

State and Local Tax Nexus

Managing Your Institution's Expanding Tax Footprint

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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:

U.S. Constitution

U.S. Supreme Court

Federal Law

State Law

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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



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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

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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.”

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"Nexus Rules—State and Local Taxation Issues and Considerations"