Special Report

MULTISTATE TAX REPORT®

2015

SURVEY OF STATE TAX DEPARTMENTS

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Key Findings

2015 SURVEY OF STATE TAX DEPARTMENTS
States Clarify Nexus Policies on Registering to Do Business, Drop Shipments; Tax Treatment of Cloud Computing

In Bloomberg BNA's 15th annual *Survey of State Tax Departments*, we asked many questions aimed at clarifying each state's position on the gray areas of corporate income tax and sales and use tax administration, with an emphasis on nexus policies—which are used for determining whether an out-of-state corporation is taxable.

New portions of the survey address the nexus consequences of registering with state agencies versus actually doing business in the state, drop shipment transactions, and trailing nexus for sales tax purposes.

It also clarifies state ''sourcing'' policies used for determining if they will impose income tax on cloud computing transactions. ''Sourcing'' refers to the rules a state uses for determining if it will attribute certain receipts to its jurisdiction after it's established that an out-of-state corporation has nexus.

Taxing Cloud-Computing Transactions

How a state characterizes an out-of-state corporation's cloud computing receipts (e.g., service, intangible or tangible personal property) is an important factor in determining how or if it will impose income tax.

Unlike previous years, most states chose only one approach to characterizing these receipts. Receipts from cloud computing are characterized as services in 12 states; the sale, lease, license or rental of intangible personal property in five states and the sale of tangible personal property in one state.

The survey results also indicate that market-based sourcing is the predominant approach to sourcing cloud-based transactions.

'Doing Business' Standard for Nexus?

A minority of states (11 for income tax nexus and 10 for sales tax nexus) said they would find nexus if an out-of-state corporation registered to do business with their jurisdiction's secretary of state. About the same number of states said they apply their secretary of state's definition of ''transacting business'' or ''doing business'' for purposes of nexus determinations. Typically, the secretary of state's definition provides a list of activities that will trigger a registration requirement, while the tax definition is vague or merely references the U.S. Constitution.

Other types of registrations are also likely to trigger nexus. Sixteen states said they would find sales tax nexus if a corporation registered as a government vendor or contractor.

Drop Shipments

State nexus policies also vary significantly with respect to complex multi-party transactions. Drop shipments involve three parties—a customer, a retailer, and a third-party supplier that delivers goods directly to the customer.

While these arrangements are common, they can raise issues as to whether the out-of-state retailer is required to collect sales tax.

The number of states that would find nexus for drop shippers varied greatly based on the specific facts of each scenario.

For example, 17 states said that nexus would be created when a manufacturer ships tangible personal property by a common carrier to in-state customers based on orders received from a distributor where the distributor itself has nexus with the state.

By contrast, no states would find nexus for the manufacturer if the distributor lacked nexus.

Where a distributor uses an in-state manufacturer as a fulfillment agent in the state to pack and ship orders by common carrier to in-state customers, 21 states said they would find nexus if the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order.

A larger number of states—33—said they would find nexus if the corporation itself holds title to the inventory until directing the manufacturer to ship the order.

SURVEY SAMPLE: We sent a questionnaire to senior state tax officials in every state, the District of Columbia and New York City. This year, every state participated in the survey; however, some states declined to answer certain questions. The states were asked to provide their positions as of Dec. 31, 2014. Full text of the questionnaire appears on page S-391.

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Survey Analysis

2015 SURVEY OF STATE TAX DEPARTMENTS
States Specify Nexus Policies on Registration and Drop Shipments; Clarify Sourcing Issues; Address Other Ambiguities

INTRODUCTION

In Bloomberg BNA's 15th annual *Survey of State Tax Departments*, senior state tax officials answered questions clarifying how their jurisdictions are taxing several gray areas of corporate income and sales and use tax, with an emphasis on nexus policies and the sourcing of receipts for income tax purposes. All 50 states, the District of Columbia and New York City participated in the survey.

As the digital economy continues to grow, businesses and consumers are accustomed to purchasing a wide variety of goods and services via the Internet. Whether it's online classes, administrative support or even groceries, the state in which the vendor is located is hardly a consideration for the parties to the transaction.

Business advocates argue that states are exceeding their constitutional authority by taxing these borderless transactions. The states counter that they need revenue to provide the infrastructure upon which businesses and consumers rely.

To avoid potential revenue loss, an increasing number of states are rejecting the bright-line physical presence test. States are adjusting to the new economy by taxing out-of-state businesses based on their ''economic presence'' within their borders. They are also adopting new rules aimed at taxing out-of-state companies' receipts from services and intangibles that are attributable to in-state customers.

Unlike the physical presence test, economic presence remains murky. The threshold of activity that will render a corporation subject to tax is still evolving, survey responses indicate. Despite several state court decisions on the constitutionality of an economic presence standard, the U.S. Supreme Court has never opined on the issue. As a result, there is a lack of uniform guidance. Taxpayers and practitioners must carefully assess whether business transactions will trigger a tax obligation in a particular jurisdiction.

For example, the taxation of digital products and services (software downloads, Web hosting, and Software as a Service transactions) has become a popular area for states to expand beyond the taxation of tangible personal property to intangibles and services as well.

As states continue to broaden the scope of economic nexus, it is more important than ever for corporations to be aware of changes in state tax nexus policies.

Even in the sales tax arena, the physical presence standard appears to be eroded. More states are adopting click-through nexus laws and attributional nexus. To date, 12 states have adopted click-through nexus provisions and several more have some sort of click-through nexus policy, even absent specific statutory authority.

After nexus has been established, most multistate corporations must take the analysis one step further. As a result, in addition to nexus issues, a new area emerged as a major hub of state tax activity—income sourcing. Income sourcing refers to the rules states use to determine whether business entities will attribute certain receipts to its jurisdiction after nexus has been established.

Most business entities will face income sourcing issues for receipts from intangibles and services when filing their tax returns, especially if they have nexus in several jurisdictions. While states have long-standing policies on sourcing income from tangible personal property and real property, there is little uniformity or guidance on sourcing income from services, intangibles, cloud computing and certain special industry receipts.

For taxpayers, the states' responses in the survey demonstrate a complete lack of uniformity in state tax policies in this area, which results in compliance confusion. This is particularly apparent in the states' approach to sourcing receipts from services, intangibles and cloud computing. Despite the shift towards a service-based economy over a decade ago, the states are still unable to reach a consensus on how to source these transactions. As more states adopt a market-based approach, the manner in which they go about doing so is inconsistent, said one prominent tax lawyer.

A new area has emerged as a major hub of state tax activity—income sourcing.

One area in which the states have made some progress is sourcing receipts from cloud computing transactions. For several years, generic ''letter rulings'' were the only guidance on cloud computing transactions. As indicated by survey responses, state policies in this area have changed dramatically. This year, 19 states were able to characterize receipts from cloud computing as either receipts from: the sale of tangible personal property; the lease, license or rental or tangible personal property; the sale, lease, license or rental or intangible personal property; or the sale of services. ''The responses have definitely improved this year,'' said one income sourcing expert.

New Additions

New portions of the survey this year address income and sales tax nexus for registration with state agencies, as well as sales tax nexus for drop shipment transactions. The survey also features significant additions to each state's rules for sourcing sales factor receipts for purposes of the corporate income tax. The 2015 survey asked states to identify in greater detail how receipts from sales of services and receipts from cloud-based transactions are characterized and sourced. There were also new questions added to sections on sourcing receipts from three special industries.

For the first time, the states were also asked whether they apply the definition of ''transacting business'' or ''doing business'' to determine whether an out-of-state corporation must register with a state agency and therefore has nexus with the state. For sales tax purposes, states were asked to answer questions about the controversial policy of ''trailing nexus.''

As in previous years, each state was asked about its position on several important trends in state taxation. This year, topics included conformity to the Multistate Tax Commission's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*, and whether a state's application of the throwback rule is based on its own nexus laws or the nexus laws of the destination state. The survey also included additions to other areas, such as add-back requirements and compliance with various portions of the Multistate Tax Compact.

The sales tax policy portion of the survey also includes questions about nexus for activities related to digital property, such as sales of digital newspaper or magazine subscriptions and remote sales of appliances.

Nexus

Much of the survey is focused on clarifying each state's position with respect to specific activities that could trigger corporate income tax or sales tax nexus. While it is fairly easy to track new legislation as states enact it, it is far more difficult to gauge how strictly each jurisdiction interprets and enforces those laws.

For state tax purposes, ''nexus'' generally means the threshold of contact that must exist between a taxpayer and a state before the state has jurisdiction to tax the taxpayer. The due process clause of the U.S. Constitution requires that there be some minimum connection between a state and the person, property or transaction it seeks to tax. Similarly, the commerce clause, which governs the taxation of interstate commerce, requires that there be a ''substantial nexus'' between the taxed activity and the taxing state.

Corporate Income Tax Nexus

For the Bloomberg BNA survey, we sought to identify each state's general approach to making income tax nexus determinations by asking whether its income tax nexus policy is based on physical presence or economic presence. Those states that adhere to a physical presence standard base nexus on the presence of employees or property within their borders. States that adhere to an economic nexus standard take the position that nexus can be triggered merely by making sales into the state; owning property or maintaining a payroll is not required.

Quill has to be applied as it is the law of the land. However, the unfortunate gratuitous sentence in the _Quill_ decision that commented on the court not having ruled on taxes other than sales tax opened a floodgate with which we are all familiar

ART ROSEN, PARTNER, MCDERMOTT WILL & EMERY

In addition to constitutional protections, a federal law (Pub. L. No. 86-272, 15 U.S.C. §381 (1959)) further limits the states' power to impose net income taxes on an out-of-state business that sells tangible personal property in the state. When the company's only activity is the solicitation of orders, the law prohibits a state from imposing tax on such a business. To receive protection under the law, the out-of-state company must receive orders outside the state and fill those orders from points outside the taxing state. The U.S. Supreme Court specified the activities that constitute protected ''solicitation'' under Pub. L. No. 86-272 in *Wisconsin Dept. of Rev. v. William Wrigley, Jr., Co.*, 112 S. Ct. 2447 (1992).

Despite these constitutional and federal nexus standards, states vary greatly in determining what particular activities performed within their borders might trigger income taxation.

A key constitutional question that remains undecided by the U.S. Supreme Court is whether the states making corporate income tax nexus determinations must use the physical presence test established by the high court in *Quill v. North Dakota*, 504 U.S. 298 (1992) for sales taxes. Currently, only seven states indicated that they apply *Quill* for income tax nexus. Only 11 states noted that they apply a physical presence standard for income tax nexus, while 34 indicated that they apply the economic presence test. ''*Quill* has to be applied as it is the law of the land. However, the unfortunate gratuitous sentence in the *Quill* decision that commented on the court not having ruled on taxes other than sales tax opened a floodgate with which we are all familiar,'' said Rosen. The MTC's Thomas Shimkin disagreed. ''*Quill* does not apply to income taxes. However, a state may choose voluntarily to extend a *Quill*-like exemption to whomever it wishes with respect to any type of tax.''

A Shifting Standard for Income Tax Nexus

While *Quill* reiterated the bright-line, physical presence standard of an earlier U.S. Supreme Court decision, it left open the question of whether that standard

Bloomberg BNA would like to thank the state tax officials who devoted their time and attention to responding to our questionnaire.

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also applied to corporate income taxes. In the absence of clear guidance from the high court, state appellate courts began providing their own answers. Almost from the time *Quill* was decided in 1992, the results have been varied and contradictory.

Many state appellate courts have opted to apply an economic presence test for income taxation, ruling that *Quill* applies only to sales taxes, said Rosen.[1] The first of these rulings was the South Carolina Supreme Court's decision in *Geoffrey Inc. v. South Carolina Tax Dept.*, 437 S.E.2d 13 (S.C. 1993), *cert. denied*, 510 U.S. 992 (1993). In *Geoffrey*, Toys ''R'' Us paid royalty fees to Geoffrey, a Delaware holding company, for the right to use certain trademarks, trade names and franchises in South Carolina. South Carolina assessed income tax on Geoffrey's royalty income.

Protesting the assessment, Geoffrey argued that it did not do business in South Carolina and did not have sufficient nexus with the state for its income to be taxable there. But the South Carolina Supreme Court upheld the assessment. Citing *Quill*, the court said ''the nexus requirement of the due process clause can be satisfied even where the corporation has no physical presence in the taxing state if the corporation has purposefully directed its activity at the state's economic forum.'' The court noted that Geoffrey purposefully directed its activities toward South Carolina's economic forum by consenting to, and benefitting from, the use of its trademarks in the state.

Accordingly, the court found that by licensing intangibles for use in South Carolina and receiving income in exchange for their use, Geoffrey had the ''minimum connection'' with the state that is required by the due process clause.

The court also held that South Carolina's tax on the income satisfied commerce clause requirements. Geoffrey argued that it had not achieved ''substantial nexus'' with the state as required under *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977), because it lacked a physical presence there. But the court said that Geoffrey's reliance on the physical presence requirement under *National Bellas Hess v. Illinois Dept. of Rev.*, 386 U.S. 753 (1967), was misplaced. The court found that while the U.S. Supreme Court in *Quill* reaffirmed the vitality of the physical presence rule, the high court noted that the physical presence requirement had not been extended to other types of taxes.

Therefore, the court concluded that a taxpayer need not have a physical presence in a state for income to be taxable there.

After the U.S. Supreme Court denied the taxpayer's petition for certiorari, several other state appellate courts found that the physical presence standard established in *Quill* is limited to sales and use tax nexus determinations.

Federal Legislation to Establish Uniform Nexus Standards

In the absence of a U.S. Supreme Court decision on state income tax nexus standards, federal legislation may be one way to establish uniform nexus standards. One proposal, the Business Activity Tax Simplification Act of 2013 (H.R. 2992) (BATSA), would define what constitutes a business' physical presence in a state for taxation purposes. BATSA would also expand the protection provided to interstate commerce under Pub. L. No. 86-272 to apply to sales of intangible property and services.

This legislation has been reintroduced no fewer than 7 times, which suggests it has faced a continuing set of challenges to enactment.

KENDALL HOUGHTON, PARTNER, ALSTON & BIRD LLP

After it was introduced in 2013, BATSA received a mixed reaction. Enacting BATSA would make compliance simpler; however, it would also undermine a state's ability to tax those who do not enjoy the benefits and protections of the taxing state, said Rosen. ''it is like the U.S. deciding to impose tax only on nonresident aliens.''

Though BATSA may promise uniform nexus standards for income tax, the bill has still not been enacted or reintroduced to date. ''This legislation has been reintroduced no fewer than 7 times, which suggests it has faced a continuing set of challenges to enactment,'' said Houghton.

Most practitioners are in agreement that the likelihood of BATSA being enacted in the near future is slim. ''Although the passage of BATSA or similar legislation remains unlikely in the near term, it is possible that a legislative approach to income tax nexus uniformity could become palatable depending on the impact of the U.S. Supreme Court's increasing activity in relation to both the due process clause and the commerce clause,'' said Brian Kirkell, partner with McGladrey. ''On its face, a bright-line physical presence standard could simplify compliance and negatively impact a state's ability to impose income tax. However, as can be seen from approaches such as attributional nexus and affiliate nexus applied in the sales tax arena, states have not been shy about aggressively imputing physical presence to out-of-state entities, with an attendant increase in uncertainty and compliance costs for businesses.''

Other practitioners shared Kirkell's view that BATSA may gain traction given the current environment. ''The

[1] *Maryland Comp. of the Treas. v. SYL Inc.* and *Maryland Comp. of the Treas. v. Crown Cork & Seal Co. (Delaware) Inc.*, 825 A.2d 399 (Md. 2003), *cert. denied*, 540 U.S. 1090 (2003); *A&F Trademark Inc. v. Tolson*, 605 S.E.2d 187 (N.C. Ct. App. 2004), *review denied* (N.C. 2005), *cert. denied* 546 U.S. 821 (2005); *General Motors Corp. v. Seattle*, 25 P.3d 1022 (Wash. Ct. App. 2001), *cert. denied*, 535 U.S. 1056 (2002); *Kmart Properties Inc. v. New Mexico Taxn. and Rev. Dept.*, 131 P.3d 27 (N.M. Ct. App. 2001) *cert. quashed* 131 P.3d 22 (N.M. 2005); *Lanco Inc. v. Director, New Jersey Div. of Taxn.*, 908 A.2d 176 (N.J. 2006), *cert. denied*, 127 S. Ct. 2974 (2007); *Geoffrey Inc. v. Oklahoma Tax Comn.,* 132 P.3d 632 (Okla. Civ. App. 2005), *review denied* (Okla. May 20, 2006); *Borden Chemicals and Plastics L.P. v. Zehnder*, 726 N.E.2d 73 (Ill. App. Ct. 2000), *appeal denied*, 731 N.E.2d 762 (Ill. 2000); *West Virginia Tax Comr. v. MBNA America Bank, N.A.*, 640 S.E.2d 226 (W. Va. 2006), *cert. denied*, *FIA Card Services, N.A. v. West Virginia Tax Comr.*, 127 S. Ct. 2997 (U.S. 2007); *Capital One Bank v. Massachusetts Comr. of Rev.*, 899 N.E.2d 76 (Mass. Jan. 8, 2009), *cert. denied* , 557 U.S. 919 (2009); *Geoffrey Inc. v. Massachusetts Comr. of Rev.*, 899 N.E.2d 87 (Mass. Jan. 8, 2009), *cert. denied*, 557 U.S. 920 (2009).

attractiveness of simple rules that do not invite disputes over their application could attract support, especially if paired up with other simplification measures that are viewed as counterbalances to the perceived revenue impact of BATSA (e.g., in the sales/use tax arena, as has been suggested in recent years),'' said Houghton. ''This is particularly true given that taxpayers are confronting expanding theories of what constitutes economic nexus.''

Due Process Clause Challenges to State Nexus Determinations

While most taxpayer challenges to state nexus determinations are based on the commerce clause, some relatively recent U.S. Supreme Court rulings involving tort cases could support arguments based on due process grounds. In *Daimler/Chrysler AG v. Bauman*, 134 S. Ct. 746 (2014), the high court unanimously held that California courts cannot exercise general personal jurisdiction over a foreign corporation for injuries allegedly caused by conduct of its subsidiary, Mercedes-Benz Argentina, outside of the U.S. because it would violate the due process clause of the 14th Amendment.

In *Goodyear Dunlop Tires Operations S.A. v. Brown*, 131 S. Ct. 2846 (2011), North Carolina residents whose sons died in a bus accident outside Paris, France, filed a suit for wrongful death damages in a North Carolina state court. Alleging that the accident was caused by tire failure, they named as defendants Goodyear USA, an Ohio corporation and three Goodyear USA subsidiaries, organized and operating, respectively, in Luxembourg, Turkey and France. The defendants filed a motion to dismiss on jurisdictional grounds. However, the North Carolina Court of Appeals held that the state's courts had general jurisdiction over the defendants because their tires reached the state through ''the stream of commerce.'' However, the U.S. Supreme Court reversed after finding that the defendants lacked ''the kind of continuous and systematic general business contacts'' necessary to allow North Carolina to entertain a suit against them unrelated to anything that connects them to the state.

In *J. McIntyre Mach. LTD v. Nicastro*, 131 S. Ct. 2780 (2011) the plaintiff injured his hand while using a metal-shearing machine manufactured by J. McIntyre Machinery, which was located in England. The plaintiff filed suit in New Jersey, where the injury occurred, and J. McIntyre Machinery moved to dismiss the suit on jurisdictional grounds. The company argued that no more than four of its machines were located in New Jersey. However, the New Jersey Supreme Court ruled that the company was subject to the state's jurisdiction even though at no time had the company advertised in, sent goods to or targeted the state in any relevant sense. The U.S. Supreme Court reversed after finding that imposing New Jersey jurisdiction on J. McIntyre Machinery violated due process because the plaintiff never established that the company directed any purposefully driven activity at the state.

Since 2008, several states have enacted legislation modeled on New York's so-called ''Amazon law,'' which creates a presumption of nexus for out-of-state sellers that compensate state residents (''associates'') for sales made via links on their websites.

These cases may have already influenced subsequent state tax cases regarding income tax nexus. For example, in *Scioto Ins. Co. v. Oklahoma Tax Comn.*, 279 P.3d 782 (Okla. 2012), the Oklahoma Supreme Court held that payments received by an out-of-state subsidiary from its parent, Wendy's International Inc., under a licensing agreement for the use of trademarks and other intellectual property by Wendy's restaurants in Oklahoma did not create sufficient nexus under the due process clause to impose corporate income tax on the subsidiary.

Similarly, the West Virginia Supreme Court held in *Griffith v. ConAgra Brands*, 728 S.E.2d 74 (W.Va. 2012) that assessments against an out-of-state licensor for West Virginia corporation net income and business franchise tax, based on royalties earned from the nationwide licensing of food industry trademarks and trade names, were prohibited by the due process and commerce clauses of the U.S. Constitution.

Sales and Use Tax Nexus

In *Quill*, the court declared that for a state tax to satisfy the U.S. commerce clause, the potential taxpayer must have a substantial connection with the taxing state, whereas under the due process clause, only ''some minimum connection'' is required. In the context of sales and use taxes, the *Quill* court found that ''substantial nexus'' means that the potential taxpayer/collector must have a physical presence in the state and that such physical presence must be more than de minimis.

Thus, under the *Quill* rule, some direct, in-state presence—either through agents or employees, an office or other place of business— must be in place to create the nexus that triggers the imposition of a duty to collect sales and use taxes on behalf of the state. In the absence of agents, employees or a physical location, a seller cannot be required to collect sales and use taxes.

Since 2008, several states have enacted legislation modeled on New York's so-called ''Amazon law,'' which creates a presumption of nexus for out-of-state sellers that compensate state residents (''associates'') for sales made via links on their websites. Maine was the most recent state to adopt such a provision. Ver-

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mont will adopt a click-through nexus provisions when 15 other states also do so.

In *Overstock.com v. New York Dept. of Taxn. and Fin.*, N.Y.3d 586 (N.Y. 2013), *cert. denied*, 134 S. Ct. 682 (2013), New York's highest court found that the state's Internet tax requiring online retailers to collect and remit sales and use tax for soliciting business through in-state affiliates satisfies the commerce clause's substantial nexus requirement because when such solicitation produces revenue for the retailer, it also creates a ''physical presence'' in the state.

The case centers on constitutional challenges to N.Y. Tax Law §1101(b)(8)(vi), which was adopted in 2008. The statute provides that out-of-state sellers of taxable tangible personal property or services are presumed to be New York vendors if they enter into agreements with residents of the state to refer customers to the seller. Under the law, the term ''vendor'' includes any person who solicits business in the state through employees, independent contractors, agents or other representatives and, by virtue of that connection, makes sales within the state.

New York's law extends to Internet retailers, such as Amazon, that enter into agreements with in-state operators of websites—referred to as ''associates''— to provide links to the retailers' sites and compensate them on a per-sale basis. When the law was enacted, Amazon and Overstock.com filed suit, charging that it was unconstitutional on its face and as applied. The New York Supreme Court—the state's trial court— ruled in favor of the state. On appeal, the Supreme Court Appellate Division upheld the statute while recognizing that the record did not contain enough information to allow an examination of whether the law actually discriminated against the retailers as applied.

By the time the case was before the New York Court of Appeals, Amazon and Overstock.com withdrew their ''as applied'' challenge and proceeded with a ''facial'' challenge to the statute. To win a facial challenge, the taxpayers would have had to prove that there were no circumstances under which the statute could be constitutionally applied. As a result, the court might have believed it was unnecessary to analyze the nexus effects of specific activities.

New York's ''Amazon'' decision leaves open whether many types of online activities constitute solicitation. The lower court in *Overstock.com* said newspaper advertisements do not constitute ''solicitation,'' but can the same be said for Google AdWords, which are targeted to appear for specific types of searches? Adding to the confusion are the multiple ways that online affiliate marketers reach out to potential customers. Common marketing methods include blogs, comparison shopping sites, e-mail newsletters, videos, paid searches and podcasts.

State-by-State Click-Through Nexus Laws

State	Effective Date	Affiliate Threshold	Statute
Arkansas (rebuttable presumption)	Oct. 24, 2011	More than $10,000	Ark. Code Ann. §26-52-117
California (rebuttable presumption)	If federal legislation is enacted by July 31, 2012, then click-through nexus is effective Jan. 1, 2013. If federal legislation is not enacted, then A.B. 155 is effective Sept. 15, 2012.	More than $10,000 (and more than $1 million in annual in-state sales)	Cal. Rev. & Tax. §6203(c)
Connecticut (irrebuttable presumption)	July 1, 2011	More than $2,000	Conn. Gen. Stat. §12-407(a)(12)(L)
Georgia (rebuttable presumption	Oct. 1, 2012	More than $50,000	Ga. Stat. Ann. §48-8-2(8)(M)
Illinois (rebuttable presumption); current statute enacted after repeal of former irrebutable presumption upheld by *Performance Mktg. Ass'n v. Hamer*, 998 N.E.2d 54 (Ill. 10/18/2013).	July 1, 2011	More than $10,000	35 ILCS 105/2, 35 ILSC 110/2, *as amended by* 2014 Ill. S.B. 352
Kansas (rebuttable presumption)	July 1, 2013	More than $10,000	Kan. Stat. Ann. §79-3702(h)(2)(C)
Maine (rebuttable presumption)	Oct. 9, 2013	More than $10,000	Me. Rev. Stat. Ann. §1754-B(1-A)(C)
Michigan (rebuttable presumption)	Oct. 1, 2015	More than $10,000 to in-state purchasers through affiliates (and more than $50,000 gross receipts from sales to in-state purchasers).	Mich. Comp. Laws §205.52b
Minnesota (rebuttable presumption)	July 1, 2013	More than $10,000	Minn. Stat. §297A.66(4a)
Missouri (rebuttable presumption)	Aug. 28, 2013	More than $10,000	Mo. Rev. Stat. §144.605(2)(e)
New Jersey (rebuttable presumption)	July 1, 2014	More than $10,000	N.J. Rev. Stat. §54:32B-2(i)(1)(C)

State-by-State Click-Through Nexus Laws — Continued

New York (rebuttable presumption)	June 1, 2008	More than $10,000	N.Y. Tax Law §1101(b)(8)(vi)
North Carolina (rebuttable presumption)	Aug. 7, 2009	More than $10,000	N.C. Gen. Stat. §105-164.8
Pennsylvania	Sept. 1, 2012	None specified	Pennsylvania Sales Tax Bulletin No. SUT 2011-01 (Dec. 1, 2011); proposed legislation in 2013 (H.B. 1043)
Rhode Island (rebuttable presumption)	July 1, 2009	More than $5,000	R.I. Gen. Laws §44-18-15
Vermont (rebuttable presumption)	When adopted in 15 other states	More than $10,000	Vt. Stat. Ann. tit. 32, §9701(9)(I) (H.B. 436)

But not all click-through nexus statutes have withstood judicial scrutiny. The Illinois Supreme Court struck down the state's click-through nexus law after finding that it was preempted by the federal Internet Tax Freedom Act (ITFA) in *Performance Marketing Ass'n v. Hamer*, 998 N.E.2d 54 (Ill. 2013). The statute was found to violate the ITFA because it treated some forms of advertising differently from others. For example, click-through links gave rise to nexus, but ''regular'' Internet advertising did not. The statute specifically defined as retailers or servicemen maintaining a place of business in Illinois, and consequently subjected to tax, those who agreed to refer potential customers to a retailer's products or services via their Internet website in exchange for consideration. The way retailers and servicemen were defined thus acted as an irrebuttable presumption of taxability. In contrast, New York's statute imposes a rebuttable presumption of business solicitation on persons who use independent contractors or other representatives to refer potential customers to their products via the Internet or other means.

However, Illinois enacted new click-through legislation in August 2014 (S.B. 352), which took effect Jan. 1, 2015, and seeks to remedy the issues the Illinois court found with the state's prior law. The new law takes a more expansive approach, including marketing arrangements involving mail, radio and broadcast media.

Perhaps it was this multitude of issues that prompted Colorado to adopt a different approach, which attempted to avoid the substantial nexus requirement. The state enacted a reporting requirement regime in 2010 under which online retailers otherwise lacking nexus must notify in-state customers that use tax may be due to the state, annually report to in-state customers the details of their purchases from the previous year and annually report to the state details on their sales to in-state customers.

But this approach was halted by a federal injunction until 2013, when the U.S. Court of Appeals for the Tenth Circuit in *Direct Marketing Association v. Brohl*, 735 F.3d 904 (10th Cir. 2013) ordered a U.S. District Court to dismiss a case in which a permanent injunction had been granted against the Colorado Department of Revenue that prevented the department from enforcing Colorado's notification and reporting requirements. The court determined that the federal Tax Injunction Act (TIA) deprived the U.S. District Court of jurisdiction to enjoin Colorado's notification law.

The case made its way to the U.S. Supreme Court, where the court reversed March 3, holding that the TIA does not bar an out-of-state retailer from challenging the Colorado reporting rules in federal court. In a unanimous opinion authored by Justice Thomas, the court said that the TIA did not apply because the information reporting requirement was related to initial information-gathering steps that precede the ''assessment, levy or collection'' actions covered by the act.

Specifically, the TIA bars federal court jurisdiction over suits that seek to enjoin, suspend or restrain the assessment, levy or collection of state taxes where a sufficient remedy is already available under state law. While the Tenth Circuit viewed the term ''restrain'' broadly, the U.S. Supreme Court chose a narrower interpretation, looking at the companion terms ''enjoin'' and ''suspend,'' which are terms of art that should be analyzed based on their legal uses rather than their broader dictionary definitions.

