Institution's Expanding Tax Footprint

June 6, 2017

Sara Arvold – Crowe Horwath, LLP

Michael Quesada – University of San Diego

Kevin Spiegel – Crowe Horwath, LLP

Today's Panel

Sara Arvold, CPA
Crowe Horwath LLP
Senior Manager,
State and Local Tax Practice
Office: 630.574.1648
Sara.Arvold@crowehorwath.com

Kevin Spiegel, JD
Crowe Horwath LLP
Senior Manager,
State and Local Tax Practice
Office: 312.857.7408
Kevin.Spiegel@crowehorwath.com

Michael Quesada
University of San Diego
Director of Tax and Compliance
mquesada@sandiego.edu

Agenda

- Nexus Overview
  - What is nexus?
  - Recent developments/trends in State nexus
- Nexus as Applied to Higher Education Institutions
  - Alternative Investments
  - Institutions' own activities
    - Remote/Telecommuting Employees
    - E-Commerce
  - How to manage Nexus

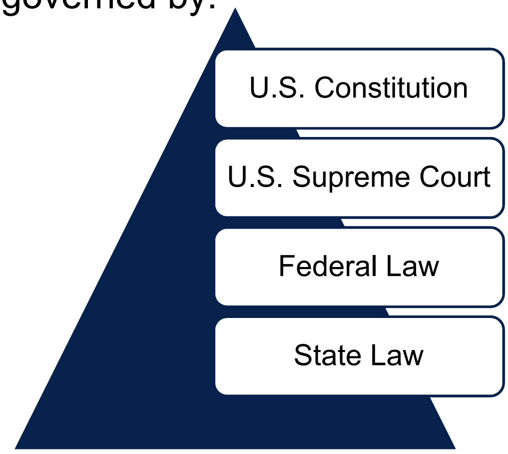
Nexus Overview

Nexus

Jurisdiction to tax – nexus

Nexus (i.e., the link) describes the amount and degree of business activity that must be present before a state can impose tax

The jurisdiction to tax is governed by:



Nexus – Two Constitutional Clauses

1. Due Process: "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . ."
   - 5th Amendment to the Bill of Rights
   - 14th Amendment – applies to the States
   - Fairness in the operation of law
   - Personal jurisdiction, based on:
     - Residency status (individual) or state of domicile (corporation)
     - Contacts with the state

Nexus – Two Constitutional Clauses

2. Commerce Clause: "The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . . ." (Article I, Section 8, Clause 3)
   - Power to regulate interstate commerce
   - The Interstate Income Act of 1959, better known as Public Law 86-272 (codified at 15 U.S.C. § 381-384)
     - Enacted in response to Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959)
     - No net income tax can be imposed if the only business activities are solicitation of orders for sales of tangible personal property

Nexus – Key Cases

- International Shoe Co. v. Washington, 326 U.S. 310 (1945)
  - "Minimum contacts" standard: "sufficient contacts or ties" are needed to establish jurisdiction, as long as it is "reasonable and just according to our traditional conception of fair play and substantial justice"

- Miller Brothers Co. v. Maryland, 347 U.S. 74 (1954)
  - "But the course of decisions does reflect at least consistent adherence to one time-honored concept: that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax."
  - "In this view of the case, we need not consider whether the statute imposes an unjustifiable burden upon interstate commerce."

Title search: State and Local Tax Nexus: Managing Your Institution's Expanding Tax Footprint

Also available as part of the eCourse
2017 Higher Education Taxation eConference

First appeared as part of the conference materials for the
5th Annual Higher Education Taxation Institute session
"Nexus Rules—State and Local Taxation Issues and Considerations"