Justice Kennedy certainly is signaling his vote for certiorari, but he needs three others to agree with him. He may be trying to nudge Congress to adopt some version of Marketplace Fairness

Richard Pomp, professor, University of Connecticut School of Law

''The decision gives state tax practitioners certain rules on challenges to state laws in federal courts,'' Stephen P. Kranz, a partner at McDermott Will & Emery LLP in Washington, told Bloomberg BNA March 3.

However, it is important to note that the U.S. Supreme Court's holding was on a jurisdictional basis, and did not reach the merits of the retailers' claim that the reporting requirements discriminate against remote vendors. That issue will be left for the Tenth Circuit to decide on remand.

The highlight of the court's decision, however, was Justice Kennedy's concurrence, in which he invited an opportunity for the court to challenge *Quill*. ''It is unwise to delay any longer a reconsideration of the Court's holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier,'' Kennedy wrote.

State tax practitioners see Kennedy's concurring opinion as a message that Congress should address this

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problem. ''Justice Kennedy expresses what a number of state tax policymakers and scholars (including amici in this case) have been arguing. The Court has always recognized that the rule in *Quill* was arbitrary,'' Helen Hecht, general counsel at the Multistate Tax Commission, said in a March 3 e-mail.

''Justice Kennedy certainly is signaling his vote for certiorari, but he needs three others to agree with him. He may be trying to nudge Congress to adopt some version of Marketplace Fairness,'' said Richard Pomp, Professor of Law at the University of Connecticut, in a March 3 e-mail.

With Justice Kennedy's concurrence, the Marketplace Fairness Act or similar remote vendor legislation is likely to remain in the spotlight in 2015. Specifically, state tax practitioners are wondering whether Congress will finally pass a bill or whether the issue will ultimately be settled by the courts.

The MFA of 2013 is a bill that authorizes each member state under the Streamlined Sales and Use Tax Agreement (SSUTA) to require all sellers to collect and remit sales and use taxes on remote sales, and contains a small-seller exception for businesses with sales under $1 million. Although the bill passed the Senate in 2014, it ultimately failed to garner enough support in the House.

However, just one week after the Supreme Court handed down its decision in *DMA*, the bill (S. 698) was reintroduced in the Senate. The 2015 version is substantially similar to the 2013 bill, and would give states the option of requiring remote vendors to collect sales taxes already owed under state law in the same manner as local businesses.

Unlike the 2013 version, the MFA of 2015 would prohibit states from imposing collection and remittance requirements on remote vendors until a year after the MFA is enacted.

The MFA would also allow remote vendors to collect sales taxes at the destination rate if the state enacts certain simplifications as required by the act and would require states to provide sales tax collection software to remote vendors for free.

A different approach, the Online Sales Simplification Act of 2015 was introduced in January by House Judiciary Chairman Robert Goodlatte (R-Va.) and includes the concept of hybrid-origin sourcing, under which a remote seller would source its receipts based on its own location rather than where the customer is located, and a system would be in place to redistribute funds collected.

Origin-based sourcing has serious drawbacks, so much so that Kranz referred to it as the ''nuclear bomb version of tax competition,'' when testifying at a March 2014 committee hearing on alternatives to the MFA.

A third possible legislative solution, the Remote Transactions Parity Act, is still being drafted. The draft is a compromise bill by U.S. Rep. Jason Chaffetz (R-Utah) and would allow states to collect taxes on remote sales. However, the draft is not yet publicly available and has not been formally presented to Congress.

With three potential legislative solutions and Justice Kennedy's concurring opinion in *DMA*, the issue of remote vendor collection may finally be addressed in 2015.

Bloomberg BNA Survey

Bloomberg BNA's annual survey offers insights for practitioners who must gauge whether a corporation's activities within a state could result in a tax assessment. As guidance in the form of case law or statutes setting forth the types of activities that trigger nexus and taxability is lacking in many states, this survey fills in essential details.

However, because nexus determinations are fact-specific and subject to interpretation, the states' answers should not be relied upon as definitive policy statements. Even when a state indicates that the performance of a particular activity, by itself, would not trigger nexus, it is not always clear whether nexus might arise if any additional activity was performed in the state.

For the 15th consecutive year, Bloomberg BNA has sought to clarify each state's position on nexus by sending questionnaires to senior state tax department officials in the District of Columbia, New York City and the 46 states that impose a corporate income tax. Bloomberg BNA also sent questionnaires regarding sales and use tax nexus to the 45 states that impose that tax. In addition to nexus, the questionnaire asked the officials questions about their state's tax treatment of non-U.S. entities, methods of sourcing income, transactions involving intangible holding companies, taxes paid to other jurisdictions, state add-back rules and bankruptcy. The states were also queried about their throwback/throwout rules, combined reporting regimes and conformity to Multistate Tax Compact and Streamlined Sales and Use Tax Agreement provisions.

This year, only seven jurisdictions indicated that they apply *Quill* (i.e., require that a corporation have a physical presence in the state in order to create nexus) in making nexus determinations.

For the income tax portion of the survey, every state that imposes an income tax, plus the District of Columbia and New York City, participated this year, with the exception of New York.[2] For the portion of the survey addressing sales and use tax nexus, almost every state that imposes a sales tax, plus the District of Columbia participated. Maryland, Mississippi, New York City and Oklahoma did not participate in the sales tax portion of the survey this year. [2]

Full text of the questionnaire used in the 2015 Bloomberg BNA survey appears on page S-323.

[2] New York said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey this year.

[2] Maryland, Mississippi and Oklahoma and declined to participate in the sales tax nexus portion of the survey. New York City noted that its sales and use tax is administered by the state.

SURVEY RESULTS

Income Tax Nexus Policies

'Quill' and a Physical Presence Standard

For several years, the survey has asked states whether they adhere to *Quill* for income tax purposes, employ a physical presence or an economic presence standard. This year, only seven jurisdictions indicated that they apply *Quill* (i.e., require that a corporation have a physical presence in the state in order to create nexus) in making nexus determinations. The seven jurisdictions were Delaware, Hawaii, Massachusetts, Pennsylvania, Tennessee, Texas, and New York City. Six jurisdictions indicated that they once adhered to *Quill*. These jurisdictions were the District of Columbia, Iowa, Kentucky, Michigan, New Mexico and Oklahoma. Thirty-seven states indicated that they do not apply *Quill*—up from 34 three years ago.

When asked whether they apply a physical presence standard, 11 jurisdictions answered ''yes,'' including Delaware, Hawaii, Michigan, Nebraska, New Mexico, New York City, Oklahoma, Pennsylvania, Rhode Island, Tennessee and Texas. Five of these states answered that they do have a physical presence standard, but also indicated that they do not apply the *Quill* decision which codifies this standard. ''This is somewhat difficult to reconcile,'' said Houghton. ''While one would have to inquire with each state that falls into these categories, I imagine that a 'physical presence standard' might be viewed by certain states as not encompassing a de minimis presence safe harbor, which the U.S. Supreme Court articulated in *Quill*. Other states will articulate their nexus standard specifically by reference to U.S. Supreme Court precedent, because that is viewed as the controlling standard, and therefore may not adopt a standard which—while it may express a reasonable interpretation of the court's ruling in *Quill* —would nonetheless not be a 'pure' restatement of that precedent.''

Other practitioners had a slightly different take. ''If we start with the assumption that has been adopted by some state courts, i.e., that *Quill* applies only to sales taxes, then income and sales tax should be looked at independently for nexus purposes,'' said Rosen. ''So the states that continue to recognize that physical presence is the only proper standard for income tax nexus can apply that in a 'direct' sense or in an 'attributional' manner.''

Economic Presence

The survey shows that physical presence and *Quill* are not the majority rule for income tax nexus. Instead, economic presence emerges as the standard recognized by most states for determining income tax nexus. This year, 34 states noted that they apply economic nexus. Only six states indicated that they do not apply economic nexus. These states were Delaware, Louisiana, Rhode Island, Tennessee, Texas and Vermont.

It is hard to see how a state would premise nexus on both derivation of receipts from a state source (economic presence) and physical presence (*Quill*), at least for taxpayers that lack any physical presence (their own presence, or attributional/agency presence)

KENDALL HOUGHTON, PARTNER WITH ALSTON & BIRD LLP

Some states, such as Hawaii, Massachusetts, Michigan, Nebraska, New Mexico and Oklahoma said their income tax nexus policy was based on economic presence, but also said it was based on physical presence, *Quill*, or both. ''The responses from Hawaii and Massachusetts beg the question whether 'economic presence,' as interpreted by those respondents, can be applied simultaneously with a nexus standard that turns on physical presence that exceeds a de minimis degree, which is *Quill*'s commonly understood line in the sand for nexus purposes,'' said Kendall Houghton, a partner with Alston & Bird LLP in Washington D.C. ''It is hard to see how a state would premise nexus on both derivation of receipts from a state source (economic presence) and physical presence (*Quill*), at least for taxpayers that lack any physical presence (their own presence, or attributional/agency presence),'' she added.

Physical Presence as a Result Of an Agency Relationship

Twenty-nine states indicate that physical presence can be established through an agency relationship, with only 11 states responding ''no.'' ''It is quite surprising that some states decline to adopt a theory of nexus adopted by the U.S. Supreme Court (i.e., attributional nexus), yet adopt a theory that has yet to be addressed by the Supreme Court (i.e., economic presence nexus),'' said Houghton.

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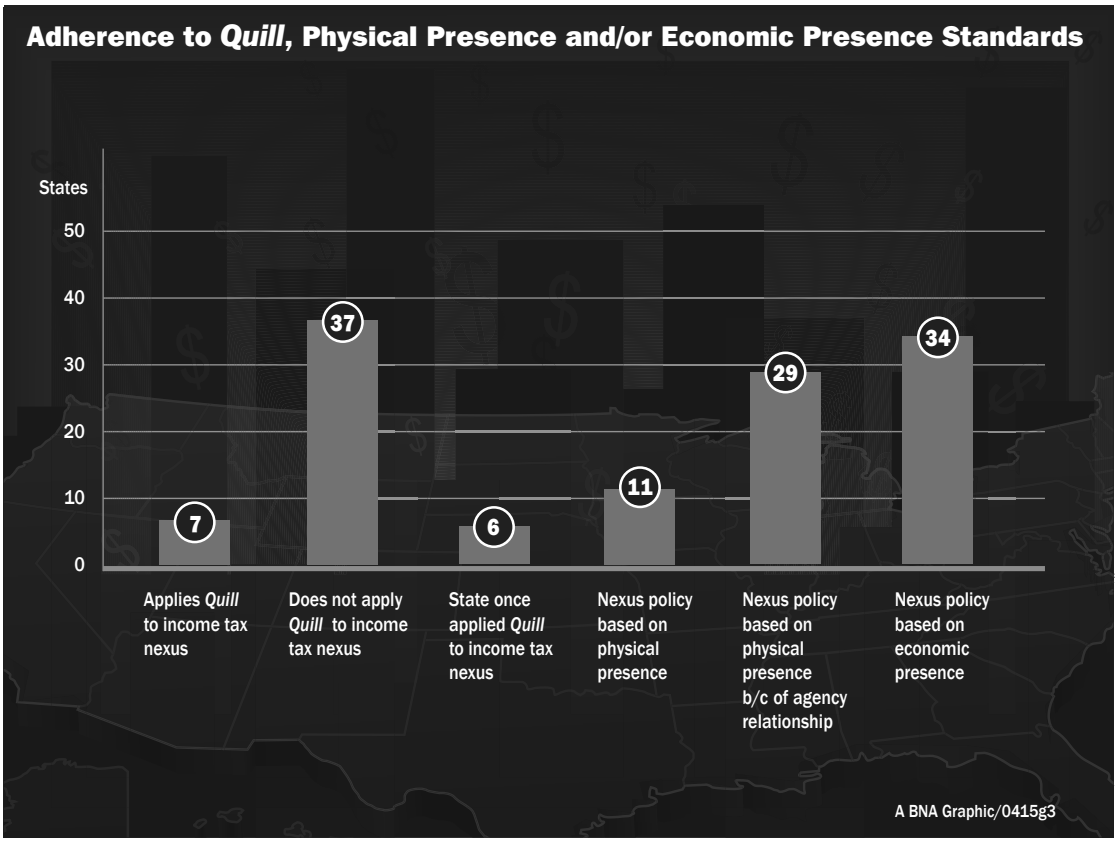

Factor Presence Nexus Standard

In an attempt to introduce some uniformity to income tax nexus standards, the Multistate Tax Commission's (MTC) model statute, *Factor Presence Nexus Standard for Business Activity Taxes*, uses both economic and physical presence to determine nexus by setting forth minimum thresholds for each. The model statute states that substantial nexus is established if any of the following limits are exceeded during the tax period: $50,000 of property; $50,000 of payroll, $500,000 of sales, or 25 percent of total property, total payroll, or total sales. These numbers are just a suggested threshold, the states that adopt the model statute are free to use different amounts, said Joe Huddleston, executive director of the MTC.

The MTC adopted a factor presence model through its member states in response to taxpayers and practitioners who said that an effective bright line test to establish nexus was necessary, noted Huddleston. ''Factor presence is a 21st century bright line standard.''

Ohio is the only state that fully conforms to the MTC's model statute. Only four other states—California, Colorado, Connecticut and Kansas—partially conform to the model statute.

In part, nexus policies based on a threshold of activity have not gained acceptance because there has yet to be a definitive ruling on whether the provisions satisfy commerce clause requirements. In its survey response, despite answering that it has never litigated the issue, Ohio is the leading jurisdiction on the constitutionality of factor presence standards. In two recent decisions, the Ohio Board of Tax Appeals upheld the imposition of Ohio's Commercial Activity tax on two out-of-state retailers, *Newegg Inc. v. Testa*, No. 2012-234 (Ohio Bd. Tax App. Feb. 26, 2015); *Crutchfield Inc. v. Testa*, Nos. 2012-926, 2012-3068m 2013-2021 (Ohio Bd. Tax App. Feb. 26, 2015).

Newegg and Crutchfield, both online retailers, satisfied the bright-line presence standard because each had gross receipts in Ohio greater than $500,000 in each of the tax years in question. These decisions were consistent with the board's previous ruling in *L.L. Bean, Inc. v. Levin*, No. 2010-2853 (Ohio Bd. Tax App. March 6, 2014).

In all three cases, the taxpayers argued that the Ohio tax commissioner's CAT assessments based on factor presence nexus were in violation of the commerce clause and that the companies lacked substantial nexus with Ohio under the U.S. Constitution. The Ohio board took note of their arguments, but it had no authority to decide the constitutional issue. Limited to applying the plain language of Ohio's bright-line presence statute, the board concluded that each taxpayer had substantial nexus with Ohio because their gross receipts exceeded the statutory threshold.

Practitioners are watching the Ohio litigation closely as the constitutionality of the MTC's model statute is particularly troubling for many taxpayers. The model statute is not constitutional, said Rosen. ''Physical presence is the dormant commerce clause rule, recent state court decisions notwithstanding. Jurisdiction over activities and persons and property within a government's borders has always been the rule—from Biblical times. It is for Congress—or perhaps the U.S. Supreme Court—to change that rule.''

This year, we asked whether states adopt an annual dollar threshold for sales made into the state that will trigger nexus, which is not based on the MTC's model

statute. Only three states answered ''yes'' to this question.

The survey also asked whether any of the states have currently adopted an annual dollar threshold or activity threshold applicable to specific industry groups, which is not based on the MTC's model statute. Six states answered ''yes'' to this question.

The survey results indicate that the MTC's efforts to create more uniform nexus standards have not been well received by the states. ''The MTC, despite their best intentions, cannot override the commerce clause or the due process clause—you still have to have a presence,'' said Bruce Ely, a partner at Bradley Arant Boult Cummings. ''The MTC suggests raising the numbers, but this doesn't necessarily rise to the level of some sort of quasi-physical presence, more than just economic presence, in many states to have income tax nexus.''

Huddleston emphasized that there is currently very little judicial guidance on this issue. ''The MTC is a big believer in constitutional limits on governmental authority. With regards to factor presence, over the period of time that states have adopted this statute, there has been very little judicial action defining it. The Ohio litigation may help clarify some of the issues.''

Trailing Nexus

Trailing nexus is another controversial policy that has been employed by the states. This year, 37 states said they would find nexus for the entire taxable year (but no more), for a corporation that stops an activity during the year that once created nexus. The jurisdictions that said they do not enforce trailing nexus were Mississippi, New Jersey, New York City, Texas and Vermont. No states said trailing nexus would extend beyond the taxable year.

Income Taxes: Sourcing Of Services, Intangibles, Cloud Computing

Background

When preparing corporate income tax returns, multistate corporations must apportion a percentage of their business income to each state in which it has nexus using the state's apportionment formula. Although apportionment formulas used by the states vary, each formula has a sales factor that takes into account the percentage of a corporation's total sales receipts that are sourced to the state.

For years, nearly all of the states conformed to §17 of the Uniform Division of Income for Tax Purposes Act (UDITPA), in effect before its recent amendments, in determining if sales, other than sales of tangible personal property, are taxable within their jurisdiction. The provision provides that such sales are sourced to the state in which the greatest proportion of the income-producing activity is performed. Income-producing activity is determined according to the taxpayer's costs of performance. However, jurisdictions differ in the way that this sourcing method is applied when the income-producing activity is performed in more than one state. The majority of cost of performance states use an ''all or nothing'' approach, where all of the receipts are sourced to a single jurisdiction based on where the costs of performance occur (plurality method). Other states use a proportionate method, or pro rata approach.

However, a growing number of states have moved away from the cost of performance method and now source receipts from sales, other than sales of tangible personal property, using a market-based approach based on the state where the taxpayer's market for the sale is located. This year, 18 states said they use market-based sourcing for receipts from services. Twenty-four states use cost of performance to source receipts from services. Eighteen states also said they use market-based sourcing to source receipts from intangibles. Only 14 states said they use cost of performance to source receipts from intangibles.

The survey results, when compared to past years, shows that it is only a matter of time before the number of states using the marketplace to source sales of services is greater than the number of states that use cost of performance approaches.

JAMIE YESNOWITZ, PRINCIPAL, GRANT THORNTON

''The survey results, when compared to past years, shows that it is only a matter of time before the number of states using the marketplace to source sales of services is greater than the number of states that use cost of performance approaches,'' said Jamie Yesnowitz, a principal at Grant Thornton.

As market-based sourcing continues to gain widespread acceptance, the implementation of this method varies greatly among marked-based sourcing states and takes into consideration a number of different factors when determining the location of the market. Implementation of this approach not only varies among states, it may also vary among categories of receipts within a single state. ''As more states move in that direction, the focus of the analysis will turn to the different methods of market-based sourcing that have been enacted, and whether some level of consistency with respect to these rules can ever be achieved.''

To further complicate sourcing issues, some states apply different sourcing methods to different categories of receipts (*e.g.*, receipts from services, intangibles or cloud computing transactions) even when the different receipts are all considered receipts from sales other than sales of tangible personal property. Other states use the same sourcing method for receipts from all types of sales other than sales of tangible personal property, but will apply the method differently depending on the type of transaction from which the receipts arose. In many cases, states define ''the market'' and ''cost of performance'' differently and taxpayers are left to interpret complex sourcing statutes.

Sourcing Receipts from Services

Most states still adhere to the cost of performance rule when sourcing receipts from services. This year, 24 states answered that they source service receipts using costs of performance. Of these states, 18 indicated that

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they use the plurality method, down from 22 two years ago. Only six states chose the proportionate method.

This year, 18 jurisdictions said they use a market-based sourcing approach, in which the receipts are sourced to the states according to factors such as where the customer is located or where the services are performed. This is up from 16 in 2014, with the District of Columbia now answering that they use market-based sourcing.

Four jurisdictions—North Carolina, Pennsylvania, Texas and New York City—said they use a sourcing method other than cost of performance or market-based sourcing for services.

Two states—California and Ohio—said they use both cost of performance and market-based sourcing for services. Pennsylvania indicated that it uses both market-based sourcing and a method other than cost of performance or market-based sourcing for services.

As more states adopt market-based sourcing, there are still several ambiguities in this area that need clarification. ''The responses in this area show the lack of uniformity and certainty in this area,'' said Yesnowitz. ''Even as more states move towards market-based sourcing, the manner in which they go about doing so is inconsistent.''

One of the biggest hurdles for taxpayers in this area is determining the definition of ''the market'' as applied by each state. ''Taxpayers in market-based states must be prepared to determine what rule is in play,'' Yesnowitz said. ''Taxpayers should use a consistent method when sourcing their receipts, to the extent they can. Consistency is especially important for taxpayers doing business in just one state,'' he added.

Even after determining the definition of ''the market'' in a state, taxpayers face other obstacles. ''Sourcing receipts from services is often difficult when taxpayers lack access to customer records or are unable to determine where the benefit is received,'' said Yesnowitz. For example, he said, it might be difficult for a multistate law firm to determine which states to source receipts to if the law firm is based in one state, represents a client in another state, and has litigation pending in a third state. In these situations, it is important for taxpayers to keep as much customer data as possible, he noted.

This market-based approach to determining the location of an income producing activity has been coming to the forefront in the last few years, particularly in Florida and Indiana when sourcing sales of services delivered via the Internet (e.g., streaming video, educational content, data reports)

BRIAN KIRKELL, PRINCIPAL, MCGLADREY

As states continue to develop guidance on market-based sourcing for receipts from services, one major criticism of state policies stems from contradictory guidance issued by revenue departments. Recently, many states that have cost of performance statutes for sourcing receipts from services actually apply a market-based analysis. For example, ''Indiana states that they are cost of performance plurality, but in many of their letters of findings, they conclude that under certain fact patterns they source receipts from services using market based sourcing,'' said Yesnowitz. ''So, in theory they may be a cost of performance state. But, in practice, they often use market-based sourcing.''

Indiana is not the only state that applies a standard other than the one codified by statute. ''This market-based approach to determining the location of an income producing activity has been coming to the forefront in the last few years, particularly in Florida and Indiana when sourcing sales of services delivered via the Internet (e.g., streaming video, educational content, data reports),'' said Kirkell. The argument is that (1) the sole income producing activity in these types of arrangements is the act of delivery of the content because the customer is paying to see the content and not to have the content created, (2) delivery occurs at the location at which the customer accesses the content (e.g., the customer's computer), and (3) if this location is within the state then 100% of the sale is sourced to the state.''

Many practitioners expressed concerns with the approach that states are taking. ''Unfortunately, we have revenue department after revenue department attempt to change the law from cost of performance to market-based sourcing,'' said Arthur Rosen, a partner at Mcdermott Will Emery. ''It is important for taxpayers to fight such illegal acts and to emphasize that alternative apportionment means that the revenue department may use different numbers but must stay with the legislative policy incorporated in the current statutes,'' he added. For example, he said, if a legislature has enacted cost of performance, it has decided that the state where a company performs its activities and uses state resources should get most of the tax and so any alternative apportionment must come to the same result.

Fred Nicely, senior tax counsel at the Council On State Taxation (COST) agreed with Rosen noting, ''this is very frustrating administrative practice for tax administrators in a cost of performance state to assert the state's apportionment law can be interpreted to be market sourcing for out-of-state sellers, yet retains its cost of performance attributes when applied to instate sellers.'' This clearly violates the fair apportionment prong of *Complete Auto*, he added.

Nicely also emphasized that a state legislature, not the department of revenue, needs to make any change in apportionment laws. ''This is an area ripe for abuse,'' he said. ''The uncertainty in the apportionment a state tax agency uses does not provide any reliable guidance to taxpayers, which can result in that being an unfavorable state for businesses to want to locate to.''

Sourcing Receipts from Intangibles

We asked states to identify the methodology used when sourcing receipts from intangibles. Fourteen states said they used the cost of performance method. Eighteen states said they used market-based sourcing. ''I think more states will start to answer 'yes' for sourcing intangibles based on where they are used,'' said Yesnowitz. ''This trend towards looking at the location where the intangible is used will continue, in line with the trend towards market-based sourcing of services.''

Despite the move towards market-based sourcing, it still remains difficult to determine where the intangible is ''used'' for sourcing purposes. This shouldn't be difficult to ascertain; but it is, noted Rosen. ''I believe that one should look to where the licensee uses the specific right that is licensed, not where, for example, the subject product ultimately ends up.''

Nicely agreed with Rosen, noting that it is unfair for a state's tax law to assume the licensor of intangibles always knows where the intangible will be used by the licensee. ''States need to have an equitable default provision to address receipts from intangibles where the licensor does not know the location where the intangible income was derived,'' said Nicely.

There are still several states that answer ''other'' when asked about the method they use to source receipts from intangibles. This year, 13 states indicated that receipts from intangibles are sourced using a method other than costs of performance or market-based sourcing.

Some states indicated that they use multiple methods to source receipts from intangibles. For example, Illinois said it sources receipts using both costs of performance and market-based sourcing. Florida and Utah indicated that they use both market-based sourcing and a method other than costs of performance or market-based sourcing. Hawaii said it uses costs of performance and a method other than costs of performance or market-based sourcing.

States were also asked whether the same sourcing rules apply to receipts from intangibles and services. Eighteen states answered yes to this question, including California. ''I am surprised by how California answers this question,'' said Yesnowitz. ''In California, the rules for services and intangibles are contained in the same regulation, but the actual sourcing rule used to source these two receipts are completely different.''

Some states, such as Oklahoma, do not provide any guidance on how receipts from intangibles are sourced. Taxpayers in these states must use alternative forms of guidance when filing returns. ''In the case of Oklahoma, the tax commission historically did not provide for guidelines in the area of sourcing services and intangibles,'' said Yesnowitz. ''While guidance has now been released on the sourcing of services, formal guidance on the sourcing of intangibles is still lacking.The best advice here might be to call the legal division of the Oklahoma Tax Commission and try to obtain some informal guidance at the very least.''

Sourcing Receipts from Cloud Computing

This year, we completely restructured our section on sourcing receipts from cloud computing transactions. We asked the states whether they characterize and source receipts from in-state customers that access an out-of-state corporation's software via a third-party's cloud infrastructure as receipts from sales of tangible personal property; leases, licenses or rentals of tangible personal property; intangibles; or services.

Receipts from cloud-based transactions are most often characterized as receipts from services, with 12 states doing so. Included among these states are Illinois, Indiana, Iowa, Maine, Maryland, Missouri, Nebraska, New Jersey, North Dakota, Texas, West Virginia and Wisconsin. Last year, 19 states characterized receipts from cloud computing in this manner.

This year, three states answered ''depends'' to characterizing receipts from cloud computing as a service; these states were: Alabama, Arkansas and Oregon. ''Since the word 'service' is in the transaction ('Software as a Service' or SaaS), it would make sense that states generally characterize this as a service,'' said Yesnowitz.

Receipts characterized as a sale, lease, license or rental of intangible personal property came in second, with five states indicating that they use this characterization. Last year 21 states characterized these transactions in this manner.

Only one state, Utah, characterizes receipts from cloud computing as receipts from the sale, lease, license or rental of tangible personal property. Last year, 11 states characterized receipts from cloud computing transactions in this manner.

Other states said how receipts from are cloud-based transactions are characterized and sourced depends on the facts of the particular situation. These states are: California, Florida, Ohio and Oregon.

Unlike last year, where multiple states indicated that receipts from cloud computing are characterized as receipts from more than one type of transaction, this year, most states chose only one approach to sourcing these receipts. While fewer states may have responded, overall, the responses were more targeted.

We also asked states to indicate the sourcing methodology used for receipts from cloud-based transactions. Regardless of how the receipts were characterized, more states said they used the market-based sourcing method, than those that used the cost of performance method or that sourced the receipts based on the customer's billing address.

State are slowly gaining clarity on the issue of how to characterize and source receipts from cloud-based transactions. However, 11 states said they still do not have, or are in the process of developing, a position on how to source these receipts. Hawaii, for example, said receipts from these transactions are subject to Hawaii income tax but that Hawaii law does not specify how the receipts are characterized. Other states, like Michigan, did not choose a method of characterizing receipts from cloud computing transactions. However, in a footnote, Michigan noted ''prewritten computer software is considered tangible personal property in Michigan-...Sales of [tangible personal property] are sourced to the state of delivery, and receipts from the lease or rental of [tangible personal property] are sourced to the state where the property is used.'' Michigan also included another footnote indicating that under a market-based analysis, receipts from SaaS transactions would be sourced to the state where the cloud is accessed or used, or if this could not be determined then to the state of the customer's billing address.''

As cloud computing transactions become increasingly prevalent, state legislatures are expected to issue guidance in the near future. ''Cloud computing is an area ripe for state legislatures to address how it is sourced for both sales and income tax purposes—consistently unless that's impractical,'' said Nicely. ''Only 22 states responding to this question shows there is lots of confusion surrounding this issue.''

However, Yesnowitz believes this lack of guidance can work to the taxpayer's advantage. ''Taxpayers may be able to get ahead of the curve by fixing their position early on,'' he said.

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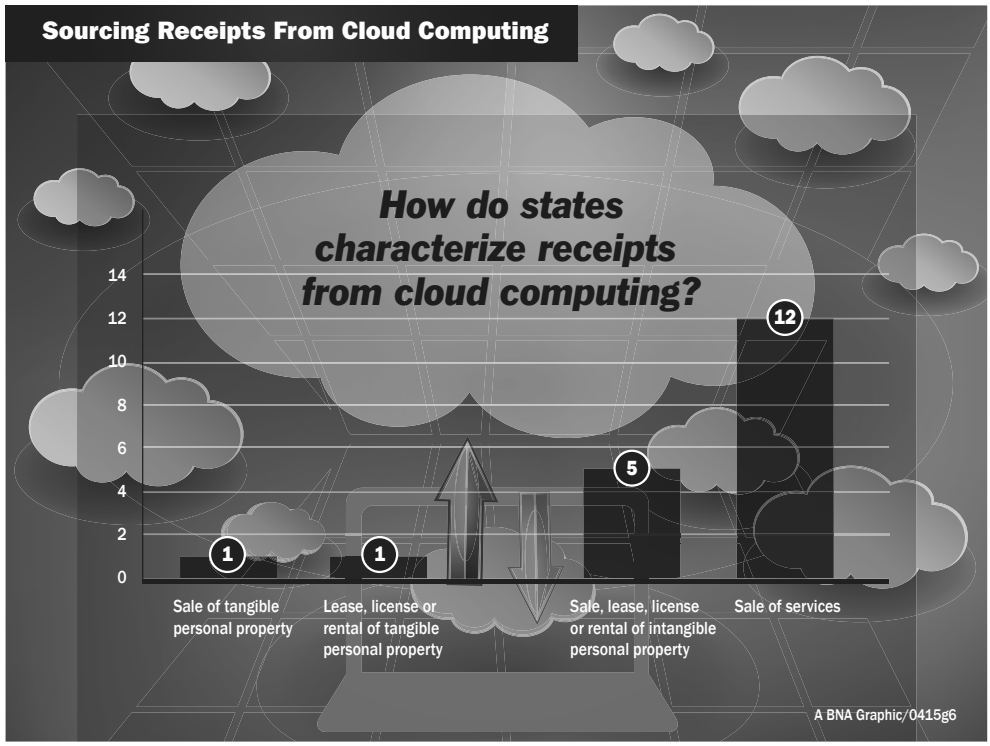


Alternative Apportionment

Due to the ambiguities that exist with sourcing receipts from various transactions, Bloomberg BNA also asked the states to cite the guidance taxpayers should refer to in the event that an alternative apportionment methodology is invoked. Twenty-nine states indicated that they had some written guidance on alternative apportionment methodologies. Of those 29 states, only 23 states provide citations to specific written guidance.

Twelve states still said they had no written guidance available on alternative apportionment. Indiana and Massachusetts indicated that they issued guidance on this issue this year.

In a footnote, Massachusetts also noted, ''a taxpayer seeking alternative apportionment must attach to its duly-filed return a statement of the reasons why the corporation believes that the allocation and apportionment provisions of this chapter are not reasonably adapted to approximate its net income derived from business carried on within this commonwealth and a description of the method of allocation sought by it.''

Bloomberg BNA also asked each jurisdiction to specify whether the burden of proof was on the party seeking to apply an alternative apportionment method, or whether the burden of proof was always on the taxpayer, without consideration as to which party is seeking to apply an alternative apportionment method. This year, 24 states indicated that the burden of proof was on the party seeking to apply an alternative apportionment method. One state, Massachusetts, said ''depends'' to this question. However, 12 states indicated that the burden of proof is always on the taxpayer, without consideration to the party seeking to apply the alternative apportionment method.

''I was surprised by the states that answered 'yes' to the question on whether the burden of proof was on the taxpayer, without regard to the party that requested alternative apportionment,'' said Yesnowitz. ''The answer should be 'no' from all states. The states that respond yes are admitting that their statutes are inequitable. If a state tax authority wants to depart from the statutory method of apportionment, the burden of proof should be on the tax authority. I think you will see a lot of play in this area this year, especially from the southern states with the *Equifax*, *Vodafone* and *Carmax* decisions as examples.

MTC Conformity

The Multistate Tax Commission, through its Compact has made an effort to provide uniform guidance for states in various areas of state tax policy. Bloomberg BNA asked each jurisdiction whether it is a party to the Multistate Tax Commission's (MTC) Multistate Tax Compact and, if so, whether it adheres to specific provisions of the compact and the MTC's model regulations. Fourteen jurisdictions said they are a party to the Multistate Tax Compact (Alabama, Alaska, Arkansas, Colorado, the District of Columbia, Hawaii, Idaho, Kansas, Missouri, New Mexico, North Dakota, Oregon, Texas and Utah). Montana and Washington are also parties to the Multistate Tax Compact, but Montana did not respond to this portion of the survey and Washington does not impose a corporate income tax.

Of these 14 jurisdictions, the following six conform to all material provisions of the Multistate Tax Compact: Alaska, Idaho, Kansas, Missouri, New Mexico and North Dakota.

Other parties to the Multistate Tax Compact conform to some, but not all, of its effective provisions. For example, eight states that do not conform to all the compact's material provisions said they conform to the compact's definition of ''sales'' (Alabama, Arkansas, Colorado, Hawaii, Illinois, Oregon, Tennessee and Utah). Other than Alabama, these states also conform to the definition of ''business income.'' Only Colorado, Hawaii

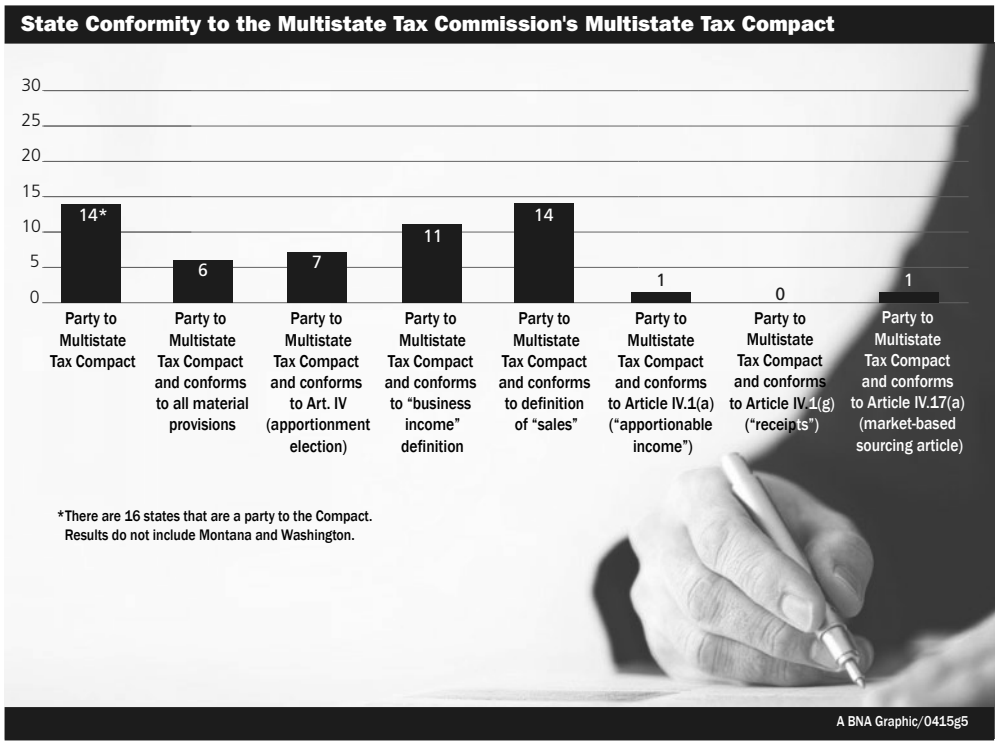
and Oregon said they conform to Article IV (UDITPA) as well.

Yesnowitz expressed concern that only six states follow all of the material provisions of the Multistate Tax Compact. ''I am surprised by the states that note that they are full compact members, but also indicate that they do not comply with all material provisions. This is highly problematic for a multistate compact and it does not bode well for the future of the compact.''

However, Shimkin noted that the lack of complete conformity to the provisions of the Compact is not troubling. ''The course of performance of Compact members over many years shows that the intention of the parties to the Compact intend that it have flexibility,'' he said. ''The use of the word 'Compact' is unfortunate, as it incorrectly implies that ALL terms are binding on all signatories,'' he added.

Parties to the Multistate Tax Compact were also asked if they conform to the following MTC Allocation and Apportionment Regulations: Regulation IV.1.(a)(3) through (6) (i.e., ''Trade or Business,'' ''Transactional Test,'' and ''Functional Test''), Regulation IV.1.(b) (''Principles for Determining Existence of a Unitary Business'') and the 2007 amendment to Regulation IV. 17.(2) and (3), including income-producing activities performed by an agent or independent contractor on behalf of a taxpayer in the definition of ''business activity.'' Seven, six and three states indicated that they do conform to these provisions, respectively.

This year, we also asked if states conform to Article IV.1(a) (''apportionable income''); Article IV.1(g) (''receipts'') and Article IV.17(a) (market-based sourcing), as well. Only Illinois answered that it conforms to Art. IV.1(a). The District of Columbia was the only jurisdiction to respond that it conforms to the MTC's market-based sourcing provisions.



Income Tax Nexus-Creating Activities

Much of the survey is devoted to posing questions addressing whether certain activities or relationships would, by themselves, create sufficient nexus to subject a corporation to a state's income-based tax. When determining whether the listed activity or relationship creates nexus for a corporation, states were asked to assume that each item on the list was the only activity or relationship the corporation had in the state, other than activities protected by Pub. L. No. 86-272.

The responses to the survey questions were consistent with those of prior years. As in the past, few of the activities Bloomberg BNA described drew unanimous agreement from the responding states as to whether they created nexus. While some differences are to be expected, the survey shows a high level of variation among the states.

Registration with State Agencies/Departments

This year, Bloomberg BNA asked every jurisdiction whether an out-of-state corporation doing business in the state would trigger nexus. Thirty-five states answered ''yes'' to this question, while three states answered ''no.'' The states that answered ''no'' were Arkansas, Iowa and Montana. ''Well, if a corporation is doing business in your state, then yes it should create

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nexus. When would this not create nexus? I'm not sure why these states answer this way,'' said Ely.

The survey also inquired whether states apply the definition of ''transacting business'' or ''doing business'' to determine whether an out-of-state corporation must register with the secretary of state, or other similar agency, when considering whether the out-of-state corporation has nexus with the state. Only 11 jurisdictions—Arizona, the District of Columbia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New Mexico and West Virginia answered ''yes'' to this question.

This year, the survey incorporated an entire section on registration with state agencies or departments. Bloomberg BNA asked states whether an out-of-state corporation being registered, authorized, certified or qualified by the secretary of state to transact business in the state would create nexus. Eleven states answered ''yes'' to this question. ''The definition of nexus is generally a four-part alternative test and 'qualified to do business' is one of the tests,'' said Ely. ''So, if you qualify to do business in the state, then you are automatically tagged. So, I'm not sure why so many states answer 'no.' ''

Despite a majority of states noting that ''doing business'' triggers nexus, very few states actually refer to the statutory definition. For taxpayers, this means that they are left in true jeopardy, not knowing what a state's position is, said Rosen. ''Of course, the ''doing business'' criterion for secretary of state registration purposes has nothing to do with the constitutional nexus requirements for state taxation,'' he added.

Additionally, based on the survey results, states appeared to give less weight in nexus determinations to the act of ''registering to do business'' than ''doing business.'' This generally matches states tax practitioners' experiences with state tax departments, according to Rosen. However, he noted that it sometimes takes ''a little fighting with the state's revenue agency to make its staff understand the distinction.''

Kirkell agreed with Rosen and noted that ''many states have a definition of 'doing business' for the purposes of registering with the secretary of state, and a separate definition of 'doing business' for income tax purposes. Typically, the secretary of state definition provides a list of activities that will trigger a registration requirement, while the tax definition is vague or merely references the U.S. Constitution. Generally, the activities that fall within the secretary of state definition also fall within the tax definition, and would be enough to support a presumption of nexus. However, differing constitutional, federal legislative, and other state limitations on the power to tax could easily render this presumption invalid.''

The survey also asked about various other registration activities creating nexus. Eight states indicated that simply holding a business license issued by the state would also create nexus. Ten states answered that registering to do business with the state tax department for payroll tax purposes would create nexus.

Ten states also answered that registering with the state as a government vendor or contractor would also create nexus.

Employee Activities — Sales Related

Reimbursing sales staff for the costs of maintaining an in-home office would trigger nexus in 24 states.

Soliciting services for one to six days would trigger nexus in every jurisdiction but the District of Columbia, Hawaii, Oklahoma, Vermont and Virginia. No longer included among these states is Massachusetts, which changed its answer from last year.

Attending a trade show for one to 14 days is enough to trigger nexus in 11 states. New York City and Texas both said they had a special exclusion for trade show participants.

This year, the survey also asked whether the states' answers would change if the corporation was protected by Pub. L. 86-272. For some activities, such as making one de minimis sale into the state, California indicated that this activity does create nexus. However, if the corporation were protected by Pub. L. 86-272, this answer would change and the activity would no longer create nexus.

Similarly, Florida indicated that while maintaining free samples would not create nexus if a corporation was protected by Pub. L. 86-272, this answer would change if Pub. L. 86-272 did not apply.

Employee Activities — Non-Sales Related

Conducting job fairs, hiring events or other recruitment activities would trigger nexus in 22 states. Thirty-six states said nexus would arise from having employees hire, supervise or train other employees within their borders.

When asked whether one employee telecommuting from a home located in the state and performing back-office administrative business functions, such as payroll, as opposed to direct customer service, would create nexus, 38 states said yes. Similarly, when asked whether one employee telecommuting from a home located in the state performing product development functions would create nexus, 37 states said ''yes.''

In many cases, human resource departments are unaware that such activities could create nexus. However, there are steps that corporations can take to avoid nexus in this situation. ''If the individual is performing back-office functions, the individual should operate as an independent contractor,'' said Rosen. ''If that is accomplished, there should be no nexus attribution since attribution is permissible only when the in-state activity is significantly associated with the out-of-state business' ability to establish and maintain the in-state market.''

This year, the survey also asked whether the states' answers would change if the corporation was protected by Pub. L. 86-272. Several states, including California indicated that while collecting delinquent accounts, repossessing property and performing repair services regularly would ordinarily create nexus, if the corporation is protected by Pub. L. 86-272, this answer would change.

Activities of Unrelated Parties

The states generally agreed that several types of activities performed by unrelated parties were sufficient to create nexus. These activities included debt collection, credit checks and installation services. The general agreement among the states on this issue appears to highlight the suspicion with which most taxing jurisdictions view third-party arrangements. Nearly all the states agreed that fulfillment services triggered nexus. Included among them was Virginia, which noted that its

''long-standing policy is that the presence of any inventory in Virginia subjects a corporation to income tax.''

Distribution and Delivery

A corporation whose trucks travel through the state one to six days in a year would trigger nexus in 11 states — Alaska, California, Florida, Illinois, Iowa, Louisiana, Michigan, Minnesota, Nebraska, Pennsylvania and Wisconsin. Texas was included among these states in 2013, but last year it noted that ''[m]erely traveling through Texas does not create nexus.'' But the state noted that if an out-of-state corporation's activities included traveling to the state, additional information regarding the activities performed in Texas would be required to make a nexus determination.

Other states said nexus would not result until the trucks travel through their jurisdiction 12 or more times during the year. These states were Missouri, Nebraska, New Mexico, North Dakota and Utah. Twenty-three states said that driving trucks through their jurisdiction was not sufficient to create nexus.

Nexus Treatment of Non-U.S. Entities

The survey addressed the state tax treatment of non-U.S. entities.

At the federal level, a non-U.S. company generally is not subject to U.S. tax on business income derived in the U.S., unless the income is attributable to a permanent establishment in the United States. The definition of ''permanent establishment'' varies by treaty, but it is generally defined as a place of management, an office, a construction site or an agent of the non-U.S. company with authority to enter into contracts. At the state level, taxation of a non-U.S. entity depends on whether the entity has nexus with the particular state.

Most states adhere to an economic nexus rationale for income taxes, which does not require a physical presence. As a result, a non-U.S. company can achieve nexus with a state even if it lacked a permanent establishment. Only 22 jurisdictions said that they rely on ''permanent establishment'' criteria for purposes of making income tax nexus determinations.

Another question is whether a state extends the protection afforded under Pub. L. No. 86-272 to non-U.S. entities. Pub. L. No. 86-272 prohibits the imposition of state income-based taxes against businesses engaged in the sale of tangible personal property whose activities in the taxing state are limited to the solicitation of orders. Twenty-eight states said that they extend the protection to foreign commerce under Pub. L. No. 86-272 to non-U.S. entities.

''It is interesting that you have a number of states that have applied Pub. L. No. 86-272 to foreign entities on the inbound side,'' said Marilyn Wethekam, a partner with Horwood Marcus & Berk Chartered in Chicago.

''In other words, if I have a foreign entity that makes sales into a state that extends Pub. L. No. 86-272 treatment to a foreign entity, then they are not doing business in that state. The assumption is that this is a tax policy consideration or placing both domestic and foreign companies on a level playing field,'' Wethekam said.

Rosen also said that a state extending Pub. L. No. 86-272 protection to a non-U.S. entity could be to treat out-of-state businesses the same simply ''by default'' or out of fairness concerns.

Nineteen states said that they would require a non-U.S. entity that is subject to state, but not federal, income tax to compute its state tax from a pro forma federal return. Only five states said that they would require a starting point other than the federal number. Those states were Mississippi, North Dakota, Oregon, Pennsylvania and West Virginia.

Eleven states responded that they would impose tax on a non-U.S. entity's apportioned worldwide income. Eighteen states said they would only impose tax on the income of a U.S. branch of a non-U.S. entity.

But the protection under Pub. L. No. 86-272 is limited to income-based taxes. A non-U.S. entity could lack a permanent establishment but have some connection with a state that makes it subject to franchise-level taxes, which typically are not based on how much income the entity earns and could be substantial in some cases. That result could come as a surprise for entities that summarily determine that the 1120F filing ensures that no state income taxes are owed. Twenty-one states said a franchise tax or other non-income based tax would apply to a non-U.S. entity that is not subject to federal income tax and only files federal form 1120F.

''With respect to a franchise tax, it is usually imposed on doing business in the taxing jurisdiction,'' said Wethekam. ''Therefore, the initial inquiry should be does the entity have nexus? If income reported on the 1120F is earned in the state or related to the state there may be a franchise tax liability,'' Wethekam said.

Ownership of In-State Pass-Through Entities

Owning an interest in an investment partnership or an LLC that has operations in the state is sufficient to create nexus in nearly every state. Only five states said this would not create nexus.

''This is just plain wrong,'' said Ely. ''There are 12 states that have clear investment partnerships exemptions in their statutes. How do 38 states answer that owning an interest in an investment partnership or LLC that operates in the state gives rise to nexus, when you only have 47 jurisdictions, including D.C. and NYC, with a corporate income tax? I think these states may be answering these questions as if it is a wish list and they are disregarding their own statutes or regulations in many cases.''

Only five jurisdictions — Connecticut, the District of Columbia, Georgia, Tennessee and Vermont — said they would not find nexus from an ownership interest in an investment LLC or investment partnership. All but five states said nexus could arise from owning a non-management interest in an LLC. Only the District of Columbia and Vermont said a general partnership interest would not trigger nexus.

Only two states said that nexus would not arise from owning an interest in an entity located in the state that is disregarded for federal income tax purposes. ''I am surprised that only two states answered 'no,' '' said Ely. ''Our experience is that several more states would regard the disregarded entity for other tax purposes.''

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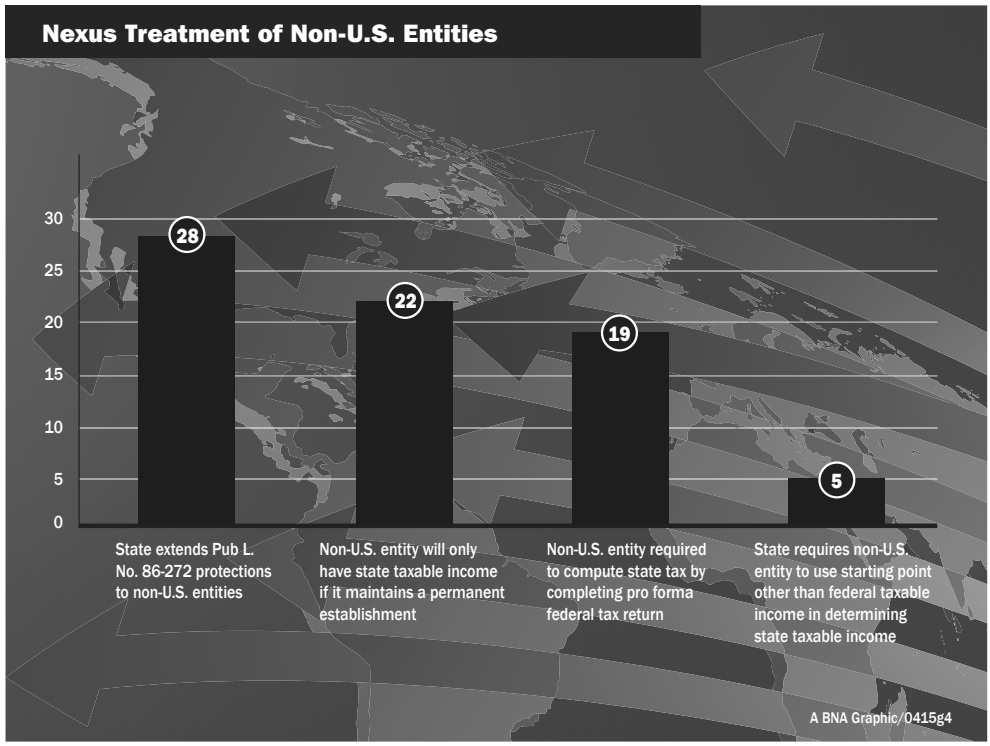

Web Server Nexus

Income tax nexus results from owning a Web server in their jurisdiction, said 38 states, the District of Columbia and New York City. An out-of-state corporation hiring third-party technicians in the state to keep the server functioning did not change any state's answer.

Most of these jurisdictions said they would also find nexus if the out-of-state corporation shared space on a third party's network of servers for less than six months. Among the exceptions were California, Indiana and Virginia. ''The presence of tangible property that is owned certainly establishes an in-state physical presence, but is it more than *de minimis* — assuming a *Quill* standard pertains,'' asked Houghton. ''A temporal leased presence — assuming away any argument that the 'space' or presence is intangible in nature — is even less material,'' she said. ''And even if economic presence were the applicable nexus standard, is it appropriate to premise nexus of a company on an arguably *de minimis* tangible contact, whereas 'economic' contacts would usually be analyzed by reference to derivation of receipts from an in-state marketplace? The server, or storage of data on same, may have no bearing on whether the company derives receipts from in-state residents.''

For corporations that lease Web server space, a finding of nexus comes down to whether the lease is exclusive or shared for a handful of states. Specifically, thirty-seven states said they would find nexus where the corporation's lease of a Web server gives them exclusive use, but only twenty-nine states said nexus would result from a lease where the third-party server is shared with other users.

Fewer states—17—said they would find nexus where a corporation neither owns nor leases a Web server in the state, but pays a web-hosting provider with an in-state server to provide services to sell products over the Internet.

Cloud Computing or Software As a Service (SaaS) Transactions

Providing access to software via the Internet to in-state customers and hiring independent contractors to perform setup or configuration services within their jurisdiction is sufficient to create nexus, 31 states said. Among the exceptions was Maryland, which noted that nexus would not be triggered if the configuration or setup services involve minimal activity.

Cloud-based service providers would also trigger nexus by allowing employees to solicit services within their jurisdiction, according to 32 states. Among these states was Virginia, which explained that it ''extends the 'solicitation test' [under Pub. L. No. 86-272] to sales of intangibles.''

This year, we asked the states whether nexus would be triggered if employees solicited sales of tangible personal property, which would be protected from tax under Pub. L. No. 86-272, if certain requirements are met. Eighteen states said they would find nexus. Among these states was North Carolina, which said its answer depends on the presence of a licensing agreement. ''Because the employee will be soliciting orders of tangible personal property that is protected under Public Law 86-272, we will not subject the taxpayer to income tax unless there is a licensing agreement under which the taxpayer receives licensing fees for the access to the software.''

Nexus would also result for cloud-based service providers that lacked a physical presence within the jurisdiction, but had a substantial number of customers with billing addresses in the state or earned a substantial amount of revenue from customers in the state, 18 jurisdictions said.

A company that offers services via the cloud would achieve nexus by renting space on a server located in the jurisdiction, 27 states said.

Ownership/Leasing of In-State Property

The states generally agreed that nexus would result from owning raw land, storing inventory, owning display racks or leasing real estate. The District of Columbia, Minnesota, Oregon and West Virginia were the only jurisdictions that said they would not find nexus for an out-of-state corporation that stored inventory within their borders. Iowa said that it generally would find nexus from property located in the state, but has an exemption for property stored at a distribution facility.

The states were less likely to find nexus where company cars were provided to sales representatives than if cars were provided to employees. Fifteen states said nexus would arise from allowing a sales representative to drive a company car within their borders. Forty-two states indicated that nexus would be triggered from allowing an employee to drive a company car within their jurisdiction.

Licensing Intangibles

Nearly every state that said nexus would arise from licensing trademarks to related entities also indicated that they would find nexus from licensing trademarks to unrelated entities. The sole exception was Maryland, which said nexus would not result from licensing trademarks to unrelated entities with locations in the state.

The jurisdictions that said they would not find nexus from licensing intangibles to related or unrelated entities were Michigan, Mississippi, New York City, Pennsylvania, Tennessee, Vermont and Virginia. But nexus could be triggered as a result of certain provisions of these type of agreements. Virginia noted that ''franchise agreements may include inspections, operating manuals and other tangible personal property which could create nexus.''

The states were more divided on whether nexus would result from selling or renting customer lists to unrelated entities within their borders. Twenty-four states said nexus would result, while 12 states said they would not find nexus.

Twenty-eight jurisdictions said licensing canned software to in-state customers would trigger nexus.

Financial Activities/Transactions

Eleven jurisdictions said they would not find nexus for a corporation that issues credit cards to in-state residents. North Carolina said nexus would result if the ''issuer has substantial nexus in the state through its physical presence or its representative's physical presence in the state or its active solicitation of North Carolina residents.'' Foreclosing on one parcel of real estate would trigger nexus in 36 states. Virginia explained that ''[f]oreclosures that result in the corporation acquiring real or tangible personal property in Virginia would result in a positive property apportionment factor thereby creating nexus.''

Transactions With In-State Printers

Most of the states agreed that nexus would arise from leasing personal property or owning raw material located at a printer's facility. But the states were closely divided over whether quality control visits to a printer would trigger nexus. North Carolina said nexus would depend ''on whether this unprotected activity is performed systematically.''

Combined Reporting

As more states move to adopt combined reporting regimes, some important differences have emerged in the way states apply unitary business concepts. Answers to fundamental questions, such as how to determine the combined group, vary from state to state.

Nearly all of the states that permit or require combined reporting said they use a definition of ''unitary business'' to determine which entities must be included within a combined group. Exceptions include Arkansas, Colorado, Iowa and Kentucky.

Fifteen jurisdictions said they use an ownership threshold to determine which entities must be included within a combined group.

Water's edge reporting is the default method for determining the composition of a combined group, 17 states said. Only Alaska, California, Idaho, Montana, and North Dakota said they use worldwide reporting as the default method.

Among the jurisdictions that said a combined group must exclude members with 80 percent of business activity outside of the U.S. were Arizona, Colorado, the District of Columbia, Illinois, Indiana, Michigan, New Hampshire, North Carolina, Rhode Island and West Virginia.

State Tax Add-backs

On another portion of the survey, the states identified taxes that they disallow as deductions and require taxpayers to add back to their tax base when calculating the corporate income tax. Nearly every state indicated that they require taxpayers to add back income taxes imposed by their own jurisdiction to taxable, state-level income.

All but ten states said they require taxpayers to add back taxes paid to other states to taxable income. The states that said they do not require an addback were Arkansas, Colorado, Delaware, Hawaii, Illinois, Iowa, Louisiana, Nebraska, Rhode Island and Tennessee. Twenty-three states said they require taxpayers to add back taxes paid to other countries. Only seven states said they require the add back of other states' gross receipts taxes.

I.R.C. §338(h)(10) Elections

The survey included questions regarding the state tax treatment of I.R.C. §338(h)(10) elections. For federal tax purposes, sellers and purchasers may jointly elect under I.R.C. §338(h)(10) to treat a qualifying stock purchase as a sale of assets by a target subsidiary, followed by a tax-free liquidation of the subsidiary under I.R.C. §332. Federal S corporation shareholders also may make such elections. Bloomberg BNA asked the states to clarify their conformity to the federal rules, the treatment of gain on the deemed sale, the effect on the apportionment formula and the resulting filing obligations.

Forty-four states said that they conform to the federal treatment of I.R.C. §338(h)(10) elections for C corporations and 40 states said they conform for S corpo-

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rations. Only Arkansas said it requires a separate election to be made at the state level.

Bankruptcy Issues

The states were also asked if they conformed to the federal tax treatment of discharge of indebtedness income resulting from bankruptcy. For federal tax purposes, I.R.C. §108 allows debtors in bankruptcy to exclude from income the discharge of indebtedness. If such an exclusion is provided, the taxpayer must reduce specific tax attributes, including adjusted basis of property, to the extent discharge-of-indebtedness income is excluded from gross income. Each state was asked to specify whether it conformed to federal provisions that exclude debt discharge from income, reduce tax attributes and permit taxpayers to reduce basis. The survey also asked whether federal tax attribute treatment is binding for state tax purposes.

Most of the states indicated that they conform to the federal exclusion of discharge of indebtedness income, reduction of tax attributes and election to reduce basis. Exceptions were Connecticut, the District of Columbia, Minnesota, Mississippi and Montana.

Intangible Holding Companies

The survey asked the states to indicate their tax treatment of royalty payments made by an in-state corporation to an out-of-state intangible holding company. As in previous years, the Bloomberg BNA survey reveals that the states are attacking these plans with a variety of approaches, including denying the deduction for the royalty payment, requiring unitary reporting, finding that the out-of-state subsidiary had nexus based on the subsidiary's licensing activities (a *Geoffrey*-type approach) or finding that the out-of-state subsidiary had nexus as a result of the parent's activities.

Nearly all of the states said they would use at least one of these four approaches. Only Delaware and Missouri said it would not use any of the approaches. Tennessee was among the states that said it would require the corporation to add back a deduction for costs arising from payments made to a subsidiary. It explained that ''deductions of intangible expenses must be properly disclosed on the return as required by Tennessee law and the transactions involved must have a practical economic effect other than the creation of tax benefits and that tax avoidance is not the motivating factor or only business purpose of such transactions.''

Twenty jurisdictions indicated that they would find that the out-of-state subsidiary had nexus as a result of licensing intangible property in the state (i.e., a *Geoffrey*-type approach). But only seven states — Florida, Maine, New Jersey, New Mexico, Oregon, Rhode Island and Wisconsin — said they would find that the out-of-state subsidiary has nexus based on the in-state parent's activities.

Twenty-one states said they would require unitary reporting.

Throwback/Throwout Rules

Twenty-three states said they would use a throwback rule to tax receipts that are sourced to a destination state with which an in-state corporation lacks nexus.

Arizona, Delaware, Iowa and Virginia are among the states that said they do not have a throwback rule. In these states, sourcing sales to jurisdictions to which the taxpayer lacks nexus could result in nowhere income.

Only Alabama, Illinois, Maine, New Mexico and West Virginia said they had a throwout rule (i.e., require multistate corporations to exclude from the denominator of the sales factor sales attributable to a state in which the corporation lacks sufficient nexus to subject it to the state's income-based tax). Illinois said its throwout rule applied to sales of services.

Sales Tax Nexus-Creating Activities

Registration With State Agencies

One question that has arisen is whether merely registering to do business with, or seeking licenses from, state agencies or departments is sufficient to create nexus for an out-of-state corporation.

Ten states said that an out-of-state corporation that is registered, authorized, certified or qualified by the secretary of state or similar agency to transact business in the state as a foreign corporation would have nexus. ''I'm very surprised that even 10 states answered yes to this question,'' said Ely.

''Very few states have a statute that indicates that simply registering to do business makes you liable to collect sales tax. It typically talks about whether actually conducting business in the state makes you liable to collect sales tax,'' Ely said.

Twelve states said that nexus would result from holding a general business license issued by the state, but only 10 states said that nexus would result from a specialty license, such as a specialty insurance license. The District of Columbia, Michigan and New Jersey said that nexus would result from a general, but not a specialty license, while Colorado said the opposite—nexus results from a specialty license but not a general one.

The circumstance that would lead to the greatest number of states finding nexus—16—is where a corporation registers with the state as a government vendor or contractor.

Fifteen states said that a corporation would have nexus if it is registered with the state for payroll tax purposes, and 14 states said that a corporation would have nexus if it is registered with the state agency or department that regulates or administers workers' compensation.

''Registration to do something is merely an inchoate right—it is different from really doing something, which is what must be analyzed to determine jurisdiction,'' Rosen said.

''Just having a registration should be a non-event for nexus purposes. But it certainly could get a state's attention,'' said Clark Calhoun, a partner with Alston and Bird LLP. ''For example, if a company is paying worker's compensation or payroll, it will not take much to create nexus.''

A state may view registration as ''affirmatively reaching out to create a connection to the state,'' said Shimkin. ''But that and nothing more cannot create the needed physical presence for use tax nexus. However, a registered entity may find itself legitimately having to answer to a state's auditor.''

Even if a corporation registers with a state, it may be able to explain why it should not be found to have nexus, Nicely suggested. ''Businesses need to be prepared to explain why they registered if they do not have substantial nexus. For example, to address future business expansion plans or to seek trademark protection.''

Trailing Nexus

Another questionable area in the sales tax realm is trailing nexus—where states find that an out-of-state corporation has nexus with the state for a certain period of time, sometimes even more than a year, after the corporation has ceased to have a physical presence in the state.

Eighteen states said that they would find nexus for the entire taxable year for a corporation that stops an activity during the tax year that once created nexus. Five states said that they would also find nexus for one additional year: Minnesota, Missouri, New Mexico, North Dakota and West Virginia. Missouri and Washington also said they would find nexus for more than an additional year after the corporation stops the nexus-creating activity.

Practitioners generally agreed that trailing nexus is unconstitutional in theory, but said that in practice it's not so simple. For example, it can be difficult for states to determine nexus when a seller has physical presence that ends on a certain date, and then resumes several months later, said Calhoun. ''When you try to practically declare that trailing nexus is unconstitutional it becomes very hairy as to how you draw those lines.''

However, too much tolerance for this concern may ''invite states to take a 'Hotel California' attitude toward nexus,'' Kirkell said. ''Once you establish the requisite physical presence, you can never leave.''

Others see the issue as more cut-and-dried. ''When a taxpayer ceases to have nexus-creating characteristics in a state, it ceases to have substantial nexus—period. Trailing nexus should only apply to those limited situations where a business only temporarily leaves a state, i.e., for a de minimis time period,'' said Nicely.

''Think of trailing nexus in de minimis terms,'' Shimkin agreed. ''Trailing nexus for one minute is clearly de minimis, no? But where do you draw the line? A year seems good to me, given the abuses that may arise from a shorter period.''

In terms of possible abuses absent any trailing nexus, Shimkin cited the hypothetical where a person spends an entire month in a state negotiating a large sale, and then leaves the state to sign the contract and make payment from another state.

This would create another problem, which Shimkin referred to as ''jumping nexus''—doing everything in state except the actual sale before jumping across state lines to make the sale tax-free.

Drop Shipment Transactions

As the use of drop shipment transactions continues to grow with the rise of e-commerce, the nexus implications will continue to be of concern to state tax practitioners. Drop shipments involve three parties—a customer, a retailer, and a third-party supplier that delivers goods directly to the customer. While these arrangements are common, they can raise issues as to whether the out-of-state retailer is required to collect sales tax.

Seventeen states said that nexus would be created when a manufacturer ships tangible personal property by a common carrier to in-state customers based on orders received from a distributor, and the distributor itself has nexus with the state. By contrast, no states would find nexus for the manufacturer if the distributor lacked nexus.

Calhoun said he was ''surprised'' that more states would not find nexus where the distributor also has nexus.

Where a distributor uses an in-state manufacturer as a fulfillment agent in the state to pack and ship orders by common carrier to in-state customers, 21 states said they would find nexus if the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order. A much larger number of states—33—said they would find nexus if the corporation itself holds title to the inventory until directing the manufacturer to ship the order.

Where a distributor contracts with an in-state manufacturer to perform order fulfillment services by accepting phone and mail orders addressed to the corporation, processing payments made payable to the corporation and packaging and shipping inventory by common carrier to the corporation's customers, 30 states said they would find nexus if the manufacturer holds title to the inventory before shipment. Thirty-three states would find nexus under the same scenario if the corporation holds title to the inventory prior to shipment. The three states that said they would find nexus where a corporation, rather than a manufacturer, holds title to the inventory prior to shipment were Iowa, New Jersey and Utah.

Sellers may be able to reduce the likelihood of having nexus based on a drop shipping relationship by structuring the agreement in a way that makes it clear that the drop shipper is not the retailer's agent, said Rosen, who added that it would be even more beneficial for the seller if the drop shipper is unaware of the price charged by the retailer to the customer.

Drop shipping has grown along with the increasing importance of Internet retailers, said Shimkin, who noted that for business reasons, drop shippers that have nexus with a state often pressure non-nexus vendors to register to collect sales and use tax even though the vendor has no legal obligation to do so.

''The drop shipper wants to protect itself from a state considering it to be the vendor with an obligation to collect tax,'' Shimkin said. ''The vendor in this situation is often forced to choose between losing the drop shipper's services and registering in a state without being legally required to do so.''

Digital Property

For 2015, we asked two new questions relating to nexus creation through sales of digital property.

Six states said that selling digital magazine or newspaper subscriptions from a remote Internet platform to an in-state user who downloads the material in their state would create nexus. Five responded that they would find nexus for a remote seller of appliances that are equipped with control devices from which an in-state user can control the appliance through a remote Internet platform.

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Fee for Accessing Non-Downloadable Software

Only three states said nexus would result for an out-of-state corporation that charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state. These states were Arizona, Hawaii and Utah. Among the majority of states that said they would not find nexus was Virginia, which noted that its ''Department of Taxation has ruled cloud computing services are not taxable.''

Practitioners were generally perplexed with the fact that three states answered yes. ''I can't really reconcile their responses. Having a customer of your service in the state should not be enough to create nexus, especially for sales and use tax purposes,'' said Harley Duncan, tax managing director at KPMG LLP.

Similarly, Rosen said that although each state's laws necessarily control, ''We have reviewed the case law in several states and in each and every one we found that the sales tax requirement that there be a transfer of title or possession is not met in the case of software maintained, run, and controlled by a host.''

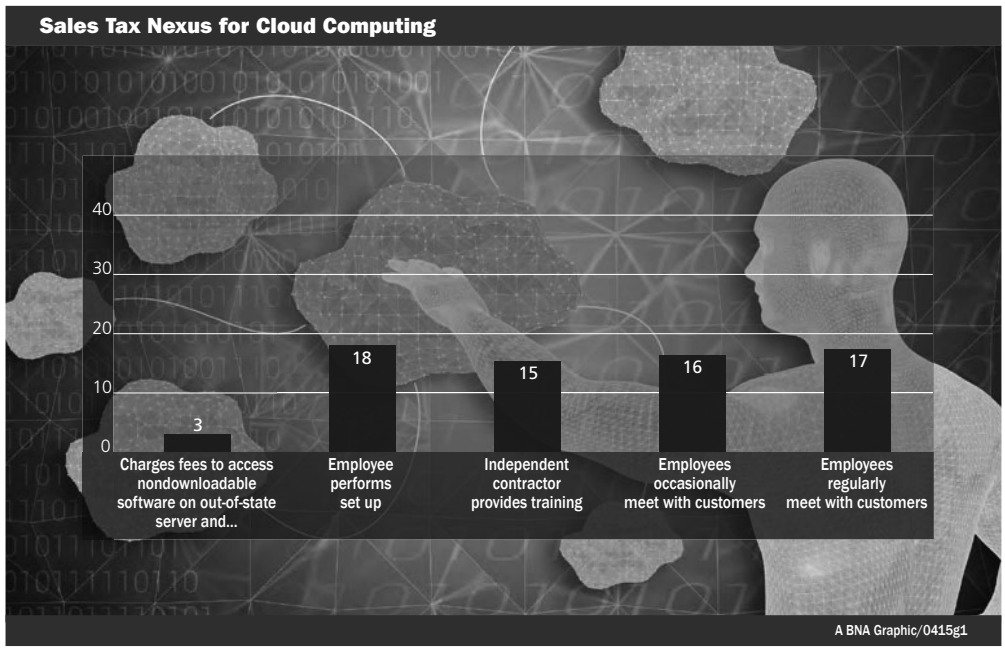
But a physical presence could arguably be found based on the fact that the seller's software must appear on the purchaser' screen, and function to the same extent as the software already loaded on the purchaser's hardware, said Kirkell. ''The incidence of use in these circumstances could be deemed to occur at the purchaser's computer terminal,'' Kirkell said, adding that ''such presence could arguably meet the physical presence requirement if the software is treated as tangible personal property.''

The states were more likely to find nexus when additional activities related to cloud computing were performed within their borders. If employees entered the state to perform an initial setup for resident customers, 18 jurisdictions said they would find nexus. Slightly fewer states—15—said they would find nexus if an independent contractor provides training to in-state customers. Sixteen states said nexus would be triggered if the out-of-state corporation occasionally (i.e., one to 11 times per year) sent employees in the state to meet with resident customers. Minnesota specified that it would find nexus if employees entered the state more than three times in a year. Seventeen states would find nexus if employees visited resident customers on a regular basis (i.e., 12 or more times per year).

''Cloud computing is definitely an area where legislation is needed before tax administrators attempt to tax such services,'' Nicely said. ''Merely accessing software should not be confused with the ownership or control requirements required for a product to be taxed as tangible personal property.''

Fee for Accessing Information on Website

The results were similar for when the cloud computing scenario was an out-of-state corporation that charged fees to in-state customers for the right to access information on its website that was hosted on a server in another state. Three states—Hawaii, New Mexico and Utah—said they would find nexus in this situation. More states said they would find nexus if additional related activities were performed within their borders. If employees entered the state to perform an initial setup for resident customers, 14 jurisdictions would find nexus. Twelve states said they would find nexus if an independent contractor provides training to in-state customers. Having employees occasionally (i.e., one to 11 times per year) visit in-state customers would trigger nexus in 12 states. Thirteen states said nexus would arise from regular employee visits (i.e., 12 or more times per year).



Web Servers

Almost of all of the states agreed that owning a Web server within their borders would result in nexus. ''A Web server, whether owned or leased, is a physical object, i.e., TPP,'' said Shimkin. ''TPP owned or leased (lessor or lessee) in a state creates nexus,'' he said. But Shimkin added that ''paying for use of the server without any ownership or rental interest is a different question.''

Most of the states agreed that nexus would arise regardless of whether the corporation owned or leased the in-state Web server. Factors such as whether or not the corporation maintained an exclusive lease of the server or merely shared space on it with other unrelated entities did not alter most of the states' findings of nexus. Four exceptions were Alabama, New Jersey, Washington and Wisconsin, which all said that nexus would arise from an exclusive lease of a server, but not from sharing space on a server with unrelated entities.

But many states—26—said nexus would not be triggered from paying a Web-hosting provider with a server located in the state to provide Web services enabling them to sell products over the Internet. Colorado, Connecticut and Indiana said they have not yet reached a determination on this issue.

Access to Remote Software

Selling remote access to canned software would trigger nexus in seven jurisdictions, according to the survey. These jurisdictions are Arizona, the District of Columbia, Hawaii, Massachusetts, New Mexico, North Dakota and Wyoming.

Internet Activities

With states continuing to look for additional ways to assert nexus on out-of-state sellers, corporations should pay specific attention to the ways in which agreements with affiliates through Internet links on in-state websites or servers may trigger nexus.

Eighteen states said a remote vendor that enters into affiliate agreements with one or more residents in the state would trigger nexus if sales attributable to all such arrangements totaled less than $10,000 for the year. Twenty-five states said they would find nexus under these circumstances if annual sales attributable to the affiliate arrangements totaled $10,000 or more.

Twelve states said that an out-of-state Internet retailer has nexus with their state if the retailer enters into an agreement with an in-state website operator to host advertisements directing consumers to the retailer's website and the website operator is paid each time the ad is displayed (per impression). Sixteen states said the retailer would have nexus if the website operator is paid each time a consumer clicks on the ad and buys a product from the retailer (per conversion).

Services

Sales tax nexus issues regarding services have grown in importance as states continue to consider expanding their sales tax bases to include services.

Further, issues regarding services may play a crucial role in 2015. ''Asserting that a seller that performs a service entirely outside of the state but delivers the end product of that service (e.g., a report, repaired item, etc.) to a customer within the state has established nexus for sales tax purposes seems to be a stretch,'' Kirkell said.

''Remote services nexus may present an avenue to test the physical presence requirement following Justice Kennedy's call to revisit *Quill* in his concurrence to the opinion of the Court in *DMA*,'' Kirkell added.

Services in most states are generally not subject to sales tax unless they are specifically enumerated as taxable by statute. One area for which there seems to be little guidance is the sales tax nexus implications for providing a service over state lines. Most states agreed that nexus would not result for an out-of-state corporation that repairs tangible personal property outside their borders and then delivers it by common carrier to an in-state customer. Five exceptions were Arizona, Iowa, Kentucky, Rhode Island and West Virginia.

The states seemed more likely to find nexus in scenarios involving a ''taxable service'' than ''repairs.'' Ten states said they would find nexus for a corporation that provides a taxable service to an in-state customer in which no part of the service, including the tangible personal property that is incidental to the performance of the taxable service, is physically transferred to the in-state customer. Eleven states would find nexus in the same situation, but where incidental tangible personal property is physically transferred.

Fewer states—nine—said nexus would arise from providing a service outside their borders and sending documents by electronic means to an in-state customer that are incidental to the service. Nearly all of the states agreed that nexus would be triggered by an out-of-state service provider that had employees occasionally deliver to in-state customers tangible personal property that was incidental to the service. Almost all of the states also said that nexus would result for a service provider that stored incidental tangible personal property with a third party within their borders. The only state that said it would not find nexus in this situation was Louisiana.

State tax administrators should be aware of their states' true object tests for differentiating between sales of services and sales of tangible personal property, Nicely stressed. ''As addressed by the Court in *Quill*, there are de minimis amounts of property that do not create substantial nexus. In *Quill* it was the delivery of disks to order suppliers; for information service providers, it may be an applet located on their customers' computers.''

''To limit the likelihood that a transaction will be considered to be of taxable tangible personal property, the vendor should characterize as much of the transaction as a nontaxable service as possible,'' Shimkin advised. ''That may not be much, and the effort may be seen as a transparent attempt to mischaracterize the true nature, but that is the direction to follow if one is willing to try.''

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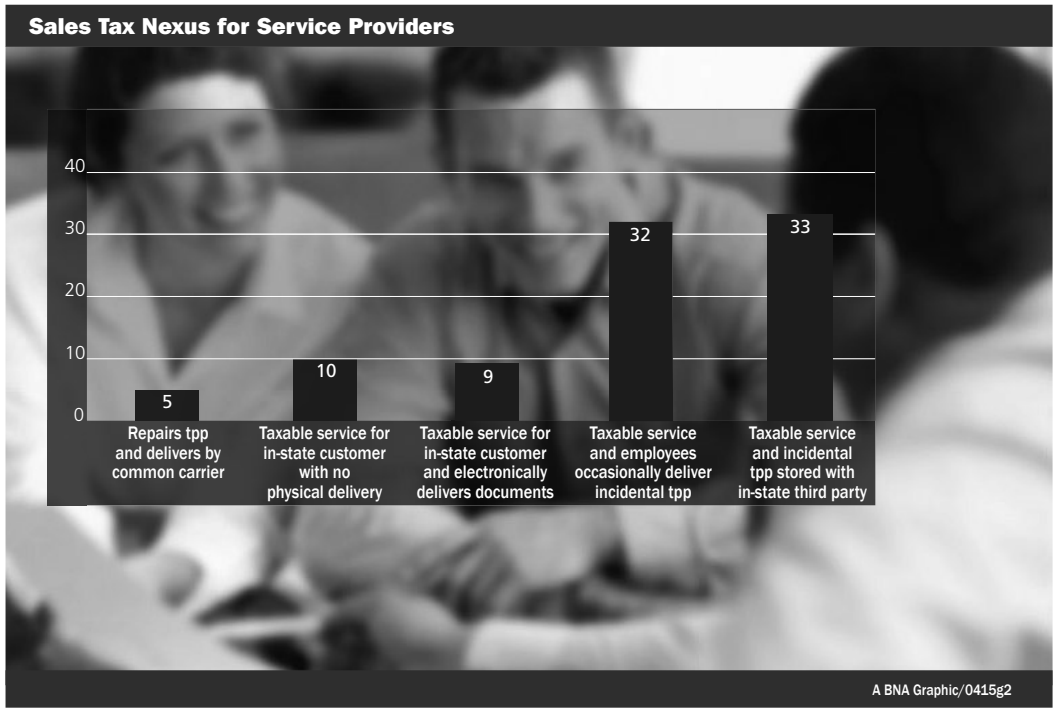

General Activities

While new concerns arise regarding nexus, such as drop shipment transactions and trailing nexus, remote sellers should still be aware of how general business activities, such as holding a certificate of authority, P.O. box, or bank account in a state may create nexus.

Holding a certificate of authority to conduct business will trigger sales tax nexus in 13 jurisdictions: the District of Columbia, Florida, Georgia, Kansas, Kentucky, Michigan, Missouri, Nevada, New York, North Dakota, Ohio, Pennsylvania and Rhode Island. Michigan said nexus would result if the corporation was domiciled or otherwise present in the state.

Nearly all of the states agreed that nexus would not result from making sales within their borders by means of an 800 telephone order number and advertising in the state. The exceptions were Missouri, North Dakota, Rhode Island and South Dakota. Maintaining a bank account within the jurisdiction's borders would result in nexus in the District of Columbia, Iowa, Massachusetts, Nevada and Rhode Island. The states were more divided on whether maintaining a post office box within their borders would create nexus. Sixteen jurisdictions said a P.O. box would trigger nexus. Among these states was California, which explained that its answer assumed ''that the post office box is used for some type of selling activity such as receiving orders and that an in-state employee or representative processes the orders received in the post office box.'' The state noted that ''[t]he mere maintenance of a post office box, with no connection to any selling activity, would not create nexus.''

Remote Sales

Nearly all of the states agreed that nexus would result from making remote sales of tangible personal property into the state and having an employee visit four or more times during the year. Virginia was the only state that said nexus would not be triggered for a remote seller that installed or delivered merchandise, or provided customer assistance, within its borders.

Temporary or Sporadic Presence

Fourteen states said nexus would result for a remote seller that attends a trade show even if it neither made sales nor took orders at the trade show. Thirty-one states said nexus would be triggered if sales were made or accepted at the trade show. Twenty-seven jurisdictions said they would find nexus for a remote vendor that held a one-day seminar within their borders.

Activities of Unrelated Parties

A significant number of states find nexus based on the agency relationship created when corporations hire contractors to perform certain activities on their behalf. For example, thirty-five states said they would find nexus for a corporation that hires independent contractors to perform warranty or repair services on tangible personal property that is located in the state.

Thirty-two states said sales tax nexus would result for a corporation that makes remote sales into the state and stores and ships items from an in-state distribution center. The states reaching the opposite conclusion were Indiana, New York, Vermont, Virginia and West Virginia.

Seventeen states would find nexus where a corporation produces an infomercial that runs on an in-state television channel and the corporation pays commissions to the local TV station based on a percentage of sales to in-state customers that resulted from the infomercial. Seventeen states also said they would find nexus for a corporation that collects delinquent accounts using a collection agency in the state or that hires attorneys or other third parties to file collection suits in courts of that state.

Slightly fewer—15—states said nexus would result from a corporation using a company in the state to drop ship merchandise to customers.

However, only three states and the District of Columbia responded that they would find nexus where the corporation enters into an advertising contract with a cable station, radio station, print publication or electronic publication in the state. The three states were Missouri, New Mexico and Rhode Island.

The large different in responses for warranty and repair services versus for advertising contracts could be explained based on how closely related the affilliate's activity is to the corporation's establishment of an in-state market. ''As a fundamental matter, I don't believe that a true 'agency' is required under current dormant commerce clause jurisprudence. I think that it is clear—largely based on what the U.S. Supreme Court said about *Scripto* (and thus *Tyler Pipe*) in its *Quill* opinion—that attribution of an independent contractor's nexus to a remote seller is justifiable only when those activities are 'significantly associated' with the remote seller's ability to 'establish and maintain' the remote seller's in-state market,'' Rosen said.

To limit the likelihood that a remote seller will be found to have nexus, Rosen advised sellers to limit their relationships with in-state independent contractors to back-office or non-customer-facing activities.

''A seller should provide the customer with options that include multiple contractors along with the option for a customer to not receive a particular service when tangible personal property is sold,'' Nicely added.

Activities With Affiliates

Nearly all of the states agreed that nexus would result for a remote retailer that accepted returns or made exchanges of items that were purchased from an affiliate's in-state stores. Twenty-one states said nexus would arise for a corporation that is part of a controlled group with an affiliated entity that was physically located in their jurisdiction. ''This is a closer question if no member of the controlled group establishes and maintains the market for the out- of-state vendor's goods or services,'' said the MTC's Shimkin.

Both Rosen and Duncan were surprised by the number of states—21—that said they would find nexus for a corporation that is part of a controlled group with an affiliated entity physically located in the state. ''It is surprising that so many states said this is a nexus-creating activity,'' Duncan said. ''I think this stance goes too far. The in-state entity has to be doing something that assists the out-of-state seller.''

''Merely being a member of a controlled group can never lead to attribution—there is a huge amount of case law on this point,'' Rosen said.

''The U.S. Supreme Court has never upheld a tax based merely on two affiliates being related to each other,'' Nicely said. ''In fact, looking at Supreme Court cases on corporate income tax, hopefully the state tax administrators acknowledge, at a minimum, that there must be a unitary relationship between the two related entities.''

Making remote sales into a state and allowing customers to redeem loyalty points for merchandise at an in-state affiliate's stores will trigger nexus in 31 states. Twenty-seven states said a remote seller that sells gift cards in affiliated in-state stores would create nexus.

As with independent contractors, the extent to which activities carried out by an in-state entity affiliated with a remote seller are related to establishing and maintaining a market for the seller is the focus of a nexus determination, Duncan said.

Sales Tax Policies: Sourcing, Software and Social Media Coupons

Bloomberg BNA asked the states about the sourcing method they use for interstate and intrastate transactions. Most states said they use destination-based sourcing (i.e., the location where the customer takes delivery is the place of the sale) for both interstate and intrastate transactions involving tangible personal property.

The states were also queried as to whether the method by which canned software is delivered from a remote seller to an in-state purchaser affects whether it is characterized and taxed as tangible personal property. Twenty-five states said the method of delivery does not affect whether the item is taxed as tangible personal property. The 12 jurisdictions that said that the delivery method did affect the classification of an item as tangible personal property were Arkansas, California, Delaware, Florida, Georgia, Idaho, Iowa, Missouri, Nevada, Pennsylvania, Rhode Island and Virginia. Pennsylvania said that ''[e]xcept for canned software, an item must be delivered on tangible medium for it to be taxable.''

Sales Tax Treatment of Cloud Computing

Sixteen jurisdictions said their sales tax would apply to fees paid by in-state customers to remotely access canned or prewritten software that is hosted on a Web server. Included among these jurisdictions were Arizona, Colorado, Delaware, District of Columbia, Hawaii, Indiana, Michigan, New Mexico, New York, Ohio, Pennsylvania, South Dakota, Texas, Utah, Vermont and Washington. Ohio explained that ''[r]emote access to software is taxed as an automatic data processing service.''

Sourcing Remotely Accessed Software

Of the states that said remotely accessing software is taxable, most indicated that the sales are sourced to the location where the software is used. But others, such as Delaware, New Mexico, North Dakota, Rhode Island and Tennessee said they source such sales according to the location of the server.

Social Media Coupons

Nearly every state agreed that social media coupon companies, such as Groupon or LivingSocial, would not achieve taxable nexus with its jurisdiction by allowing their coupons to be redeemed at in-state retailers or restaurants. The only exceptions were the District of Columbia and West Virginia.

Taxable Amount of Social Media Coupons

Thirteen jurisdictions said at the time an item is purchased and the social media coupon is redeemed, the retailer is required to collect tax on the full value of the

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item purchased (*e.g.*, sales tax would be imposed on a full-purchase price of $100 even though the customer actually paid $50 as a result of the certificate). Twenty states said they would require the retailer to collect tax on only the discounted value of the item purchased (*e.g.*, sales tax would be imposed on a discounted purchase price of $50 even though the full value of the meal was $100).

Disclosure of Discounted Price

Twenty-two states said they require retailers to collect sales tax on the full value of an item purchased using a social media coupon if the coupon does not disclose the discounted price.

Conformity to Streamlined Sales And Use Tax Agreement

The states were also asked questions regarding the extent to which they conform to the Streamlined Sales and Use Tax Agreement (SSUTA) as of Jan. 1, 2015. Twenty-two states—up two from last year—said they are fully compliant with SSUTA. Three states (Minnesota, Ohio and Utah) said they are in compliance with the SSUTA, except for sourcing. Georgia explained that it was a full member state, but that it was found to be out of compliance with some provisions that are unrelated to sourcing. Nine jurisdictions, including California, the District of Columbia, and Pennsylvania, said they had not adopted any SSUTA provisions.

The increasing number of states that fully comply with SSUTA may be helped along if Congress enacts the MFA or similar legislation in 2015. ''I think that if the MFA were to be enacted, more states—but far from all—would join the Streamlined Governing Board,'' said Rosen.

''On the other hand, if the RTPA were to be enacted, I think most states would surely join since the preemption provision in that bill would act as a very big 'stick' that would be joined with the authority-to-require 'carrot.' ''

''I encourage states with sales and use taxes that are not already members of the SSUTA to join, even if federal legislation does not require it,'' Nicely said. ''Why? Because it provides greater certainty that the state will garner remote seller collection, is a proven way of reimbursing sellers for some of their collection costs, and is a more business-friendly method of helping both in-state and remote sellers collect sales and use taxes.''

QUALIFICATIONS

Some states qualified their responses as follows:

Alabama

For sales tax purposes, Alabama said that it has not established definitive thresholds for the frequency of contact that would create sufficient nexus to require the out-of-state seller to collect tax. ''Because the Department approaches the question of nexus on a case by case basis, the survey questions are difficult to answer; and, in fact, the Department may prefer not to respond definitively to some of them,'' it said.Alabama also noted that its responses are to the question of whether the activity creates nexus and not whether the transaction is taxable.

California

California noted that answers to questions addressing highly factual areas, specifically relating to nexus, are necessarily general in nature and may change based upon the specific fact pattern presented and the constantly changing nature of the law regarding nexus.

Where appropriate, California said, it provided an explanation in a footnote, instead of a ''yes'' or ''no'' response. In addition, California stated that it made no attempt to address the imposition of any fee or license, filing requirements, distinctions between nexus and doing business, withholding responsibilities, or the consequences of unity and foreign commerce.

Florida

Florida said that nexus is a very complicated issue and, in many instances, a thorough review of the facts and circumstances of each individual taxpayer's situation is required in order to make an accurate determination.

For sales tax purposes, Florida also said that it would prefer, based on the nexus issue that so many states these days are struggling with, for taxpayers with nexus questions to come to the state for guidance. Additionally, Florida said it believes a yes or no answer to many of these questions could be misleading given a certain set of facts and that it finds that no two taxpayer's or sets of facts are the same.

Georgia

Georgia said that the information is provided in response to Bloomberg BNA's specific inquiry and that the views expressed are the unofficial views of the writer only. An official letter ruling may be obtained by following the procedures set out at https://etax.dor.ga.gov/policystatements/2-22-12__TLP_Policy_Statement_SUT_2007-11-14.pdf, Georgia added.

Hawaii

Hawaii said that its responses provide general guidance; should not be strictly interpreted as the State of Hawaii, Department of Taxation's policy on the establishment of nexus; and may not be relied upon in any dispute arising under the facts outlined in the questionnaire. Hawaii also said that its responses are subject to change due to future amendments to laws, rules, or official Department positions. Additional information on Hawaii's taxes is available at the Department's website at tax.hawaii.gov, the state noted.

Indiana

Indiana said the conclusions expressed in the survey response are those of the writer and therefore not binding on the Department of Revenue. The advice given in the survey response is based on the facts as presented and understood.

Iowa

Iowa noted that its survey response is an informal opinion and only applicable to the factual situation referenced and the statutes in existence at the time of issuance. Because of this the Department of Revenue could, in the future, take a contrary position.

Louisiana

Louisiana said that its responses to the portion of the questionnaire addressing nexus-creating activities should be considered to be general guidelines based on the scenario provided. Deviations from those scenarios might alter the determination, the state said. Additionally, the state said its responses constitute ″informal advice″ from the Louisiana Department of Revenue, as contemplated by La. Admin. Code tit. 61, §101.D.3, which provides that informal advice does not have the force and effect of law and is not binding on the department.

Massachusetts

Massachusetts said that its responses to the questionnaire constituted an ''information letter'' within the meaning of the Letter Ruling Regulation, 830 Mass. Code Regs. §62C.3.2. The responses, the state said, are intended to provide general information such as the potential applicability of the Massachusetts Department of Revenue's public written statements or well-established principles of tax law, but are not intended to provide authoritative guidance on the application of the tax laws to a specific set of facts. The responses are not a ''ruling'' or ''letter ruling'' that is legally binding on the department, the state said.

Mississippi

Mississippi's 2013 responses were used for the income tax portion of the 2015 survey.

New Mexico

New Mexico responses are an informal analysis of the facts presented in the survey, the state said. New Mexico also advised that their response does not constitute a ruling issued pursuant to NMSA 1978, Section 9-11-6.2, and does not stop the department from taking a contrary position in the future.

New York

New York did not participate in the income tax portion of the 2015 survey. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which take effect Jan. 1, 2015. ''Because we have only begun the process of implementing the reform provisions, it would be premature for us to opine on [the] survey at this time,'' New York said.

''As should be expected with a change of this magnitude, there are numerous issues that will require guidance beyond the statutory language,'' the state said, before identifying the following three ways in which it will expound upon the new law:

- a dedicated web page for corporate tax reform information (http://www.tax.ny.gov/bus/ct/corp_tax_reform.htm), including a section for FAQs, the state's official reform outline and a summary of the revised provisions;
- narrowly focused guidance memoranda (TSB-Ms) issued on particular topics, which they anticipate will cover transitional issues, expense attribution and special tax benefits for manufacturers; and
- regulations that the state intends to make available for public comment by the end of 2015.

New York City

New York City noted that nexus is a very complicated issue and, in many instances, a thorough review of the facts and circumstances of each individual taxpayer's situation is required in order to make an accurate determination. The responses to this survey have no binding effect on the New York City Department of Finance. The Department indicated that they maintain a website on which current developments are posted.

South Carolina

South Carolina's 2010 responses were used for the 2015 survey. Its responses to the questions regarding nexus-creating activities are formally addressed by South Carolina Department of Revenue Ruling No. 14-04 (2014). In addition, the state indicated that its answers to the questions regarding state tax addbacks are contained in Revenue Ruling No. 09-10 (2010). The responses provided to the remaining portions of the survey are the personal opinion of a department employee and should not be construed as the department's official position regarding the issue, the department stated.

Texas

Texas noted that the Texas franchise tax is the state's major business tax and is imposed on each taxable entity that is chartered in Texas or that does business in the state. ''Taxable entity'' includes a corporation, limited liability company, bank, savings and loan association, partnership (general, limited and limited liability), business trusts, professional associations, business associations, joint ventures and other legal entities that are organized in Texas or that do business in Texas. However, a general partnership where direct ownership is composed entirely of natural persons is not a taxable entity. The state explained that it does not impose a corporate income tax, but does impose a franchise tax. The franchise tax is based on a taxable entity's margin. Margin equals the least of four calculations: total revenue minus cost of goods sold, total revenue minus compensation, total revenue times 70 percent or total revenue minus $1 million. A taxable entity with total revenue of $10 million or less may elect to calculate its franchise tax due by multiplying total revenue times the apportionment factor times 0.575 percent. Texas said that because the survey specifically asks about the state's ''income-based'' tax on corporations, its responses are directed at the calculation of ″margin″ for franchise tax reporting purposes on taxable entities.

Wyoming

Wyoming noted that the state does not have an income tax and its responses to the portion of the survey

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addressing sales tax should not be extended to income tax nexus. The state also said that it does not have a de minimis threshold that businesses must meet before nexus or a physical connection is established. ''One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus,'' the state said

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State Nexus Policies

Economic Presence Nexus Theories Gain Wider Acceptance, But State Standards Remain Unclear

The nexus policy portion of the survey asks questions regarding each jurisdiction's nexus standard and the mechanisms it uses to enforce them. We asked each state whether its nexus standard is based on physical presence or economic nexus.

The need for corporations and their tax advisors to determine nexus arises in a variety of contexts. In some cases, a business that started off doing business in only one state grows quickly and fails to recognize it may have triggered nexus in a number of states where it has been operating for a few years.

Nexus can also come up as a result of a corporate merger or acquisition. Sometimes, an acquiring company does a due diligence examination of a target company and determines that it may owe taxes to certain jurisdictions. These determinations are sometimes made before, and sometimes after, the merger or acquisition.

In other cases, a company may review the nexus positions it took in various states after it changes tax managers. A company might change an earlier position after concluding that the former tax manager either incorrectly concluded that the company was not subject to tax or pursued an overly aggressive nexus policy.

Theories Underlying Policies

For the Bloomberg BNA survey, we sought to identify each state's general approach to making income tax nexus determinations by asking whether its income tax nexus policy is based on physical presence or economic presence. Those states that adhere to a physical presence standard base nexus on the presence of employees or property within their borders. States that adhere to an economic nexus standard believe nexus can be triggered merely by making sales into the state - owning property or maintaining a payroll is not required.

For state tax purposes, ''nexus'' generally means the threshold of contact that must exist between a taxpayer and a state before the state has jurisdiction to tax the taxpayer. The Due Process Clause of the U.S. Constitution requires that there be some minimum connection between a state and the person, property, or transaction it seeks to tax. Similarly, the U.S. Commerce Clause, which governs the taxation of interstate commerce, requires that there be a ''substantial nexus'' between the taxed activity and the taxing state.

A key constitutional question that remains undecided by the U.S. Supreme Court is whether the states making corporate income tax nexus determinations must use the physical presence test established by the high court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).[1]

In *Quill*, the court declared that, for a state tax to satisfy the requirements under the U.S. Constitution's Commerce Clause, the potential taxpayer must have a substantial connection with the state. The court found that, in the context of sales and use taxes, substantial nexus means that the potential taxpayer/collector has a physical presence in the state, and that such physical presence must be more than *de minimis*.

While *Quill* established a ''bright-line'' physical presence standard for sales and use taxes, the opinion leaves open the question of whether the same requirements for nexus apply to corporate income taxes. In absence of clear guidance from the high court, the state appellate courts began providing their own answers from the time that the *Quill* case was decided. Many state appellate courts have found that an out-of-state corporation need not be physically present within their jurisdictions to trigger nexus.

Economic Presence Doctrine

The first of these cases was the South Carolina Supreme Court's decision in *Geoffrey Inc. v. South Carolina Tax Dept.*, 437 S.E.2d 13 (S.C. 1993), *cert. denied*, 510 U.S. 992 (1993). In *Geoffrey*, the state supreme court, ostensibly utilizing the U.S. Supreme Court's analytical framework in *Quill*, held that an out-of-state corporation, Geoffrey, was subject to the state's income tax (and license fees) even though the company had no physical presence in the state.

In connection with *Quill's* requirement that substantial nexus must exist between the taxpayers and the state before the state may impose tax, the court stated that it is a well-established rule that the ownership of intangible property in a state equates with substantial nexus and that Geoffrey's ownership of the marketing intangibles and the accounts receivable for royalty payments for South Carolina sales of Toys ''R'' Us Inc. was such property. To buttress this conclusion, the court found that Geoffrey's exploitation of the South Carolina market demonstrated that it had substantial nexus there.

After the U.S. Supreme Court denied the taxpayer in Geoffrey's petition for *certiorari*, several other state appellate courts have found that the physical presence

[1] Nexus regarding income-based taxes is discussed in 1400 T.M., *Federal Constitutional Limitations on State Taxation*, and 1410 T.M., *Limitations on States' Jurisdiction to Impose Net Income Based Taxes*.

standard established in *Quill* is limited to sales and use tax determinations.[2]

In light of the state appellate court decisions on this issue, Bloomberg BNA asked each state if it applies *Quill* (*i.e.*, requires that a corporation have a physical presence in the state in order to create nexus) in making income tax nexus determinations.

The states that said they did not apply *Quill* were asked if they had ever adhered to *Quill* in making income tax nexus determinations. The states that indicated that they had adhered to *Quill* at one time were then asked to indicate when they ceased adhering to the case.

Bloomberg BNA also asked each state if its income tax nexus policies are based on a physical presence standard (*i.e.*, require that a corporation have a physical presence in the state in order to create nexus) or an economic presence standard (*i.e.*, an out-of-state corporation may trigger nexus by conducting a certain amount of economic activity within the state, even if the corporation lacks a physical presence within the state's borders).

Most states have said in this survey, and past surveys, that corporate income tax nexus could be triggered by conducting a certain amount of economic activity in a state, even for a corporation that lacks a physical presence within a state's borders.

This response from the survey is consistent with state appellate court rulings in this area. Many state appellate courts have held that the physical presence requirement for finding substantial nexus set forth by the U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) is limited to sales and use taxes. As a result, unless or until the U.S. Supreme Court rules otherwise, there is no uniform bright-line standard for determining whether substantial nexus exists for corporate income taxes.

Some states have said on the survey they use both economic activity and physical presence to gauge nexus. For example, California noted that ''Physical presence creates nexus. Economic presence may create nexus depending on facts and circumstances.''

Without clear guidance in this area, states and multistate corporations often disagree on the level of economic activity within a given jurisdiction that constitutes substantial nexus.

''The lack of uniformity by the states on what constitutes substantial nexus for having to file a tax return is a huge compliance problem for multijurisdictional businesses,'' said Fred Nicely, tax counsel with the Council On State Taxation (COST).

''It is not only a tax compliance burden,'' Nicely added, ''but also a financial reporting burden. It makes U.S. businesses less competitive in the global economy. Those businesses have to conduct extensive research, which is expensive, to determine not only if they owe a state a tax, but when required to file, they must also figure out how to comply with each of the state's unique tax laws.''

Nicely said the states should clarify their nexus standards by adhering to the physical presence test. ''Whether you believe in physical presence as the substantial nexus standard for all types of state and local taxes,'' Nicely said, ''*Quill's* physical presence test sets forth clear guidance on when substantial nexus is present. The morass we are presently in is seen by those states giving inconsistent responses to the survey.''

MTC Model Statute

One solution might be the Multistate Tax Commission's model statute: *Factor Presence Nexus Standard for Business Activity Taxes*. This model law, which was approved by the MTC in 2002, uses both economic and physical presence to determine nexus. Nexus is triggered for each type of contact only if the following thresholds are exceeded during the tax period:

- $50,000 of property,
- $50,000 of payroll,
- $500,000 of sales, or
- 25 percent of total property, total payroll, or total sales.

In sum, the model statute quantifies the level of activity that constitutes economic nexus. A state is allowed to assert nexus based on a specified amount of economic activity alone or a reasonable amount of physical presence alone.

''This factor presence nexus standard is intended to represent a simple, certain and equitable standard for the collection of state business activity taxes,'' according to an MTC statement that precedes the model law.

''In short, a state should be able to assert nexus based on a reasonable amount of economic activity alone, or a reasonable amount of physical presence alone,'' Thomas Shimkin, director of the Multistate Tax Commission's Nexus Program told Bloomberg BNA. ''Each is an indicator of a business' contact with a state,'' Shimkin said.

Few States Have Adopted Model Statute

Despite the model statute's purported benefits, few states have adopted, or used, it to shape their own nexus standard in some way. California adopted a factor presence nexus standard for tax years beginning on or after Jan. 1, 2011. Ohio conforms to the model law via statute. Another conforming state is Colorado, which said it partially adopts the model law via regulation.

The vast majority of states said they do not conform to any aspect of the MTC's model statute.

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[2] *Maryland Comp. of the Treas. v. SYL Inc.* and *Maryland Comp. of the Treas. v. Crown Cork & Seal Co. (Delaware) Inc.*, 825 A.2d 399 (Md. 2003), *cert. denied*, 540 U.S. 1090 (2003); *A&F Trademark Inc. v. Tolson*, 605 S.E.2d 187 (N.C. Ct. App. 2004), *review denied* (N.C. 2005), *cert. denied* 546 U.S. 821 (2005); *General Motors Corp. v. Seattle*, 25 P.3d 1022 (Wash. Ct. App. 2001), *cert. denied*, 535 U.S. 1056 (2002); *Kmart Properties Inc. v. New Mexico Taxn. and Rev. Dept.*, 131 P.3d 27 (N.M. Ct. App. 2001) *cert. quashed* 131 P.3d 22 (N.M. 2005); *Lanco Inc. v. Director, New Jersey Div. of Taxn.*, 908 A.2d 176 (N.J. 2006), *cert. denied*, 127 S. Ct. 2974 (2007); *Geoffrey Inc. v. Oklahoma Tax Comn.*, 132 P.3d 632 (Okla. Civ. App. 2005), *review denied* (Okla. May 20, 2006); *Borden Chemicals and Plastics, L.P. v. Zehnder*, 726 N.E.2d 73 (Ill. App. Ct. 2000), *appeal denied*, 731 N.E.2d 762 (Ill. 2000); *West Virginia Tax Comr. v. MBNA America Bank, N.A.*, 640 S.E.2d 226 (W. Va. 2006), *cert. denied*, *FIA Card Services, N.A. v. West Virginia Tax Comr.*, 127 S. Ct. 2997 (U.S. 2007); *Capital One Bank v. Massachusetts Comr. of Rev.*, 899 N.E.2d 76 (Mass. Jan. 8, 2009), *cert. denied* , 557 U.S. 919 (2009); *Geoffrey Inc. v. Massachusetts Comr. of Rev.*, 899 N.E.2d 87 (Mass. Jan. 8, 2009), *cert. denied*, 557 U.S. 920 (2009).

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We asked each state whether it:

- conforms to the MTC's model statute,
- partially conforms to the model statute,
- has had its conformity to the MTC's model law tested in court, and
- does not conform to any aspect of the model statute.

Nexus Enforcement Procedures

While much of the survey is devoted to determining each state's nexus laws, another section looks to the enforcement mechanisms states use for determining whether a corporation's activities constitute substantial nexus.

Many states send corporations a ''nexus questionnaire,'' which is designed to elicit specific responses from a company that it believes might be doing business in the state. Most state tax agencies also make these questionnaires available on their websites.

The questions are similar to the ones Bloomberg BNA asks the states. Activities that the state nexus questionnaires typically ask about include whether the corporation:

- owns or leases property in the state,
- has any employees in the state, or
- sells products in the state.

Another nexus enforcement issue is how each state determines the period for which it will assess tax after a corporation has triggered income tax nexus. Will it impose tax on the corporation for the entire year (*i.e.*, including amounts in the sales factor that occurred before nexus was established)?

Some states impose compliance obligations on certain corporations even without a finding of nexus. Specifically, we asked each state if a corporation must file a tax return:

- even if its activities are protected by Pub. L. No. 86-272, and
- if it registers in the state, but has not yet commenced doing business there.

Trailing Nexus

A related issue is the concept of trailing nexus, which is nexus that exists even after a corporation ceases doing business within a jurisdiction's borders. Some jurisdictions rely on the theory of trailing nexus to assert that an out-of-state corporation's duty to collect tax lingers even after the company has ceased all activities within its borders. Bloomberg BNA asked each state if it would find taxable nexus for the entire year:

- but no more, for a corporation that stops an activity during the tax year that once created nexus;
- plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus; or
- plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus.

We also asked each to state to explain if its answers to these questions depends on the magnitude of the nexus-creating activity (*e.g.*, three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum super tanker).

State Income Tax Nexus Policies

State[1]	Applies *Quill* to income tax nexus[2]	If no, has state ever applied *Quill* to income tax?[3]	If yes, date state ceased applying *Quill*[4]	State nexus policy based on physical presence[5]	State nexus policy based on physical presence b/c of agency relationship[6]	State nexus policy based on economic presence[7]
Alabama	No	No	Not Applicable	No	**No Response**	Yes
Alaska	No	No	Not Applicable	No	**No**	Yes
Arizona	No	No	Not Applicable	No	**No**	Yes
Arkansas	No	No	Not Applicable	No	**Yes**	Yes
California	Depends	**Not Applicable**	**Not Applicable**	No Response[8]	**Yes**	Depends[9]
Colorado	No[10]	No	Not Applicable	No	**Yes**	Yes
Connecticut	No[11]	No Response[12]	No Response	No[13]	**Depends**[14]	Yes[15]
Delaware	Yes	Not Applicable	Not Applicable	Yes	**Yes**	No
District of Columbia	**No**[16]	**Yes**	Not Applicable	**No**[17]	**Yes**	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Applies *Quill (i.e.*, requires that a corporation have a physical presence in the state in order to create nexus) in making income tax nexus determinations.

[3] If your state does not apply *Quill*, please indicate if your state had ever adhered to *Quill* in making income tax nexus determinations.

[4] If your state had applied *Quill* in the past, please indicate when your state ceased adhering to *Quill* in making income tax nexus determinations.

[5] Physical presence (*i.e.*, requires that a corporation have a physical presence in the state in order to create nexus).

[6] Physical presence as a result of an agency relationship *(i.e.* nexus may result from an out-of-state corporation's relationship with an in-state entity that has the right to bind a corporation into a contract).

[7] Economic presence *(i.e.*, nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders).

[8] CA: Physical presence creates nexus.

[9] CA: Economic presence may create nexus depending on facts and circumstances. *See also* R&TC section 23101(b).

[10] CO: Notwithstanding reference to *Quill* in Taxpayer Service Division FYI INCOME 58.

[11] CT: Conn. Gen. Stat. §12-216a.

[12] CT: DRS has no published position.

[13] CT: Conn. Gen. Stat. §12-216a; IP 2010(29.1), Q&A on Economic Nexus.

[14] **CT: *Id.***

[15] CT: *Id.*

[16] DC: Additionally, a corporation may perform a service in the District of Columbia, but do not have a physical presence in the state, and still be liable **for DC taxes. For tax years beginning after December 31, 2010.**

[17] DC: There is no longer a requirement of having office, warehouse or other place of business in District.

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State[1]	Applies *Quill* to income tax nexus[2]	If no, has state ever applied *Quill* to income tax?[3]	If yes, date state ceased applying *Quill*[4]	State nexus policy based on physical presence[5]	State nexus policy based on physical presence b/c of agency relationship[6]	State nexus policy based on economic presence[7]
Florida	No	No	Not Applicable	No	**Yes**	Yes
Georgia[18]	No Response	No Response	No Response	No Response	**No Response**	No Response
Hawaii	Yes[19]	Not Applicable	Not Applicable	Yes	**Yes**	Yes
Idaho	No	No	Not Applicable	No	**Yes**	Yes[20]
Illinois	No	No	Not Applicable	No	**No**	Yes
Indiana	No	No	Not Applicable	No	**No**	Yes
Iowa	No[21]	Yes	Tax years beginning on or after Jan. 1, 1995.	No[22]	**Yes**[23]	Yes
Kansas[24]	No	No	Not Applicable	No Response	**No Response**	No Response
Kentucky	No	Yes[25]	2005	No[26]	**Yes**[27]	Yes
Louisiana	No[28]	No	Not Applicable	No[29]	**No**	**No**[30]
Maine	No	No	Not Applicable	No	**Yes**	Yes
Maryland	No	No	Not Applicable	No	**Yes**	Yes

[18] GA: Nexus is a factual determination; Georgia applies all applicable legal standards in making a determination.

[19] HI: For income tax purposes, Hawaii recognizes and applies Public Law 86-272. *See* Tax Information Release No. 96-1, ''Computer Company's Provision of In-State Repair Services Creates Nexus,'' which states that Hawaii will follow the Multistate Tax Commission Nexus Program Bulletin No. 95-1.

[20] ID: Idaho Code section 63-3023, Transacting business.

[21] IA: Iowa Code §422.33(1) was amended starting in 1995 to eliminate the physical presence requirement. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010. KFC's petition for the U.S. Supreme Court to hear their appeal was denied on October 3, 2011. This was also upheld in an Administrative Law Judge decision involving Jack Daniels Properties and Southern Comfort Properties issued on July 28, 2011.

[22] IA: Iowa Code §422.33(1) sets forth economic presence standard. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010.

[23] **IA: Iowa Code §422.33(1) sets forth economic presence standard. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010. The independent contractor/agent can maintain an office in Iowa and not create nexus for the corporation which they represent. However, any nonsolicitation activities by the independent contractor will create nexus for the corporation they represent. *See* rule 701-52.1(3)(w).**

[24] KS: The business must be conducting sufficient business activity to have nexus. Public Law 86-272 does not extend to those business which sell services, real estate, or intangibles or are incorporated in Kansas. If a business is incorporated in Kansas and is located outside of Kansas making sales into Kansas, it has nexus.

[25] KY: The Commonwealth applied *Quill* for tax years beginning before Jan. 1, 2005.

[26] KY: The Commonwealth adopted the ''doing business standard'' as provided by KRS §141.010(25), effective Jan. 1, 2005.

[27] **KY: *See* 103 KAR 16:240, Section 4(4)(b).**

[28] LA: Louisiana's response for 2010 was ''yes'' but was incorrect and should have been ''no.'' Louisiana does not require physical presence for nexus determinations, but physical presence in Louisiana will certainly give rise to nexus. For income tax, we can use other determinations for nexus when there is no physical presence in the state.

[29] LA: To determine if your corporation is liable for corporation income and franchise tax, Form R-4310, the Questionnaire to Assist in Determining Liability for Corporate Income Tax or Franchise Tax, is available on our website.

[30] LA: *Id.*

State[1]	Applies *Quill* to income tax nexus[2]	If no, has state ever applied *Quill* to income tax?[3]	If yes, date state ceased applying *Quill*[4]	State nexus policy based on physical presence[5]	State nexus policy based on physical presence b/c of agency relationship[6]	State nexus policy based on economic presence[7]
Massachusetts	Yes	Not Applicable	Not Applicable	No	**No**	Yes
Michigan	No[31]	Yes	Effective Dec. 31, 2007.[32]	Yes[33]	**Yes**[34]	Yes[35]
Minnesota[36]	No	No	Not Applicable	No	**Yes**	Yes
Mississippi	No Response	No Response	No Response	No Response	**No Response**	No Response
Missouri	No	No	Not Applicable	No	**Yes**	Yes
Montana	No	No	Not Applicable	No	**No**	Yes
Nebraska	No	**No**	Not Applicable	Yes	**Yes**	Yes[37]
New Hampshire	No	No	Not Applicable	No	**No**	Yes
New Jersey	No	No	Not Applicable	No	**Yes**	Yes
New Mexico	No	Yes	1998[38]	Yes	**Yes**	Yes
New York City	Yes	Not Applicable	Not Applicable	Yes[39]	**Yes**	No Response
North Carolina[40]	No	No	Not Applicable	No	**Yes**	Yes

[31] MI: Persons have nexus with Michigan and are subject to the CIT if ''the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, if the taxpayer actively solicits sales in this state and has gross receipts of $350,000 or more sourced to this state, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state.'' MCL 206.621(1).

[32] MI: Date is the enactment of the MBT.

[33] MI: A person may have nexus with Michigan if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in the state and has Michigan gross receipts of $350,000 or more, or if the person has an ownership interest or a beneficial interest, held directly or indirectly, in a flow-through entity that has substantial nexus in Michigan. MCL 206.621(1).

[34] **MI: Physical presence is defined in MCL 206.621(2)(b) to include any activity conducted on behalf of the taxpayer by the taxpayer's agent.**

[35] MI: A person may have nexus with Michigan if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in the state and has Michigan gross receipts of $350,000 or more, or if the person has an ownership interest or a beneficial interest, held directly or indirectly, in a flow-through entity that has substantial nexus in Michigan. MCL 206.621(1).

[36] MN: Minn. Stat. §290.015, subd. 1(b) provides, in part, that a person that conducts a trade or business is subject to taxes imposed by Minn. Stat. chapter 290 if the trade or business obtains or regularly solicits business from within the state, without regard to physical presence in this state. That statute was enacted prior to the *Quill* decision.

[37] NE: See Nebraska Revenue Ruling 24-08-01.

[38] NM: Applied *Quill* until around 1995-1998 when we adopted a representation and economic requirement for nexus.

[39] NYC: Effective for tax years beginning on or after Jan. 1, 2011, the Administrative Code related to Bank Tax has been amended to tax credit card companies with customers having a mailing address in New York City regardless of whether the credit card company has a physical location in the city.

[40] NC: NC statutes do not define ''doing business.'' Our administrative regulation, NCAC T17:5C.0102, does define ''doing business.'' It includes activities that would create nexus, but it is not all inclusive.

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State[1]	Applies *Quill* to income tax nexus[2]	If no, has state ever applied *Quill* to income tax?[3]	If yes, date state ceased applying *Quill*[4]	State nexus policy based on physical presence[5]	State nexus policy based on physical presence b/c of agency relationship[6]	State nexus policy based on economic presence[7]
North Dakota	No	No	Not Applicable	No	**Yes** [41]	Yes
Ohio	No[42]	No[43]	Not Applicable	No[44]	**No**	Yes[45]
Oklahoma	No	Yes	No Response	Yes	**No Response**	Yes
Oregon	No	No	Not Applicable	No	**Yes**	Yes
Pennsylvania	Yes[46]	Not Applicable	Not Applicable	Yes[47]	**Yes**	Depends
Rhode Island	No	No	Not Applicable	**Yes**[48]	**Yes**[49]	**No**[50]
South Carolina	No	No	Not Applicable	No	**No Response**	No Response[51]
Tennessee	Yes	Not Applicable	Not Applicable	Yes[52]	**Yes**	No[53]
Texas	Yes	Not Applicable	Not Applicable	Yes	**Yes**	No
Utah	No	No	Not Applicable	No	**Yes**	Yes
Vermont	No	No	Not Applicable	No	**No**	No
Virginia	No[54]	No[55]	Not Applicable	No	**No**	Yes[56]
West Virginia	No	No	Not Applicable	No	**Yes**	Yes[57]
Wisconsin	No	No	Not Applicable	No[58]	**Yes**[59]	Yes[60]

[41] **ND: Nexus is not based on physical presence, but the example given may result in nexus.**
[42] OH: For purposes of the CAT only.
[43] OH: *Id.*
[44] OH: *Id.*
[45] OH: *Id.*
[46] PA: Physical presence may be through agents and representatives.
[47] PA: Physical presence may be through agents or representatives.
[48] **RI: Under the implementation of combined reporting, a company who is part of a unitary business may have a filing requirement because one of the related companies has nexus.**
[49] **RI: *Id.***
[50] **RI: *Id.***
[51] SC: Economic presence may trigger nexus in accordance with South Carolina's income tax nexus policy even if a corporation lacks physical presence.
[52] TN: *See J.C. Penney National Bank v. Johnson*, 19 S.W.3d 831 (Tenn. Ct. App. 1999).
[53] TN: *Id.*
[54] VA: *See* P.D. 06-38.
[55] VA: *Id.*
[56] VA: *See*23 VAC 10-120-90; P.D. 09-81.
[57] WV: *Tax Comm'r of WV v. MBNA America Bank, N.A.*, 640 S.E.2d 226 (W.Va. 2006).
[58] WI: Economic nexus is in Wisconsin's definition of ''doing business'' in this state - sec. 71.22(1r), Wis. Stats. (2011-12).
[59] **WI:** *Id.*
[60] WI: *Id.*

Adherence to Factor Presence Nexus Standard

State[1]	Conforms to MTC model statute[2]	Partially conforms[3]	Conformity litigated[4]	Does not conform[5]	Threshold for sales that triggers nexus[6]	Threshold for specific industry groups[7]
Alabama[8]	No	No	Not Applicable	No	**No**	**No**
Alaska	No	No	Not Applicable	Yes	**No**	**No**
Arizona	No	No	Not Applicable	No Response	**No**	**No**
Arkansas	No	No	No	Yes	**No**	**No**
California	No[9]	Yes[10]	No[11]	No[12]	**Yes**	**Yes**[13]
Colorado	No	Yes[14]	No	No Response[15]	**No Response**[16]	**No Response**[17]
Connecticut[18]	No	Yes	No	No Response	**Yes**	**No**
Delaware	No	No	Not Applicable	Yes	**No**	**No**
District of Columbia[19]	No	No	No	**Yes**	**No**	**No**
Florida	No	No	Not Applicable	No	**No**	**No**
Georgia	No	No	Not Applicable	Not Applicable	**No**	**No**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The state conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

[3] The state partially conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

[4] If the state conforms or partially conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*, has the state's reliance on the MTC's model statute been tested in court?

[5] The state does not conform to any aspects of the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

[6] The state has adopted an annual dollar threshold for sales made into the state that will trigger nexus, which is not based on the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

[7] The state has adopted an annual dollar threshold or activity threshold applicable to specific industry groups, which is not based on the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

[8] AL: No factor presence statute in place.

[9] CA: California partially conforms to the MTC's model statute. *See* RTC §23101(b).

[10] CA: *Id.*

[11] CA: *Id.*

[12] CA: *Id.*

[13] **CA: RTC §23104 provides that any corporation that is not incorporated under the laws of California and whose sole activity in the state is engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, for seven or fewer calendar days, or any portion thereof, during the taxable year and that does not derive more than ten thousand dollars ($10,000) of gross income reportable to this state from those activities during that taxable year is not a corporation doing business in California.**

[14] CO: Reg 39-22-303.1. Colorado regulation applies only to business. Deletes MTC subsection D and substitutes reference to state law regarding combined returns. Deletes MTC subsection E regarding throwback.

[15] CO: *Id.*

[16] **CO: *Id.***

[17] **CO: *Id.***

[18] CT: *See* IP 2010(29.1), Q&A on Economic Nexus. In regards to economic nexus, Connecticut established a bright-line test, which requires more than $500,000 in sales. There is no bright-line test for property and payroll.

[19] DC: MTC model statute has not been adopted by D.C.

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State[1]	Conforms to MTC model statute[2]	Partially conforms[3]	Conformity litigated[4]	Does not conform[5]	Threshold for sales that triggers nexus[6]	Threshold for specific industry groups[7]
Hawaii	No	No	Not Applicable	Yes	**No**	**No**
Idaho	No	No	Not Applicable	Yes	**No**	**No**
Illinois	No	No	Not Applicable	Yes	**No**	**No**
Indiana	No	No	Not Applicable	Yes	**No**	**No**
Iowa	No	No	Not Applicable	Yes	**No**	**No**
Kansas	No	Yes[20]	No	Not Applicable	**No**	**No**
Kentucky	No	No	Not Applicable	Yes	**No**	**No**
Louisiana	No	No	Not Applicable	Yes	**No**	**No**
Maine	No	No	Not Applicable	Yes	**No**	**No**
Maryland	No	No	Not Applicable	Yes	**No**	**No**
Massachusetts	No	No	Not Applicable	**No**	**No**	**No**
Michigan	No	No	Not Applicable	Yes	**No**	**No**
Minnesota[21]	No	No	Not Applicable	Yes	**No**	**Yes**
Mississippi	No	No	Not Applicable	Yes	**No Response**	**No Response**
Missouri	No	No	No	Yes	**No**	**No**
Montana	No	No	Not Applicable	Yes	**No**	**No**
Nebraska[22]	No	No	Not Applicable	Yes	**No**	**Yes**[23]
New Hampshire	No	No	Not Applicable	No Response	**No**	**No**
New Jersey	No	No	Not Applicable	Yes	**No**	**No**
New Mexico	No	No	Not Applicable	Yes[24]	**No**	**No**
New York City	No	No	Not Applicable	No Response	**No**	**No**

[20] KS: To the extent it complies with Pub. L. No. 86-272.
[21] MN: Nexus Presumptions in Minn. Stat. Section 290.015, Subd. 2 define activities which Minnesota nexus can be presumed.
[22] NE: Nebraska follows the MTC Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272.
[23] **NE: *See* Revenue Ruling 24–08–1 Nexus - For-hire Trucking Companies.**
[24] NM: New Mexico has not adopted the MTC model statute.

State[1]	Conforms to MTC model statute[2]	Partially conforms[3]	Conformity litigated[4]	Does not conform[5]	Threshold for sales that triggers nexus[6]	Threshold for specific industry groups[7]
North Carolina	No	No	Not Applicable	No	**No**	**Yes**[25]
North Dakota	No	No	Not Applicable	Yes	**No**	**Yes**[26]
Ohio	Yes[27]	Not Applicable	No	No	**Yes**	**No**
Oklahoma	No	No	Not Applicable	No Response	**No**	**No**
Oregon	No	No	Not Applicable	Yes	**No**	**No**
Pennsylvania	No	No	No	No	**No**	**Yes**
Rhode Island	No	No	Not Applicable	Yes	**No**	**No**
South Carolina	No	No	Not Applicable	No Response	**No Response**	**No Response**
Tennessee	No	No	Not Applicable	Yes	**No**	**No**
Texas	No	No	Not Applicable	Yes	**No**	**No**
Utah	No	No	Not Applicable	Yes	**No**	**Yes**[28]
Vermont	No	No	Not Applicable	Yes[29]	**No**	**No**
Virginia	No	No	Not Applicable[30]	Yes	**No**	**No**
West Virginia	No	No	Not Applicable	Yes	**No Response**	**No Response**
Wisconsin	No	**Not Applicable**	Not Applicable	Yes[31]	**No**	**No**

[25] **NC: A mortgage lender corporation that does not maintain a place of business in North Carolina is considered to be "doing business" in this state if it makes more than $5,000,000 of loans secured by real property in this state and uses employees, agents, or independent contractors for the purpose of soliciting or finalizing loans. (Tax Directive CD-99-1).**

[26] **ND: Trucking companies - travels 25,000 miles within the state, or more than 3% of all miles traveled are in the state, or makes more than 12 trips into the state.**

[27] OH: Ohio R.C. 5751.01(H) and (I). Please note that Ohio's CAT utilizes gross receipts instead of sales.

[28] **UT: Utah Administrative Rule R865-6F-19 dealing with Trucking companies requires such a company to file a Utah corporation franchise tax return if: 1) It owned or rented any real or personal property in this state; 2) made any pickups or deliveries within this state; 3) traveled more than 25,000 mobile property miles in this state, provided that the total mobile property miles traveled within this state during the tax year exceeded three percent of the total mobile property miles traveled in all states; or 4) made more than 12 trips into this state.**

[29] VT: Vermont does not conform to the thresholds established in the model statute.

[30] VA: Nexus requires at least one positive apportionment factor. Moreover, there is a de minimis standard, which is based on the nature, continuity, and regularity of the activities conducted in the state. See 23 VAC 10-120-90.

[31] WI: Yes, DOR does not conform to any aspects of the MTC model statute.

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Nexus Enforcement Policies

State[1]	Sends nexus questionnaire[2]	Taxes whole year[3]	Return for protected activities[4]	Return if registered[5]	Nexus for entire taxable year for trailing nexus[6]	Nexus for entire taxable year, plus additional year, for trailing nexus[7]	Nexus for entire taxable year, plus more than additional year, for trailing nexus[8]
Alabama	Yes	Yes[9]	Yes	Yes	Yes	No	No
Alaska	Yes[10]	Yes	No	**Yes**	Yes[11]	No[12]	No[13]
Arizona	Yes[14]	Yes	No	No	Yes	No	No
Arkansas	Yes	Yes	No	No	Yes[15]	No[16]	No[17]
California	Yes[18]	Yes	Yes[19]	Yes	Yes	Depends	Depends
Colorado	Yes[20]	No	No	Yes	Yes[21]	No	No
Connecticut	No	No Response[22]	Yes	Yes	No Response[23]	No Response[24]	No Response[25]
Delaware	Yes[26]	Yes	No	No	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The state sends a nexus questionnaire to corporations that it believes might be doing business within its borders.

[3] The state imposes tax on a corporation that triggers nexus for the entire year (*i.e.*, including amounts in the sales factor that occurred before nexus was established).

[4] The state requires a tax return to be filed even if the corporation's activities are protected by Pub. L. No. 86-272.

[5] The state requires a tax return to be filed by a corporation that has registered in the state, but has not yet commenced doing business.

[6] The state would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[7] The state would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[8] The state would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[9] AL: All AL sales for the entire year would be included in the numerator of the sales factor if nexus is established during the year.

[10] AK: No official form number.

[11] **AK: No, the answer does not depend on the magnitude of the nexus-creating activity.**

[12] **AK: *Id.***

[13] **AK: *Id.***

[14] AZ: Nexus Questionnaire Form ADOR 10894 (7/10).

[15] AR: For Arkansas purposes, the magnitude of the nexus-creating activity does not matter.

[16] AR: *Id.*

[17] AR: *Id.*

[18] CA: FTB Form 4684.

[19] CA: Assuming the taxpayer is doing business in California.

[20] CO: Case-by-case questionnaire.

[21] CO: The presumption articulated in this question is only a presumption. Either the department or the taxpayer may establish that the nexus-creating activities established or maintained the market for a period longer or shorter than the current tax year.

[22] CT: DRS has no published position.

[23] CT: *Id.*

[24] CT: *Id.*

[25] CT: *Id.*

[26] DE: Nexus questionnaire available at http://revenue.delaware.gov/services/Nex.shtml.

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State[1]	Sends nexus questionnaire[2]	Taxes whole year[3]	Return for protected activities[4]	Return if registered[5]	Nexus for entire taxable year for trailing nexus[6]	Nexus for entire taxable year, plus additional year, for trailing nexus[7]	Nexus for entire taxable year, plus more than additional year, for trailing nexus[8]
District of Columbia	Yes[27]	Yes	No	No	Yes	No	No
Florida	Yes[28]	Yes	No	Yes	Yes	No	No
Georgia	Yes	Yes	Yes	Depends[29]	**Depends**	Depends	Depends
Hawaii	Yes[30]	No[31]	No	No	Depends	Depends	Depends
Idaho	Yes[32]	Yes	No[33]	Yes[34]	Yes	No	No
Illinois	No	Yes	Yes[35]	Yes[36]	Yes	No	No
Indiana	No	Yes	No	No	Yes[37]	No[38]	No[39]
Iowa	Yes[40]	Yes	No	No	Yes[41]	No[42]	No[43]
Kansas	Yes[44]	Yes	No	No	Yes	No	No
Kentucky	Yes[45]	Yes	Yes[46]	**No[47]**	Yes[48]	No[49]	No[50]
Louisiana	Yes[51]	Yes	No[52]	Yes[53]	Yes[54]	No[55]	No[56]
Maine	Yes[57]	Yes	No	No	Yes[58]	No[59]	No[60]

[27] DC: Form FR-176.
[28] FL: There is a nexus questionnaire sent to taxpayers, but it does not have a form number.
[29] GA: Net Worth Return needs to be filed.
[30] HI: Nexus questionnaire sent to corporations being audited. There is no form number for the nexus questionnaire.
[31] HI: Does not impose a tax on amounts in the sales factor that occurred before nexus was established, however, will impose taxes for period after nexus is established.
[32] ID: No form number.
[33] ID: Idaho Income Tax Administrative Rule 801.04 (IDAPA 35.01.01.801.04).
[34] ID: Idaho Code sections 63-3030(3) and (4).
[35] IL: IITA Section 502(a)(2) requires corporations qualified to do business in Illinois and required to file a federal income tax return to file in Illinois regardless of tax liability.
[36] IL: *Id.*
[37] IN: The answer does not depend on the magnitude of the nexus-creating activity.
[38] IN: The answer assumes a permanent end to activity; otherwise, the answer is "yes" on both.
[39] IN: *Id.*
[40] IA: The nexus questionnaire can be found at **https://tax.iowa.gov/sites/files/idr/forms1/NexusSurvey21-004f.pdf**
[41] IA: As long as the activity was of a non-de minimis nature, it does not matter what nexus-creating activity occurred.
[42] IA: *Id.*
[43] IA: *Id.*
[44] KS: The questionnaire has no form number.
[45] KY: Form 41A800.
[46] KY: A corporation is subject to limited liability entity tax (LLET) which is not protected by Pub. L. No. 86-272. LLET is the lesser of .00095 of gross receipts or .0075 of gross profits (minimum $175).
[47] **KY: If a Ky. corporation, yes. If a foreign corporation who merely fills out the certificate of authority to do business in Ky. but has not actually commenced doing business in Kentucky, then no.**
[48] KY: Generally, it does not depend on the magnitude of the nexus-creating activity.
[49] KY: *Id.*
[50] KY: *Id.*
[51] LA: Form R-4310.
[52] LA: A Corporation Income & Franchise Tax return would be required to be filed if requirement is met for franchise tax.
[53] LA: *Id.*
[54] LA: Answers do not depend on the magnitude of the nexus-creating activity.
[55] LA: *Id.*
[56] LA: *Id.*
[57] ME: No form number has been assigned to the questionnaire.
[58] ME: The answers do not depend on the magnitude of the nexus-creating activity.
[59] ME: *Id.*
[60] ME: *Id.*

State[1]	Sends nexus questionnaire[2]	Taxes whole year[3]	Return for protected activities[4]	Return if registered[5]	Nexus for entire taxable year for trailing nexus[6]	Nexus for entire taxable year, plus additional year, for trailing nexus[7]	Nexus for entire taxable year, plus more than additional year, for trailing nexus[8]
Maryland	Yes	Yes	No	No	Yes[61]	No[62]	No[63]
Massachusetts[64]	Yes	No Response	Yes	**Yes**	Yes	No	No
Michigan	Yes[65]	Yes	No	No	Yes[66]	No[67]	No[68]
Minnesota	Yes[69]	Yes	No	No	Yes[70]	No	No
Mississippi	Yes[71]	No	Yes[72]	Yes	No[73]	No[74]	No[75]
Missouri	Yes[76]	Yes	Yes	Yes	Yes	No	No
Montana	Yes[77]	Yes	Yes	Yes	Yes	No	No
Nebraska	Yes[78]	Yes	No	No	Yes	No	No
New Hampshire	Yes[79]	Yes	No	No	No Response	No Response	No Response
New Jersey	Yes[80]	No	Yes	Yes	No[81]	No[82]	No[83]
New Mexico	Yes[84]	Yes	Yes	Yes[85]	Yes[86]	No[87]	No[88]
New York City	No Response	No	No[89]	No Response	No	No	No

[61] MD: The answers do not depend on the magnitude of the nexus-creating activity.
[62] MD: *Id.* No, so long as the taxpayer files a final return in the year that the nexus-creating activity stops.
[63] MD: The answers do not depend on the magnitude of the nexus-creating activity.
[64] MA: *See* 830 CMR 63.39.1.
[65] MI: Form 1353.
[66] MI: Once nexus has been established by a taxpayer during a tax year for CIT purposes, nexus exists for that taxpayer for the entire tax year. **Answer does not depend on the magnitude of the nexus-creating activity.**
[67] **MI: Answer does not depend on the magnitude of the nexus-creating activity.**
[68] **MI: *Id.***
[69] MN: Form C-101.
[70] MN: Each taxable year is considered separately in determining nexus.
[71] MS: Nexus questionnaire does not have a form number.
[72] MS: Will require a tax return if taxpayer has a franchise tax filing requirement. Public Law 86-272 does not apply to franchise tax.
[73] MS: Answers on ''trailing nexus'' do not depend on the magnitude of the nexus-creating activity. There is taxable nexus for a corporation until it stops business activity during the tax year.
[74] MS: *Id.*
[75] MS: *Id.*
[76] MO: Form 4458.
[77] MT: Montana Department of Revenue Nexus Questionnaire - Montana Form ''NEXUS.''
[78] NE: Done via letter; no specific form or form number.
[79] NH: Form AU-15.
[80] NJ: Nexus Questionnaire.
[81] NJ: The answers do not depend on the magnitude of the nexus-creating activity.
[82] NJ: *Id.*
[83] NJ: *Id.*
[84] NM: Questionnaire does not have a form number.
[85] NM: Yes to pay franchise tax.
[86] NM: The answers do not depend on the magnitude of the nexus-creating activity.
[87] NM: *Id.*
[88] NM: *Id.*
[89] NYC: Form NYC-245 (Activities Report of Corporations) should be filed by any corporation that has an officer, employee, agent, or representative in the City and claims not to be subject to the New York City General Corporation tax.

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State[1]	Sends nexus questionnaire[2]	Taxes whole year[3]	Return for protected activities[4]	Return if registered[5]	Nexus for entire taxable year for trailing nexus[6]	Nexus for entire taxable year, plus additional year, for trailing nexus[7]	Nexus for entire taxable year, plus more than additional year, for trailing nexus[8]
North Carolina	Yes[90]	Yes	Yes	Yes[91]	Yes[92]	No	No
North Dakota	Yes[93]	Yes	No	No	Yes[94]	No[95]	No[96]
Ohio[97]	Yes	Yes	Not Applicable	Not Applicable	Yes[98]	No	No
Oklahoma	No	No	No	No	Yes	No	No
Oregon	Yes[99]	No	No	No	Yes[100]	No[101]	No[102]
Pennsylvania	Yes[103]	Yes	Yes[104]	Yes[105]	Yes	No	No
Rhode Island[106]	Yes[107]	Yes	No	Yes	Yes	No	No
South Carolina	Yes[108]	Yes	No Response	No Response	No Response	No Response	No Response
Tennessee	Yes[109]	Yes[110]	Yes[111]	Yes[112]	Yes[113]	No[114]	No[115]
Texas	Yes[116]	No	Not Applicable[117]	No	No[118]	No[119]	No[120]

[90] NC: Nexus Questionnaire Form (no number is assigned).
[91] NC: A corporation that has registered to do business by obtaining a certificate of authority with the Secretary of State's Office must file an annual return and pay at least the minimum franchise tax.
[92] NC: Regardless of the nature of the tangible personal property, if the non-protected activity establishes a relationship in which the company conducts an activity systematically, it will establish nexus even if the activity is infrequent.
[93] ND: No form number; questionnaire may be found at: http://www.nd.gov/tax. Click on ''Corporation Income Tax;'' ''Forms;'' ''Nexus Questionnaire.''
[94] ND: Answers do not depend on the magnitude of nexus, as long as U.S. Constitutional standards have been met.
[95] ND: *Id.*
[96] ND: *Id.*
[97] OH: Ohio's nexus inquires are not limited to corporations. There is no specific form number. When contacting an entity, the CAT Division, Audit Division, or Tax Discovery Division will request various types of information relating to the nexus standard set forth in Ohio Revised Code Section 5751.01(H) and (I) relating to an entity's activities within the state.
[98] OH: Ohio Revised Code Section 5751.01(H) and (I) are measured by activities that occur in a calendar year.
[99] OR: Oregon's questionnaire is tailored to each business; not a generic form.
[100] OR: Magnitude of the nexus-creating activity does not affect determination.
[101] OR: *Id.*
[102] OR: *Id.*
[103] PA: Form REV-203.
[104] PA: Capital Stock Franchise Tax applies to corporations that have income tax protection under Pub. L. No. 86-272.
[105] PA: *Id.*
[106] RI: Answers do not depend on the magnitude of nexus-creating activity.
[107] RI: Rhode Island Nexus Questionnaire.
[108] SC: The ''Nexus Questionnaire'' is on the DOR website, www.sctax.org, under ''Nexus Filing.''
[109] TN: Form RV-2050. SEATA nexus questionnaires from other states are also reviewed.
[110] TN: Absence of Tennessee property, payroll, and sales in the apportionment factors prior to nexus will automatically adjust the tax base.
[111] TN: Only the franchise tax is due - no excise tax based on income is due.
[112] TN: Only the $100 minimum franchise tax is due. (*See* T.C.A. Sec. 67-4-2119).
[113] TN: Answers do not depend on the magnitude of nexus-creating activity.
[114] TN: *Id.*
[115] TN: *Id.*
[116] TX: Form AP-114 Texas Nexus Questionnaire.
[117] TX: Public Law 86-272 does not apply to the revised Texas franchise tax. Section 21 from Acts of the 79th Legislature, 3rd Called Session, 2006, House Bill 3 and Franchise Tax Rule 3.586(e).
[118] TX: Texas has no de minimis nexus standard.
[119] TX: *Id.*
[120] TX: *Id.*

State[1]	Sends nexus questionnaire[2]	Taxes whole year[3]	Return for protected activities[4]	Return if registered[5]	Nexus for entire taxable year for trailing nexus[6]	Nexus for entire taxable year, plus additional year, for trailing nexus[7]	Nexus for entire taxable year, plus more than additional year, for trailing nexus[8]
Utah	Yes[121]	Yes	No[122]	Yes	Yes	No	No
Vermont	No	Yes[123]	No	No	No	No	No
Virginia	No	Yes	No[124]	Yes[125]	Yes[126]	No[127]	No[128]
West Virginia	Yes[129]	No	Yes	No	Yes	No	No
Wisconsin	Yes[130]	Yes[131]	Yes[132]	Yes	Yes[133]	No[134]	No[135]

[121] **UT: Form TC-51.**
[122] UT: Only if qualified to do business in Utah.
[123] VT: To the extent the nexus triggering activity also affects their sales volume calculation, the apportionment of income for the year will affect the amount of tax due.
[124] VA: Note that a tax return is only required if the corporation has registered with the State Corporation Commission for the privilege of doing business in Virginia; otherwise, a tax return is not required. *See* 23 VAC 10-120-310(A).
[125] VA: *See* 23 VAC 10-120-310(A).
[126] VA: The answers do not depend on the magnitude of the nexus-creating activity.
[127] VA: *Id.*
[128] VA: *Id.*
[129] WV: WV/NEXUS Rev. 2005.
[130] WI: Form A-816.
[131] WI: Nexus once established is for the entire year.
[132] WI: Provided corporation is registered with the state.
[133] **WI: Our answers do not depend on the magnitude of the activity.**
[134] **WI: *Id.***
[135] **WI: *Id.***

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Nexus-Creating Activities

States Identify Activities, Relationships That Would by Themselves Create Nexus

One of the more perplexing state tax questions facing multistate corporations is the identification of those jurisdictions in which the corporation's activities create sufficient nexus to subject the corporation to the state's income tax.[1]

While states have implicit jurisdiction to impose income taxes, this power is subject to federal constitutional limitations. The U.S. Commerce Clause has been interpreted as prohibiting the states from unduly burdening interstate commerce. The U.S. Due Process Clause requires a definite link or minimum connection between the in-state activities of the taxpayer and the taxing state before the taxing state may impose its tax.

Exemption for Solicitation of Orders

While the imposition of state income taxes is subject to federal constitutional limitations, Congress enacted Public Law No. 86-272 (15 U.S.C.A. §§381-384) to further limit the states' power to impose income taxes.

The statute prohibits states from taxing the net income of businesses whose only activities in the taxing state consist of the ''solicitation of orders'' for the sale of tangible personal property, provided the orders are sent outside the state for acceptance and, if accepted, the goods are delivered from a point located outside the state.

When enacted, Pub. L. No. 86-272 was designed to restrict the states' power to tax by establishing a minimum level of activity below which a tax measured by net income could not be imposed. In practice, however, the statute's minimum standard has been less than clear. The primary source of confusion has been the definition of the crucial term ''solicitation.'' A second nagging question has been whether the federal statute embraces a *de minimis* exception. Finally, there is disagreement as to what constitutes a ''tax measured by net income.''

The U.S. Supreme Court addressed these issues in *Wisconsin Dept. of Rev. v. William Wrigley Jr. Co.*, 505 U.S. 214 (1992). The court concluded that the term ''solicitation of orders'' covers only those activities that are ''entirely ancillary to requests for purchases—those that service no independent business function apart from their connection to the soliciting of orders.''

The court also announced a *de minimis* exception to activities that exceed the scope of ''solicitation of orders.'' In the court's view, whether an activity that exceeds ''solicitation of orders'' is sufficiently *de minimis* turns on whether the activity establishes a ''nontrivial additional connection with the taxing State.''

Troublesome Nexus Issues

One issue that is becoming increasingly troublesome for state authorities and state tax practitioners is the effect of delivery on Pub. L. No. 86-272. Some states have taken the position that a seller forfeits its Pub. L. No. 86-272 protection if the company itself delivers its merchandise into a state using its own, or leased, vehicles. The common taxpayer response to this position is that Pub. L. No. 86-272 states explicitly that a seller may fill orders by ''shipment or delivery'' and still fall within the purview of the statute. By using the term ''delivery,'' the argument goes, Congress contemplated that a corporation could transport goods into a state in its own vehicles and not subject itself to the state's taxing authority.

Another issue that causes disagreement among the states is whether the mere qualification by a corporation to do business in a particular state subjects that corporation to tax in the state where it is qualified, Pub. L. No. 86-272 notwithstanding. While Pub. L. No. 86-272 states unequivocally that a corporation may not rely on Pub. L. No. 86-272 to escape tax in the state in which it is incorporated, the statute is silent as to the consequences of qualifying or registering to do business with a state.

Bloomberg BNA Survey Clarifies State Positions

Because of the varying state opinions on what creates nexus, Bloomberg BNA surveyed the states in an attempt to clarify state tax department positions on certain specific activities or relationships. Top state tax department personnel were asked to identify which specified activities or relationships would create nexus in their state, assuming that the listed activity or relationship is the only such activity or relationship that a corporation has in the state. The state responses are presented in the following charts.

[1] Nexus regarding income-based taxes is thoroughly discussed in 1400 T.M., *Federal Constitutional Limitations on State Taxation*, and 1410 T.M., *Limitations on States' Jurisdiction to Impose Net Income Based Taxes*.

Nexus-Creating Activities: General Activities (Part 1 of 2)

State[1]	Doing business[2]	Sales via 800 number[3]	In-state phone listing[4]	Local phone no.[5]	Maintains bank account[6]
Alaska[7]	**Yes**	No Response[8]	No Response[9]	No Response[10]	No
Arizona	**Yes**	No	Yes	No	No
Arkansas	**No**	Yes	Yes	Yes	Yes
California	**Yes**[11]	**Depends**[12]	No[13]	No[14]	Depends[15]
Colorado	**Yes**	No[16]	No[17]	Yes[18]	No[19]
Connecticut	**Yes**	No Response[20]	No Response[21]	No Response[22]	No
Delaware	**Yes**	No	No	No	No
District of Columbia[23]	**Yes**	**Yes**[24]	No[25]	**Yes**[26]	Yes
Florida[27]	**Yes**	No	No	No	No
Georgia	**Yes**	No	Yes	Yes	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation is doing business in your state.
[3] The corporation makes sales to customers in your state by means of an 800 telephone order number.
[4] The corporation is listed in the local telephone books of cities in your state.
[5] The corporation uses local phone numbers in your state, which are forwarded to its headquarters located in another state.
[6] The corporation maintains a bank account at a bank located in your state.
[7] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[8] AK: Alaska has no position at this time.
[9] AK: *Id.*
[10] AK: *Id.*
[11] **CA: It would depend on the facts and circumstances whether or not the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[12] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[13] **CA: *Id.***
[14] **CA: *Id.***
[15] **CA: It would depend on the facts and circumstances whether or not the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[16] CO: No- must met nexus threshold.
[17] CO: *Id.*
[18] CO: If meets nexus dollar or percentage threshold.
[19] CO: Must meet nexus threshold.
[20] **CT: To the extent that answers relate to economic nexus, brightline test for receipts must be met. See IP 2010(29.1)**
[21] **CT: *Id.***
[22] **CT: *Id.***
[23] **DC: Answers would change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[24] DC: Answer is yes if provide services or warranty with sales.
[25] DC: Yes, if they have a presence or affiliate address.
[26] DC: *Id.*
[27] **FL: [Whether or not answers would change if the corporation was otherwise protected under Pub. L. NO. 86-272] depends on the facts and circumstances.**

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State[1]	Doing business[2]	Sales via 800 number[3]	In-state phone listing[4]	Local phone no.[5]	Maintains bank account[6]
Hawaii[28]	**Yes**	No	Yes[29]	Yes[30]	No
Idaho	**Yes**	No	No[31]	No	No
Illinois	**Yes**	No	Yes	Yes	No
Indiana	**Yes**	No	No	No	No
Iowa	**No**	Yes	No	No	No
Kansas	**Yes**	No	No	No	No
Kentucky	**Yes**	No	No	No	No
Louisiana	**No Response**	No	No	No	Yes
Maine	**Yes**	No	Yes	Yes	No
Maryland	**Yes**	Yes[32]	No	No	No
Massachusetts[33]	**Yes**	No Response	No Response	No Response	No
Michigan	**No Response**[34]	No[35]	No[36]	No[37]	No
Minnesota	**Depends**[38]	Yes	Yes	Yes	No
Mississippi	**No Response**	No	No	No	No
Missouri	**Yes**	Yes	Yes	Yes	No
Montana	**No**	No	No[39]	No	No
Nebraska	**Yes**	No[40]	No	No	Yes[41]
New Hampshire	**Yes**	Depends	Yes	Depends	Yes
New Jersey	**Yes**	No	No	No	No
New Mexico	**Yes**	Yes	Yes	Yes	No
New York City	**Yes**	No	No	No	No
North Carolina	**Yes**	No	No	No	No
North Dakota	**Yes**	No	No	No	No
Oklahoma	**Depends**	No	No	No	No

[28] HI: *See* Tax Information Release No. 95-3, ''Immunity from Net Income Taxation Under Public Law 86-272.''
[29] HI: Unless protected under Pub. L. No. 86-272.
[30] HI: *Id.*
[31] ID: May exceed unprotected activities if a local contact address in the state is included.
[32] MD: Depends on method of advertising.
[33] MA: *See* TIR Nos. 03-19 and 98-13, D.D. Corp. No. 96-2, Letter Ruling 05-08, and 830 CMR 63.39.1.
[34] **MI: Yes, if the corporation's activities meets at least one of the provisions of MCL206.621(1). Answer would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion 1.**
[35] MI: Active solicitation, which these activities may demonstrate, plus Michigan gross receipts of $350,000 will constitute nexus with Michigan.
[36] MI: *Id.*
[37] MI: *Id.*
[38] **MN: Depends on the meaning of "doing business." Yes if the business obtains or regularly solicits business within the state.**
[39] MT: So long as calls are not made to facilities described in paragraphs IV.A.16c and IV.A.16g of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Pub. L. No. 86-272.
[40] NE: If the corporation utilizes a telemarketing service located in Nebraska to solicit sales through an 800 number, then nexus is established.
[41] NE: Assuming that is not de minimis.

State[1]	Doing business[2]	Sales via 800 number[3]	In-state phone listing[4]	Local phone no.[5]	Maintains bank account[6]
Oregon	**Yes**	Yes	Yes	Yes	No
Pennsylvania	**Yes**	No	No	No	No
Rhode Island	**Yes**	Yes	No	No	No
South Carolina[42]	**No Response**	No	No	No	No
Tennessee	**Yes**[43]	No	Yes[44]	Yes[45]	No
Texas	**Yes**	No	No	No	No
Utah	Depends[46]	No	Yes	No	No
Vermont	**Yes**	No	No	No	No
Virginia	**Yes**	No[47]	No	No	No
West Virginia	**Yes**	No	No	No	Yes
Wisconsin[48]	**Yes**	No	No	No	No

[42] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.

[43] **TN: The minimum $100 franchise tax would be due.**

[44] TN: Answers may depend on the specific facts and circumstances involved, but generally a business listed in a Tennessee telephone directory makes itself available to the general public to conduct Tennessee business transactions of a taxable nature.

[45] TN: *Id.*

[46] **UT: This question is circular in certain contexts. Doing business does not necessarily equate to having nexus. For example, a corporation may be doing business in this state but exempt from taxation under Public Law 86-272; Further, the Utah definition of doing business includes the right to do business through qualification to do business in the state. However, mere qualification to do business by itself, does not create nexus in the state. Finally, a corporation may be conducting a de minimis amount of business in the state and not have nexus Pursuant to Utah Administrative Rule R865-6F-6.**

[47] VA: *See* P.D. 93-6.

[48] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**

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Nexus-Creating Activities: General Activities (Part 2 of 2)

State[1]	Provides 6 or fewer days of consulting[2]	Provides warranty services[3]	Sends catalogs[4]	De minimis activity/standard[5]	Conform to MTC Bull. 95-1[6]	Apply "transacting business" definition[7]
Alaska[8]	No Response[9]	Yes	No	No	No	**No**
Arizona	Yes	Yes	No	Yes[10]	Yes	**Yes**
Arkansas	Yes	Yes	No	Yes[11]	Yes	**No**
California	**Yes**[12]	**Yes**[13]	No[14]	No	No[15]	**No**
Colorado	Yes[16]	Yes[17]	Yes[18]	Yes[19]	Yes	**No**
Connecticut	No Response[20]	No Response[21]	No Response[22]	No Response[23]	No Response[24]	**No**[25]
Delaware	Yes	Yes	No	No	No	**No**
District of Columbia[26]	Yes	Yes	No[27]	No	Yes	**Yes**
Florida[28]	Yes	Yes	No	No	Yes	**No**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation provides six or fewer days of consulting services in your state during the year.

[3] The corporation, through a third party, provides warranty services on goods sold in your state.

[4] The corporation sends catalogs to residents in your state.

[5] Does your state have a de minimis standard? If yes, please explain, including whether the standard is based on the number of activities performed or the number of days that an activity is performed in your state.

[6] Does your state conform to MTC Bulletin 95-1 "Computer Company's Provision of In-State Repair Services Creates Nexus"?

[7] Does your state apply the definition of "transacting business" or "doing business" used to determine whether an out-of-state company must register with the Secretary of State, or other similar agency, when determining whether the out-of-state corporation has nexus with your state?

[8] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[9] AK: Alaska has no position at this time.

[10] AZ: *See* CTR 99-5.

[11] AR: Arkansas Reg. 6.26-51-702 not based on a specific number of activities. Arkansas Reg. 8.26-51-702 (14) bases nexus on whether a sample or display room is maintained for more than 14 days at any one location within Arkansas.

[12] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[13] **CA: *Id.***

[14] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[15] CA: While Multistate Tax Commission Bulletin 95-1 (Bulletin) has not been adopted as a regulation or notice, staff believes the legal position contained in the Bulletin is correct. Staff has used the same legal analysis as that contained in the Bulletin concerning nexus.

[16] CO: Yes, if meets nexus dollar or percentage threshold.

[17] CO: *Id.*

[18] CO: Yes, if meets nexus dollar or percentage threshold. Catalogs treated as corporation's property in Colorado.

[19] CO: Yes, if meets nexus dollar or percentage threshold. Colorado conforms to "Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Pub. Law 86-272."

[20] **CT: To the extent that answers relate to economic nexus, brightline test for receipts must be met.**

[21] **CT: *Id.***

[22] **CT: *Id.***

[23] **CT: *Id.***

[24] **CT: *Id.***

[25] **CT: *See* Conn. Gen. Stat. § 12-213(a)(20).**

[26] **DC: Answers would change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[27] DC: Yes, if they maintain storage of catalogs.

[28] **FL: [Whether or not answers would change if the corporation was otherwise protected under Pub. L. NO. 86-272] depends on the facts and circumstances.**

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State[1]	Provides 6 or fewer days of consulting[2]	Provides warranty services[3]	Sends catalogs[4]	De minimis activity/standard[5]	Conform to MTC Bull. 95-1[6]	Apply "transacting business" definition[7]
Georgia	Yes	Yes	No	No[29]	No	**No**
Hawaii[30]	Yes	Yes	No	Depends	Yes	**Yes**
Idaho	Yes	Yes	Depends	No[31]	Yes	**No**
Illinois	Yes	Yes[32]	No	Yes[33]	No	**Yes**[34]
Indiana	Yes[35]	No	No	No[36]	Yes	**No**
Iowa	Yes	Yes	No	No[37]	Yes	**No**
Kansas	Yes	Yes	No	No	No	**No**
Kentucky	Yes	Yes[38]	No	Yes[39]	Yes	**Yes**[40]
Louisiana	Yes	Yes	No	No[41]	No	**Yes**
Maine	Yes	Yes	No	Yes[42]	Yes	**No**
Maryland	Yes	Yes	No	No	Yes	**Yes**
Massachusetts[43]	No Response	Depends	No	**No**	Yes	**Yes**
Michigan	Yes[44]	Yes[45]	No[46]	Yes[47]	Yes	**No**
Minnesota	Yes	Yes	Yes	No[48]	Yes	**No**
Mississippi	Yes	Yes	No[49]	No	Yes	**No Response**
Missouri	Yes	Yes	No	No	Yes	**No**
Montana	Yes	Yes	No	Yes[50]	Yes	**No**
Nebraska	Yes	Yes	Yes	Yes[51]	Yes	**No**
New Hampshire	Yes	Depends	Depends	No	Yes	**No**
New Jersey	Yes	**Yes**	No	No	Yes	**Yes**
New Mexico	Yes	Yes	Yes	Yes[52]	Yes	**Yes**

[29] GA: Georgia's de minimis standard has not been defined.
[30] HI: *See* Tax Information Release No. 95-3, "Immunity from Net Income Taxation Under Public Law 86-272."
[31] ID: Except for trucking companies, *see* MTC Trucking Regulation.
[32] IL: If work is performed by an agent of the taxpayer.
[33] **IL: Illinois has no specific definition of de minimis.**
[34] **IL: Depends on the facts.**
[35] **IN: The answer would change if the corporation was otherwise protected under Pub. L. No. 86–272.**
[36] IN: *Id.*
[37] IA: The de minimis standard is based on the totality of all types of nonsolicitation activities, and is determined on a case-by-case basis.
[38] KY: Paragraph (b) of subsection (4) of Section 4 of 103 KAR 16:240.
[39] KY: De minimis is determined on the facts and circumstances.
[40] **KY: KRS 14A.9-010 dictates when a foreign corp has to register with the Secretary of State and it doesn't necessarily mirror DOR statutes and regulations.**
[41] LA: La. R.S. 47:287.95(C)(2)(a) contains a de minimis rule specifically for trucking companies.
[42] ME: *See* Rule 808.04(C).
[43] MA: *See* TIR Nos. 03-19 and 98-13, D.D. Corp. No. 96-2, Letter Ruling 05-08, and 830 CMR 63.39.1.
[44] **MI: If physically present in Michigan 2 or more days. Answer would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion I.**
[45] MI: *Id.*
[46] MI: Active solicitation, which this activity demonstrates, plus Michigan gross receipts of $350,000 will constitute nexus with Michigan.
[47] MI: Physical presence of 1 day or less and active solicitation of sales in Michigan with Michigan gross receipts under $350,000.
[48] MN: Minnesota has enacted amounts that create presumptions of nexus, but has not enacted de minimis standards.
[49] MS: If the catalogs are sent directly to customers in the state, nexus is not created. If an in-state corporation acts as an agent for the out-of-state seller, nexus is created.
[50] MT: *See* Administrative Rules of Montana 42.26.504 and 42.26.706.
[51] NE: U.S. Supreme Court case law **and *see* Nebraska revenue Ruling 24-08-1**.
[52] NM: For only trucking entities, neither owns nor rents property, nor makes any pick-ups or deliveries, nor travels more than 25,000 miles (New Mexico miles must be < than 3% total miles), nor makes more than 12 trips into New Mexico.

State[1]	Provides 6 or fewer days of consulting[2]	Provides warranty services[3]	Sends catalogs[4]	De minimis activity/standard[5]	Conform to MTC Bull. 95-1[6]	Apply "transacting business" definition[7]
New York City	Yes	No	No	Yes[53]	**No**[54]	**Not Applicable**
North Carolina	Yes	Yes	No	No	Yes[55]	**No**
North Dakota	Yes	Yes	No	No	Yes	**No**
Oklahoma	No	No	No	No	No	**No Response**[56]
Oregon	Yes	Yes	Yes	No	Yes	**No**
Pennsylvania	Yes	Yes	No	No	Yes	**No**
Rhode Island	Yes	No	No	Yes[57]	No[58]	**No Response**[59]
South Carolina[60]	Yes[61]	No Response	No Response	Yes[62]	No Response[63]	**No Response**
Tennessee	Yes[64]	Yes[65]	Yes	Yes[66]	No[67]	**Not Applicable**
Texas	Yes	Yes	No	No	Yes	**No**
Utah	Yes	Yes	No	Yes[68]	Yes	**No**
Vermont	No[69]	No[70]	No	No	Yes	**No**
Virginia	Yes[71]	No[72]	No[73]	Yes[74]	No	**No**[75]
West Virginia	Yes	Yes	No	Yes[76]	Yes	**Yes**
Wisconsin[77]	Yes	Yes[78]	No	No	Yes	**No**[79]

[53] NYC: *See* 19 RCNY Sec. 11-04(c)(vi) regarding trade shows.
[54] NYC: New York City is not a party to the MTC's nexus bulletin 95-1 and therefore has no position with respect to that document.
[55] NC: MTC Bulletin is consistent with North Carolina's historical position.
[56] **OK: Check with Secretary of State.**
[57] RI: On a case-by-case determination.
[58] RI: Rhode Island Regs. 95-02.
[59] **RI: Unable to answer as this is not administered by the Division of Taxation.**
[60] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[61] SC: Unless de minimis.
[62] SC: South Carolina has a de minimis standard and follows the principles defined by the courts. *See Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 112 S. Ct. 2447 (1992), S.C. Revenue Ruling No. 97-15, S.C. Private Letter Ruling No. 94-8, and S.C. Code §12-6-4920.
[63] SC: South Carolina has not adopted MTC's Nexus Bulletin.
[64] TN: Answer given assumes that the corporation's employees come into Tennessee to perform the services rendered.
[65] TN: Answer assumes that an agency relationship exists between the corporation and the third party.
[66] TN: No specific number of days or specific activities.
[67] TN: An in-state repair service performed in Tennessee by an out-of-state entity would create nexus for that entity unless de minimis.
[68] UT: De minimis is defined as those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy whether or not in writing will not normally be considered trivial.
[69] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[70] VT: *Id.*
[71] VA: *See* P.D. 93-6, P.D. 09-172, and P.D. 13-172.
[72] VA: *See* P.D. 04-173, P.D. 08-184, and P.D. 09-44.
[73] VA: *See* P.D. 95-103.
[74] VA: Virginia's de minimis standard is based on the nature, continuity, and regularity of the activities conducted in the state. *See* 23 VAC 10-120-90G.
[75] **VA: All corporations having income from Virginia sources are subject to Virginia income tax regardless of whether or not they are required to obtain a certificate of authority. *See* 23 VAC 10-120-20, subsection B1 under the definition of "income and deductions from Virginia sources."**
[76] WV: W.V. Code 11-24-7b provides a de minimis standard of activity to establish nexus for financial organizations based on soliciting business with 20 or more persons in the State, or if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds $100,000.
[77] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**
[78] WI: Provided the corporation supervises, monitors, inspects, approves, or is ultimately responsible for the work performed by the third party.
[79] WI: No, we do not use these definitions to determine nexus. However, registering with the Department of Financial Institutions does create a filing requirement with us. Please refer to Wisconsin Tax Bulletin 34, page 12, at http://www.revenue.wi.gov/ise/wtb/034tr.pdf.

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Nexus-Creating Activities: Registration with State Agencies/Departments

State[1]	Registered with Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Registered for payroll[5]	Registered for workers' comp[6]	Registered as gov't vendor or contractor[7]
Alaska	No	No	No	No	No	No
Arizona	No	No	No	No	No	No
Arkansas	No	No	No	Yes	No	Yes
California	No	Depends	Depends	Depends	Depends	Depends
Colorado	No	No Response	Yes	Yes	Yes	No
Connecticut	Yes[8]	Depends[9]	Depends[10]	Depends[11]	Depends[12]	Depends[13]
Delaware[14]	No	No	No	No	No	No
District of Columbia	Yes	Yes	Yes	No	Yes	Yes[15]
Florida	No[16]	No	Yes	No	No	No
Georgia	No	No Response	No Response	No Response	No Response	No Response
Hawaii	No	No	No	No	No	No
Idaho[17]	Depends	Depends	Depends	Depends	Depends	Depends
Illinois	No	No	No	No	No	No
Indiana	No	No	No	No	No	No
Iowa[18]	No	No	No	No	No	No
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No	No	No	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes

[1] This chart is appearing for the first time in 2015. As a result, none of the responses are in bold.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
AL, MS and SC did not participate in this portion of the survey.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.

[3] The out-of-state corporation holds a general business license issued by your state.

[4] The out-of-state corporation holds a specialty license issued by your state, such as a specialty insurance license.

[5] The out-of-state corporation is registered with the state tax department for payroll purposes.

[6] The out-of-state corporation is registered with the state agency or department that regulates or administers workers' compensation.

[7] The out-of state corporation is registered with the state as a government vendor or contractor.

[8] CT: Conn. Agencies Regs. §12-214-1(b)

[9] CT: There may be nexus depending on the facts and circumstances.

[10] CT: *Id.*

[11] CT: *Id.*

[12] CT: *Id.*

[13] CT: *Id.*

[14] DE: A corporation can choose to register with the Delaware Dept. of State for organizational purposes, but must register with the Delaware Division of Revenue and obtain a business license if they are engaged in business in the State of DE. The corporation should contact all other State agencies to determine registration requirements.

[15] DC: Yes, if performing activity in DC.

[16] FL: 12 C-1.022(2)(c)

[17] ID: Depends on the facts..

[18] IA: The mere fact that a corporation is registered with the Secretary of State or other state agency, or has a license, does not, in and of itself, create nexus.

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State[1]	Registered with Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Registered for payroll[5]	Registered for workers' comp[6]	Registered as gov't vendor or contractor[7]
Maine	No	No	No	No	No	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts[19]	Yes	Depends	Depends	Depends	Depends	Depends
Michigan	No	No Response[20]	No	Yes[21]	Yes[22]	No
Minnesota	No	No	No	No	No	No
Mississippi	No Response	No Response	No Response	No Response	No Response	No Response
Missouri	No	No	No	No	No	No
Montana	No	No	No	No	No	No
Nebraska	No Response[23]	No Response[24]	No Response[25]	No Response[26]	No Response[27]	No Response[28]
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	No	No	No	No	No	No
New York City	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	No	No	No	No	No	No
North Dakota	No	No	No	No	No	No
Oklahoma	No Response[29]	No Response	No Response[30]	No Response[31]	No Response[32]	No Response
Oregon	No	No	No	No	No	No
Pennsylvania	Yes	Yes	Yes	No	Yes	Yes
Rhode Island[33]	No	No	No	No	No	No
Tennessee[34]	No	No	No	No	No	No
Texas	No	No	No	No	No	No
Utah	No[35]	No	No	No	No	No
Vermont	Yes	Yes	Yes	Yes	Yes	Yes

[19] MA: Pursuant to G.L. c. 63, s. 39 a corporation has nexus in Massachusetts if it is qualified to do business in this state or actually doing business in this state.
[20] MI: Refer to RAB 2014-5.
[21] MI: Answer assumes corporation has employees present in Michigan.
[22] MI: *Id.*
[23] NE: Not enough facts to make a nexus determination.
[24] NE: *Id.*
[25] NE: *Id.*
[26] NE: *Id.*
[27] NE: *Id.*
[28] NE: *Id.*
[29] OK: Check with Secretary of State.
[30] OK: Check with Insurance Commission.
[31] OK: Oklahoma Tax Commission registers WH accounts.
[32] OK: Check with Workers' Compensation Commission.
[33] RI: Registration for these activities alone do not create nexus, however any of the activities related to these registrations would create the nexus.
[34] TN: Registration alone does not satisfy nexus. However, the acts the company engages in in order for it to think that it should register may satisfy nexus.
[35] UT: Mere qualification to do business does not create nexus. However, such a corporation would be required at the least to file a Utah corporation franchise tax return and pay the minimum tax.

State[1]	Registered with Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Registered for payroll[5]	Registered for workers' comp[6]	Registered as gov't vendor or contractor[7]
Virginia	Yes[36]	Not Applicable[37]	Yes[38]	Yes[39]	Not Applicable[40]	Not Applicable[41]
West Virginia	No	No	No	No	No	No
Wisconsin	No[42]	No	No	No	No	No

[36] VA: Pursuant to 23 VAC 10-120-310, every corporation organized under the laws of Virginia and every foreign corporation registered with the State Corporation Commission for the privilege of doing business in Virginia shall file a return with the Department of Taxation under this section. A return must be filed even if the corporation has no income from Virginia sources and no Virginia income tax is due.

[37] VA: Virginia does not have a statewide general business license.

[38] VA: Insurance companies are subject to the Virginia Insurance Premiums License Tax, which is an annual license tax based on direct gross premium income, in lieu of the Virginia Corporate Income Tax.

[39] VA: Pursuant to 23 VAC 10-120-190, the total wages reported to Virginia for unemployment company purposes are generally presumed to be paid in Virginia for purposes of determining the company's Virginia payroll factor. *See* P.D. 12-151 and P.D. 06-76.

[40] VA: The Department has not published guidance on these issues.

[41] VA: *Id.*

[42] WI: Registration with the Department of Financial Institutions (formerly the Secretary of State) creates a filing requirement with Wisconsin even if no business is transacted in our state. Merely registering to transact business does not, however, create nexus.

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Nexus-Creating Activities: Ownership/Leasing of In-State Property (Part 1 of 2)

State[1]	Owns raw land[2]	Stores inventory[3]	Ships in-process inventory[4]	Consigns goods[5]	Owns display racks[6]	Owns tooling[7]	Leases real estate[8]	Leases mobile property[9]
Alaska[10]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California[11]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colorado[12]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut	Yes	Yes	No Response[13]	Yes	No Response[14]	Yes	Yes	No Response[15]
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	**No**	**No**	**Yes**	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes[16]	Yes	Yes	Yes[17]	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Illinois[18]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation owns raw land.

[3] The corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year.

[4] The corporation ships in-process inventory to an unrelated party in your state solely for processing.

[5] The corporation consigns goods to vendors, independent contractors, or other parties.

[6] The corporation owns display racks.

[7] The corporation owns tooling, molds, dies, etc., located at a manufacturing facility in your state.

[8] The corporation leases (as lessor) real estate in the state to an unrelated third party.

[9] The corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in your state five or fewer times per year.

[10] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[11] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**

[12] CO: If meets nexus dollar or percentage threshold.

[13] CT: DRS has no published position.

[14] CT: *Id.*

[15] CT: *Id.*

[16] HI: If a foreign corporation is a manufacturer of inventory or other goods, the answer is no. *See* Haw. Rev. Stat. §235-6.

[17] HI: Racks are not as described in paragraphs IV.B.4 and IV.B.10 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Pub. L. No. 86-272.

[18] **IL: All answers assume property is not used solely in activities protected under Pub. L. 86-272.**

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State[1]	Owns raw land[2]	Stores inventory[3]	Ships in-process inventory[4]	Consigns goods[5]	Owns display racks[6]	Owns tooling[7]	Leases real estate[8]	Leases mobile property[9]
Indiana	Yes[19]	Yes[20]	No	Yes[21]	Yes[22]	Yes[23]	Yes[24]	Yes[25]
Iowa	Yes	Yes[26]	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes[27]
Maryland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes	No Response	Yes	Yes	Depends
Michigan[28]	Yes[29]	Yes[30]	Yes[31]	Yes[32]	Yes[33]	Yes[34]	Yes[35]	Yes[36]
Minnesota	Yes	No	Yes[37]	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes[38]
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes[39]	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[19] **IN: This answer would change if the company was protected by P.L. 86–272.**
[20] **IN: *Id.***
[21] **IN: *Id.***
[22] **IN: *Id.***
[23] **IN: *Id.***
[24] **IN: *Id.***
[25] **IN: *Id.***
[26] IA: Owning property at a distribution facility may not create nexus due to Iowa Code section 422.34A(8).
[27] ME: Only if there is intrastate activity. Could be de minimis.
[28] **MI: "Yes" answers would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion I.**
[29] MI: For all questions in this survey that do not reference a number of days or times, *e.g.*, ''for fewer than 30 days per year'' it is assumed that there is a physical presence in Michigan for 2 or more days.
[30] MI: If the property is in Michigan 2 or more days.
[31] MI: For all questions in this survey that do not reference a number of days or times, *e.g.*, ''for fewer than 30 days per year'' it is assumed that there is a physical presence in Michigan for 2 or more days.
[32] MI: *Id.*
[33] MI: For all questions in this survey that do not reference a number of days or times, *e.g.*, ''for fewer than 30 days per year'' it is assumed that there is a physical presence in Michigan for 2 or more days. Unless without charge or other consideration.
[34] MI: For all questions in this survey that do not reference a number of days or times, *e.g.*, ''for fewer than 30 days per year'' it is assumed that there is a physical presence in Michigan for 2 or more days.
[35] MI: *Id.*
[36] MI: If the property is in Michigan 2 or more days.
[37] MN: Exemption provided for paper stock provided to in-state printer.
[38] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[39] ND: Assuming rack is still owned.

State[1]	Owns raw land[2]	Stores inventory[3]	Ships in-process inventory[4]	Consigns goods[5]	Owns display racks[6]	Owns tooling[7]	Leases real estate[8]	Leases mobile property[9]
Oregon	Yes	No	Yes	Yes	No	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes[40]	Yes	Yes	Yes[41]	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina[42]	Yes	Yes[43]	Yes[44]	Yes[45]	Yes[46]	Yes	Yes	Yes[47]
Tennessee	**Yes**	Yes	No	Yes	No	No[48]	Yes	Yes[49]
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes[50]	Yes	Yes	Yes	Yes	Yes[51]
Vermont[52]	Yes	No Response	No Response	No Response	No Response	No Response	Yes	No Response
Virginia	Yes	Yes[53]	No[54]	Yes	Yes	Yes[55]	Yes	Yes
West Virginia	Yes	No	Yes	Yes	Yes	Yes[56]	Yes	Yes
Wisconsin[57]	Yes	Yes	No	Yes	No	No	Yes	Yes

[40] PA: Statutory exception for printing and metallurgy.
[41] PA: Statutory exception for metallurgy.
[42] SC: *See* SC Rev. Rul. No. 03-4 for official responses of the department.
[43] SC: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under S.C. Code Section 12-6-555.
[44] SC: Except for processing in connection with a printing contract under S.C. Code Section 12-6-555.
[45] SC: Except for independent contractors under Public Law 86-272.
[46] SC: Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity under S.C. Revenue Ruling No. 97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines.
[47] SC: Assuming it is not de minimis. *See* S.C. Private Letter Ruling No. 94-8 where it was concluded that the leasing of airplanes landing in South Carolina three times per year was de minimis.
[48] TN: Answer given assumes no rent is paid by the manufacturer for use of the tooling, molds, dies, etc. *See* Tenn. Code Ann. §67-4-2004(14)(E)(iii).
[49] TN: Answer given assumes that the property is leased in Tennessee.
[50] UT: Except at a printer's facility.
[51] **UT: Unless activity is de minimis.**
[52] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[53] VA: Temporary storage, however, may be de minimis. *See* 23 VAC 10-120-90G.
[54] VA: *See* P.D. 86-4.
[55] VA: Except for printing plates. *See* Va. Code §58.1-401(7).
[56] WV: A recent review of TAA 98-002 has resulted in a change of response to this question for West Virginia. A Taxpayer can have sufficient nexus to render the Taxpayer subject to Corporation Net Income Tax, yet still not be subjected to the Tax if the Taxpayer is not ''engaging in business . . . or deriving income from . . . sources in this State.'' W. Va. Code §11-24-4.
[57] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**

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Nexus-Creating Activities: Ownership/Leasing of In-State Property (Part 2 of 2)

State[1]	Co. cars for sales reps[2]	Co. cars for employees[3]	Owns/leases equipment[4]	Holds title until contract price is paid[5]	Files security interest[6]	Owns place for staff[7]
Alaska[8]	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	Yes	Yes	Yes	No	Yes[9]
Arkansas	No	Yes	Yes	Yes	Yes	Yes[10]
California	Yes[11]	Yes[12]	Yes[13]	Yes[14]	Yes[15]	Yes[16]
Colorado	Yes[17]	Yes[18]	Yes[19]	No	No	Yes[20]
Connecticut	No Response[21]	Yes	Yes	No Response[22]	No Response[23]	Yes
Delaware	No	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	No[24]	Yes
Florida	No	Yes	Yes	Yes	Yes	Yes
Georgia	No	Yes	Yes	Yes	Yes	Yes
Hawaii	No[25]	No[26]	Yes[27]	Yes[28]	No	Yes[29]
Idaho	No[30]	Yes	Yes[31]	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation owns or leases automobiles provided to salespersons.
[3] The corporation owns or leases trucks or automobiles used by non-salespersons.
[4] The corporation owns or leases other machinery or equipment.
[5] The corporation holds title to property located in your state until the contract price has been paid.
[6] The corporation files a security interest on inventory sold until the contract price has been paid.
[7] The corporation owns or leases a place for company employees, directors, and officers.
[8] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[9] AZ: Protected if used for activities geared to solicitation, such as training, etc.
[10] AR: Answer based on the assumption that ''place'' is an office location.
[11] **CA: Whether or not the answer would change if the corporation was otherwise protected under Pub. L. 86-272 depends on the facts and circumstances; Providing automobiles to sales personnel for their use in conducting protected activities is a protected activity, *see* FTB Publication 1050.**
[12] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**
[13] **CA: *Id.***
[14] **CA: *Id.***
[15] **CA: *Id.***
[16] **CA: *Id.***
[17] CO: If meets nexus dollar or percentage threshold.
[18] CO: *Id.*
[19] CO: *Id.*
[20] CO: *Id.*
[21] CT: DRS has no published position.
[22] CT: *Id.*
[23] CT: *Id.*
[24] DC: Yes, if on consignment and, Yes, if repossessed under security interest.
[25] HI: If solely limited to conducting protected activities.
[26] HI: *Id.*
[27] HI: Unless protected under Pub. L. No. 86-272.
[28] HI: Tangible personal property is accepted by corporation's customers in Hawaii.
[29] HI: Tax Information Release No. 95-3, ''Immunity from Net Income Taxation Under Public Law 86-272.''
[30] ID: If solely limited to the conducting of protected activities.
[31] ID: Unless used solely in carrying on protected activities in an ''in-home'' office.

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State[1]	Co. cars for sales reps[2]	Co. cars for employees[3]	Owns/leases equipment[4]	Holds title until contract price is paid[5]	Files security interest[6]	Owns place for staff[7]
Illinois[32]	**Yes**	Yes	**Yes**	Yes	Yes	Yes
Indiana	Yes[33]	Yes[34]	Yes[35]	Yes[36]	No	Yes[37]
Iowa	No	Yes	Yes	Yes	Yes	Yes
Kansas	No	Yes	Yes	Yes	Yes	Yes
Kentucky	No	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	No	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	**Yes**	**Yes**	Yes	Yes	**Yes**	Yes
Michigan[38]	Yes	Yes	Yes	Yes	No	Yes
Minnesota	Yes[39]	Yes	Yes	Yes	Yes	Yes
Mississippi	No	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes
Montana	No	Yes	Yes	Yes	Yes	Yes
Nebraska	No	Yes	Yes	Yes	Yes	Yes
New Hampshire	Depends	Yes	Yes	Yes	Yes	Yes
New Jersey	No	Yes	Yes	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York City	No Response	Yes	Yes	Yes	**Yes**	Yes
North Carolina	No	Yes	Yes	No	No	Yes
North Dakota	No	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	No	Yes
Oregon	No	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Depends	Yes	Yes	Yes	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina[40]	No	Yes	Yes	Yes[41]	No	No Response
Tennessee	No[42]	Yes	Yes	No	No	Yes[43]
Texas	Yes	Yes	Yes	Yes	No	Yes
Utah	No	Yes	Yes	Yes	Yes	Yes

[32] **IL: All answers assume property is not used solely in activities protected under Pub. L. 86-272.**
[33] **IN: These answers would change if the company was protected under P.L. 86–272.**
[34] **IN: *Id.***
[35] **IN: *Id.***
[36] **IN: *Id.***
[37] **IN: *Id.***
[38] MI: For all questions in this survey that do not reference a number of days or times, *e.g.*, ''for fewer than 30 days per year'' it is assumed that there is physical presence in Michigan 2 or more days. **"Yes" answers would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion I.**
[39] MN: Yes, except if the automobiles are used by salespersons solely in the solicitation of sales (Pub. L. No. 86-272 protection), then No.
[40] SC: *See* S.C. Rev. Rul. No. 03-4 for official response of the department.
[41] SC: Assuming ownership has not passed and that holding title does not serve merely as a security interest.
[42] TN: Answer assumes that the owner/lessee does not otherwise have tax nexus in Tennessee.
[43] TN: Answer assumes that the place owned or leased is not merely a place of abode, such as a motel room, where no business is conducted.

State[1]	Co. cars for sales reps[2]	Co. cars for employees[3]	Owns/leases equipment[4]	Holds title until contract price is paid[5]	Files security interest[6]	Owns place for staff[7]
Vermont[44]	No Response	No Response	No Response	No Response	No Response	Yes
Virginia	Yes[45]	Yes	Yes[46]	Yes	No	Yes[47]
West Virginia	No	No	Yes	Yes	Yes	Yes
Wisconsin[48]	No	Yes	Yes	Yes	Yes	Yes[49]

[44] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[45] VA: Unless the salespersons' activities are protected by Pub. L. No. 86-272.
[46] VA: *See* P.D. 97-180.
[47] VA: *See* P.D. 96-123 and P.D. 05-128 (providing that a taxpayer is not protected from taxation by a state pursuant to P. L. 86-272 if its employees and/or representatives maintain an office in the state).
[48] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**
[49] WI: Nexus is created by the maintenance of any business location in Wisconsin, including any kind of office.

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Nexus-Creating Activities: Ownership Interest of In-State Pass-Through Entities

State[1]	Investment LLC or partnership interest[2]	General partnership interest[3]	Limited partnership interest[4]	Mgmt LLC interest[5]	Non-mgmt LLC interest[6]	Disregarded entity interest[7]
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona[8]	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes[9]	Yes	Yes[10]	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut	No	Yes	Yes	Yes	Yes	Yes[11]
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	**No**[12]	**No**[13]	**No**[14]	**Yes**[15]	**Yes**[16]	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No[17]	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes[18]
Idaho	Yes[19]	Yes[20]	Yes[21]	Yes[22]	Yes[23]	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
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OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation owns an interest in an investment partnership or LLC that has operations in your state.

[3] The corporation owns a general interest in a partnership that is doing business in your state.

[4] The corporation owns a limited interest in a partnership that is doing business in your state.

[5] The corporation owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.

[6] The corporation owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.

[7] The corporation owns an interest in an entity located in your state that is disregarded for federal income tax purposes.

[8] AZ: These situations create nexus for reporting the partnership/LLC flow through. May or may not create nexus for the balance of the corporation's activities depending on if the partnership/LLC income is business or nonbusiness to the corporation.

[9] CA: Generally, but *see Appeals of Amman & Schmid Finanz* AG, 96-SBE-008.

[10] **CA: Generally, but *see* *Swart Enterprises, Inc. v. California franchise Tax Board* (2014) Fresno Superior Court, No. 13CECG02171, order on Cross-Motions for Summary Judgment.**

[11] CT: DRS has no published position.

[12] DC: Depends on facts and circumstances. The answer to this question is ''yes,'' if receiving salary allowance or actively engaged, or a general partner.

[13] DC: Depends on facts and circumstances.

[14] DC: Depends on facts and circumstances. The answer to this question is ''no,'' unless receiving a salary allowance.

[15] DC: Depends on facts and circumstances.

[16] DC: Depends on facts and circumstances.

[17] GA: Assuming the partnership and the corporation meets the requirements of the investment partnership exception in O.C.G.A. §48-7-24(c).

[18] HI: Based on the assumption the entity is a single member LLC.

[19] ID: A corporation is considered transacting business within Idaho if it is a partner in a partnership that is transacting business within Idaho. Idaho Income Tax Administrative Rule 620. IDAPA 35.01.01.620.

[20] ID: *Id.*

[21] ID: *Id.*

[22] ID: *Id.*

[23] ID: *Id.*

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State[1]	Investment LLC or partnership interest[2]	General partnership interest[3]	Limited partnership interest[4]	Mgmt LLC interest[5]	Non-mgmt LLC interest[6]	Disregarded entity interest[7]
Illinois	No Response[24]	Yes	Yes	Yes[25]	Yes[26]	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No	Yes	No	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Depends	Yes	Depends	Depends
Michigan	Yes	Yes	Yes	Yes	Yes	Yes[27]
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	No	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire[28]	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	No[29]	Yes	Yes[30]	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes[31]	Yes	Yes	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes[32]
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes[33]
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes

[24] IL: IITA Section 205(b) exempts an ''investment partnership'' from replacement income tax. Under IITA Section 305(c-5) the distributive share income of a nonresident partner of an investment partnership is generally deemed nonbusiness income and allocated to the partner's state of residence or commercial domicile.

[25] IL: Yes, if the LLC has nexus.

[26] IL: *Id.*

[27] MI: The disregarded entity will be treated as a branch or division of its own; therefore, the nexus-creating activities of the disregarded entity will be considered to be those of the corporation.

[28] NH: New Hampshire does not recognize pass-through entities. All business organizations, including entities disregarded for federal taxation, are taxed pursuant to RSA Chapter 77-A and RSA Chapter 77-E.

[29] NJ: There could be nexus depending on whether the corporation meets the nexus standards of N.J.A.C. 18:7-7.6.

[30] **NJ: Assumes the interest is not a passive investment.**

[31] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.

[32] ND: Assuming the LLC has nexus in the state.

[33] OR: Assume ''located in your state'' means ''doing business in your state,'' as stated in questions 1-5.

State[1]	Investment LLC or partnership interest[2]	General partnership interest[3]	Limited partnership interest[4]	Mgmt LLC interest[5]	Non-mgmt LLC interest[6]	Disregarded entity interest[7]
South Carolina[34]	Yes[35]	Yes	Yes	Yes[36]	Yes[37]	No Response
Tennessee[38]	No[39]	Yes[40]	No[41]	No[42]	No[43]	No[44]
Texas	Yes[45]	Yes	No	Yes	No	Yes[46]
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont	No[47]	No[48]	No[49]	No[50]	No[51]	No
Virginia	Yes[52]	Yes	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes[53]

[34] SC: *See* SC Rev. Rul. No. 03-4 for official responses of the department.
[35] SC: Although the income may not be taxed in South Carolina. *See* S.C. Commission Decision No. 92-58 and S.C. Private Letter Ruling No. 95-2.
[36] SC: Assuming the LLC is taxed as a partnership or S corporation.
[37] SC: *Id.*
[38] TN: Limited partnerships and LLCs doing business in Tennessee are subject to franchise, excise tax just the same as corporations doing business in Tennessee. The excise tax is based on net earnings.
[39] TN: Answer given assumes that the owner of the interest does not otherwise have tax nexus in Tennessee. The investment partnership or LLC is taxable in Tennessee. If the interest is in a general partnership or equivalent, then Tennessee nexus for the interest holder would result.
[40] TN: Assumes that the partnership is a general partnership.
[41] TN: The limited partnership would be taxed in Tennessee.
[42] TN: The LLC would be taxed in Tennessee.
[43] TN: *Id.*
[44] TN: Answer assumes that the entity that is disregarded for federal tax purposes is filing Tennessee franchise, excise tax returns and paying the taxes due. Otherwise, the entity with ownership in the disregarded entity would have Tennessee nexus.
[45] TX: Owning a general interest in a partnership that has operations in Texas creates nexus for Texas franchise tax. However, merely owning an interest in a limited liability company (LLC) that is doing business in Texas is not sufficient to subject the owning entity to Texas franchise tax.
[46] TX: Yes, if involved in managing or acts on behalf of the disregarded entity.
[47] VT: Vermont requires partnerships, LLCs, and S-corps to withhold tax from out-of-state partners and shareholders.
[48] VT: *Id.*
[49] VT: *Id.*
[50] VT: *Id.*
[51] VT: *Id.*
[52] VA: An ownership interest in an investment partnership that has operations in Virginia would not create nexus. *See*P.D. 05-69 (providing that investment pass-through entities established solely to invest in intangible personal property, such as stocks and bonds, and that have no employees, and no real or tangible personal property are not considered to be carrying on a trade or business. Accordingly, the income from the intangible property held by an investment pass-through entity is not income from Virginia sources).
[53] WI: Provided the disregarded entity is doing business in Wisconsin.

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Nexus-Creating Activities: Licensing Intangibles (Part 1 of 2)

State[1]	Licenses trademarks to related entities[2]	Licenses trademarks to unrelated entities[3]	Sells/licenses franchises[4]	Licenses canned software[5]
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Depends	Depends	Depends	Yes
Colorado	Yes[6]	Yes[7]	Yes[8]	No[9]
Connecticut[10]	Yes	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes
District of Columbia	**Yes**[11]	**Yes**[12]	Yes	**Yes**
Florida	Yes	Yes	Yes	Yes
Georgia	No Response	No Response	No Response	No
Hawaii	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes
Illinois	**Yes**	**Yes**	Yes	**Yes**
Indiana	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes[13]
Kansas	Yes	Yes	Yes	No
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	No
Maryland	Yes	No	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation licenses trademarks or trade names to related entities with locations in your state.

[3] The corporation licenses trademarks or trade names to unrelated entities with locations in your state.

[4] The corporation sells/licenses franchises (such as fast-food franchises) to residents of your state.

[5] The corporation licenses canned software to consumers in your state.

[6] CO: If meets nexus dollar or percentage threshold.

[7] CO: *Id.*

[8] CO: *Id.*

[9] CO: Unless the licensing is less than a sale.

[10] CT: To the extent that these answers relate to economic nexus, bright-line test for receipts must be met. *See* IP 2010(29.1), Q&A on Economic Nexus.

[11] DC: Yes, since deriving income from D.C.

[12] DC: *Id.*

[13] IA: Economic nexus standard is applied. This is supported by the Iowa Supreme Court decision in KFC Corporation that was issued on Dec. 30, 2010.

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State[1]	Licenses trademarks to related entities[2]	Licenses trademarks to unrelated entities[3]	Sells/licenses franchises[4]	Licenses canned software[5]
Massachusetts	**Yes**	Depends[14]	Depends[14]	Depends[14]
Michigan	No	No	No	No
Minnesota	Yes	Yes	Yes	Yes
Mississippi	No	No	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	No[15]
New Mexico	Yes	Yes	Yes	Yes
New York City[16]	No	No	No	No Response
North Carolina	Yes	Yes	Yes	Yes[17]
North Dakota	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	No
Oregon	Yes	Yes	Yes	No[18]
Pennsylvania	No	No	No	No
Rhode Island	Yes	Yes	Yes	Yes
South Carolina[19]	Yes	Yes	Yes[20]	Yes
Tennessee[21]	No[22]	No	No[23]	No
Texas	No	No	Yes	No
Utah	Yes	Yes	Yes	Yes
Vermont	No	No	No	No
Virginia	No[24]	No	No[25]	No
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes

[14] **MA: *See* G.L. c. 63, s. 38(f)**
[14] **MA: *Id.***
[14] **MA: *Id.***
[15] NJ: *Quark, Inc. v. Director, Division of Taxation*, NJ Tax Court Docket No. 004692-2002 (Aug. 13, 2009); *AccuZIP, Inc. v. Director, Division of Taxation*, NJ Tax Court Docket No. 005744-2003 (Aug. 13, 2009).
[16] NYC: Entities dealing with affiliates in New York City may be subject to combination even if nexus is lacking if dealings result in distortion. *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[17] NC: Depends on the licensing agreement between the parties.
[18] OR: Canned software is considered by Oregon to be tangible personal property.
[19] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[20] SC: Assuming this does not mean the sale of an entire business, *e.g.*, not an outright sale of a restaurant and not a sale of all of franchisor's interest in the franchise.
[21] TN: Answers assume that the licensor corporation does not have substantial physical presence in Tennessee and has no representatives or agents in Tennessee.
[22] TN: The licensee in Tennessee, if affiliated with the licensor, must comply with the disclosure requirements of Tenn. Code Ann. §67-4-2006(d) by disclosing its intangible expenses on its franchise, excise tax return. If no such disclosure is made, or the transfer and license back transactions between the Tennessee licensee and the affiliated licensor have no practical economic effect other than the creation of tax benefits and tax avoidance is the clear motivating factor or the only business purpose of the licensor, then the licensee will not be permitted to deduct the intangible expenses paid to its affiliate(s).
[23] TN: However, the franchisor's relationship with the Tennessee resident would most likely involve other transactions that would create nexus for the franchisor.
[24] VA: *See* P.D. 10-279.
[25] VA: *See* P.D. 88-58 and P.D. 07-121. Note, however, that franchise agreements may include inspections, operating manuals, and other tangible property which could create nexus.

Nexus-Creating Activities: Licensing Intangibles (Part 2 of 2)

State[1]	Management fee from related party[2]	Management fee from unrelated party[3]	Licenses webinar to in-state consumer[4]	Sells/licenses patent to related entity[5]	Sells/licenses patent to unrelated entity[6]	Sells/rents customer lists to unrelated entities[7]
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	No	Yes	Yes	Yes
California	Depends	Depends	Yes	Yes	Yes	Depends
Colorado	Yes[8]	Yes[9]	No	Yes[10]	Yes[11]	Yes[12]
Connecticut[13]	No	Depends	Depends	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes[14]	Yes	**Yes**	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes[15]
Georgia	No Response	No Response	Depends[16]	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho[17]	Depends	Depends	Depends	Depends	Depends	Depends
Illinois	Yes	Yes	Yes	Yes	Yes	**Yes**
Indiana	No	No	Yes	Yes	Yes	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	No	No	No	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation receives a management fee from a related entity with a location in your state.
[3] The corporation receives a management fee from an unrelated entity with a location in your state.
[4] The corporation licenses to an in-state consumer permission to use its website for a webinar.
[5] The corporation sells/licenses the right to use a patent or copyright to related entities with locations in your state.
[6] The corporation sells/licenses the right to use a patent or copyright to unrelated entities with locations in your state.
[7] The corporation sells/rents customer lists to unrelated entities in your state.
[8] CO: If meets nexus dollar or percentage threshold.
[9] CO: *Id.*
[10] CO: If meets nexus dollar or percentage threshold and if the sale is sourced to the state.
[11] CO: *Id.*
[12] CO: If meets nexus dollar or percentage threshold.
[13] CT: To the extent that these answers relate to economic nexus, bright-line test for receipts must be met. *See* IP 2010(29.1), Q&A on Economic Nexus.
[14] **DC: Assuming no storage, etc.**
[15] FL: Rents - yes.
[16] GA: Depends, if server is in Georgia.
[17] ID: Depends on the extent of services provided in the state or use of assets in the state and other activity of the corporation.

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State[1]	Management fee from related party[2]	Management fee from unrelated party[3]	Licenses webinar to in-state consumer[4]	Sells/licenses patent to related entity[5]	Sells/licenses patent to unrelated entity[6]	Sells/rents customer lists to unrelated entities[7]
Kentucky	No[18]	No[19]	Yes[20]	Yes[21]	Yes[22]	Yes[23]
Louisiana	Yes	No[24]	No	Yes	Yes	Yes
Maine	No	No	No	Yes	Yes	No
Maryland	Yes	No	No	Yes	No	No
Massachusetts[25]	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	No	No	No[26]	No	No	No
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Yes	Yes	Yes	Depends
Nebraska	Yes	Yes	No Response	Yes	Yes	**Yes**[27]
New Hampshire	Yes	Yes	Depends	Yes	Yes	Depends
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No	No	No	No [28]	No	No
North Carolina	Yes[29]	Yes[30]	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	No	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	No	No	No	No	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	No Response	No Response	No Response	No Response	No Response	No Response

[18] KY: If the management services are performed in Kentucky in whole or in part, the answers would be yes.
[19] KY: *Id.*
[20] KY: When intangible property acquires a Kentucky business situs, income from the property falls under the definition of doing business.
[21] KY: *Id.*
[22] KY: *Id.*
[23] KY: *Id.*
[24] LA: No, only if the management company does not send any representatives to Louisiana to facilitate the management services.
[25] **MA: *See* G.L. c. 63, s. 38(f)**
[26] MI: The corporation may have nexus if the website constitutes prewritten software located on a server in Michigan.
[27] NE: In Nebraska, customer lists are TPP and as such, if sold, the activity may be protected by PL 86–272.
[28] NYC: Entities dealing with affiliates in New York City may be subject to combination even if nexus is lacking if dealings result in distortion. *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[29] NC: Depends on where the management services are provided.
[30] NC: *Id.*

State[1]	Management fee from related party[2]	Management fee from unrelated party[3]	Licenses webinar to in-state consumer[4]	Sells/licenses patent to related entity[5]	Sells/licenses patent to unrelated entity[6]	Sells/rents customer lists to unrelated entities[7]
Tennessee[31]	No	No	No	No	No	No
Texas	No Response[32]	No Response[33]	No	No[34]	No[35]	No
Utah	Depends[36]	Depends[37]	Yes	Yes	Yes	Yes
Vermont	No	No	No	No	No	No
Virginia	Yes[38]	Yes[39]	No[40]	No[41]	No[42]	No
West Virginia	Yes	Yes	Yes	Yes	Yes	No
Wisconsin	Depends	Depends	Yes	Yes	Yes	Depends

[31] TN: Answers assume that the licensor corporation does not have substantial physical presence in Tennessee and has no representatives or agents in Tennessee.
[32] TX: Yes, if the entity sends an employee or representative into Texas to perform any service per Franchise Tax Rule 3.586(c)(8).
[33] TX: *Id.*
[34] TX: A franchisor entering into specified contracts with franchisees located in Texas per Franchise Tax Rule 3.586(c)(7) has nexus in Texas.
[35] TX: *Id.*
[36] UT: Need more information to make a determination. For example, does the management arise from a service provided in Utah?
[37] UT: *Id.*
[38] VA: Assumes that management activities require visits to, or other activity at, the Virginia location.
[39] VA: *Id.*
[40] VA: *See* P.D. 00-53.
[41] VA: *See* P.D. 03-37.
[42] VA: *See* P.D. 93-157.

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Nexus-Creating Activities: Employee Activities — Sales Related (Part 1 of 2)

State[1]	Accept orders[2]	Negotiate prices[3]	Check credit[4]	Accept deposits[5]	Handle credit disputes[6]	Attend trade shows one to 14 days[7]
Alaska[8]	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	Yes	Yes	No
Arkansas	Yes	No	Yes	Yes	Yes	No
California	Yes[9]	Yes[10]	Yes[11]	Yes[12]	Yes[13]	No Response[14]
Colorado	Yes[15]	Yes[16]	Yes[17]	Yes[18]	Yes[19]	No[20]
Connecticut	Yes	No Response[21]	Yes	No Response[22]	Yes	No Response[23]
Delaware	Yes	No	Yes	Yes	Yes	Yes
District of Columbia	Yes	No	**Yes**	**Yes**	**Yes**	**No**[24]
Florida	Yes	Yes	Yes	Yes	Yes	Depends
Georgia	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	No
Idaho	Yes	Yes	Yes	Yes	Yes	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Employees, while in your state, accept and approve customer orders.
[3] Employees, while in your state, negotiate prices, subject to approval outside your state.
[4] Employees, while in your state, investigate credit worthiness of customers.
[5] Employees, while in your state, secure or accept deposits on sales.
[6] Employees, while in your state, handle credit disputes.
[7] Employees, while in your state, attend trade shows or maintain sample/display rooms for one to 14 days per year.
[8] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[9] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**
[10] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. 86-272.**
[11] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**
[12] **CA: *Id.***
[13] **CA: Whether or not the answer would change if the corporation was otherwise protected under Pub. L. 86-272 depends on the facts and circumstances.**
[14] CA: *See* doing business exclusion of RTC §23104, **FTB Publication 1050**.
[15] CO: If meets nexus dollar or percentage threshold.
[16] CO: *Id.*
[17] CO: *Id.*
[18] CO: *Id.*
[19] CO: *Id.*
[20] CO: Payroll of employee in state for trade show does not count towards nexus payroll calculation.
[21] CT: DRS has no published position.
[22] CT: *Id.*
[23] CT: *See* Conn. Gen. Stat. §12-213(a)(20)(C).
[24] DC: Having a trade show is Yes. Attending is No.

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State[1]	Accept orders[2]	Negotiate prices[3]	Check credit[4]	Accept deposits[5]	Handle credit disputes[6]	Attend trade shows one to 14 days[7]
Illinois[25]	Yes	Yes	Yes	Yes	Yes	No Response[26]
Indiana[27]	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	No	Yes	Yes	Yes	No
Kansas	Yes	Yes	Yes	Yes	Yes	No
Kentucky	Yes	Yes	Yes	Yes	Yes	No
Louisiana	Yes	No	Yes	Yes	Yes	No
Maine	Yes	Depends	Yes	Yes	Yes	No
Maryland	Yes	No	Yes	Yes	Yes	No
Massachusetts[28]	Depends	Depends	Depends	Depends	**Depends**	Depends
Michigan[29]	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes	Yes	No
Mississippi	Yes	Yes	Yes	Yes	Yes	No
Missouri	Yes	Yes	Yes	Yes	Yes	No
Montana	Yes	Yes	Yes	Yes	Yes	No
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes[30]
New Hampshire	Yes	Yes	Yes	Yes	Yes	Depends
New Jersey	Yes	No	Yes	Yes	Yes	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	No	Yes	Yes	Yes	No[31]
North Carolina	Yes	No	Yes	Yes	Yes	No
North Dakota	Yes	No	Yes	Yes	Yes	No
Oklahoma	Yes	Yes	Yes	Yes	Yes	No
Oregon	Yes	No	Yes	Yes	Yes	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	No	Yes	Yes	Yes	Yes
South Carolina[32]	Yes	No	Yes	Yes	Yes	No

[25] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**

[26] **IL: Insufficient information is provided to answer the question.**

[27] **IN: All answers would change if the corporation was otherwise protected under Pub. L. No. 86–272.**

[28] **MA: Pursuant to 830 CMR 63.39.1(5), "A foreign corporation.....nevertheless is not subject to Massachusetts taxation if Massachusetts is precluded from exercising its jurisdiction by P.L. 86272 (15 U.S.C. §§381 et seq.). P.L. 86272 currently precludes the imposition of the excise under M.G.L. c. 63, §39, upon a foreign corporation if the sole activity of the corporation in Massachusetts is the solicitation by the corporation's representatives (in the name of the corporation or in the name of a prospective customer) of orders for the sale of tangible personal property, provided that the orders are sent outside Massachusetts for approval or rejection, and provided that the orders are filled by shipment or delivery by common carrier or contract carrier from a point outside of Massachusetts."**

[29] MI: If physically present in Michigan 2 or more days. **"Yes" answers would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion I.**

[30] NE: Assuming sales were made.

[31] NYC: Recently we adopted rules [N.Y.C. Regs. §§11-03 and -04] allowing corporations to participate in one or more trade shows in the City for up to 14 days in the aggregate without being subject to tax if they do not otherwise have nexus to the City.

[32] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.

State[1]	Accept orders[2]	Negotiate prices[3]	Check credit[4]	Accept deposits[5]	Handle credit disputes[6]	Attend trade shows one to 14 days[7]
Tennessee	Yes	No[33]	Yes	Yes	Yes	No[34]
Texas	Yes	Yes	Yes	Yes	Yes	Yes[35]
Utah[36]	Yes	Yes	Yes	Yes	Yes	No
Vermont	Yes	No Response[37]	No Response[38]	No Response[39]	No Response[40]	No[41]
Virginia	Yes[42]	No	Yes[43]	Yes	Yes[44]	No
West Virginia	Yes	No	Yes	Yes	Yes	No
Wisconsin[45]	Yes	Yes	Yes	Yes	Yes	Yes[46]

[33] TN: Answer given assumes no other in-state activity beyond that allowed by Pub. L. No. 86-272.
[34] TN: *Id.*
[35] TX: There is an exception for certain trade show participants per TTC Section 171.084 that is limited to the solicitation of orders at certain types of trade shows and on an occasional basis as defined in the statute.
[36] **UT: The answers would not likely change if the corporation was otherwise protected under P L 86-272. In fact, the understood premise for these questions is that the specified activity is the only activity taken into consideration. That would suggest that the taxpayer is otherwise protected under 86-272 if it is engaged in selling tangible personal property.**
[37] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[38] VT: *Id.*
[39] VT: *Id.*
[40] VT: *Id.*
[41] VT: *Id.*
[42] VA: *See* P.D. 05-128 (providing that a taxpayer is not protected from taxation by a state pursuant to P. L. 86-272 if its employees and/or representatives accept sales orders).
[43] VA: *See* P.D. 08-139.
[44] VA: *See* P.D. 92-150.
[45] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**
[46] WI: Merely attending a trade show as a visitor would not create nexus.

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Nexus-Creating Activities: Employee Activities — Sales Related (Part 2 of 2)

State[1]	Maintain free samples[2]	Check customers' inventories[3]	Make one de minimis sale[4]	Make one non de minimis sale[5]	Solicit service sales one to 6 days[6]	In-home office[7]	Operate mobile stores[8]
Alaska[9]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	Yes	Yes	No	Yes
Arkansas	No	No	No	Yes	Yes	No	Yes
California	Yes[10]	Yes[11]	Yes[12]	Yes[13]	Yes[14]	Yes[15]	Yes[16]
Colorado	No	No	No	Yes[17]	Yes[18]	No[19]	Yes[20]
Connecticut	No Response[21]	No Response[22]	No Response[23]	No Response[24]	No Response[25]	Yes	Yes
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	No[26]	**No**	Yes	**No**	Yes	Yes
Florida	No[27]	No	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Employees, while in your state, maintain a two-month supply of free samples.

[3] Employees, while in your state, check customers' inventories for reorder.

[4] An employee, while in your state, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was de minimis).

[5] An employee, while in your state, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was not de minimis).

[6] Employees, while in your state, solicit sales of services in your state one to six days per year.

[7] Employees, while in your state, perform a sales-related function and are reimbursed for the costs of maintaining an in-home office.

[8] Employees, while in your state, operate mobile stores.

[9] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[10] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. 86-272.**

[11] **CA: *Id.***

[12] **CA: *Id.***

[13] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**

[14] **CA: *Id.***

[15] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. 86-272.**

[16] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. 86-272.**

[17] CO: If meets nexus dollar or percentage threshold.

[18] CO: *Id.*

[19] CO: Assuming salesperson only conducts protected activities.

[20] CO: If meets nexus dollar or percentage threshold.

[21] CT: DRS has no published position.

[22] CT: *Id.*

[23] CT: *Id.*

[24] CT: *Id.*

[25] CT: *Id.*

[26] DC: No, it does not create nexus.

[27] FL: If protected by Pub. L. No. 86-272.

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State[1]	Maintain free samples[2]	Check customers' inventories[3]	Make one de minimis sale[4]	Make one non de minimis sale[5]	Solicit service sales one to 6 days[6]	In-home office[7]	Operate mobile stores[8]
Georgia	No	Yes	No[28]	Yes	Yes	No[29]	Yes
Hawaii	No	No Response[30]	Yes	Yes	No	No Response[31]	Yes
Idaho	No[32]	No[33]	Yes	Yes	Yes	No[34]	Yes
Illinois[35]	Yes	No Response	No	Yes	Yes	No	Yes
Indiana[36]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	No	No	No	Yes	Yes	Yes	Yes
Kansas	No	No	Yes	Yes	Yes	No	Yes
Kentucky	No	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	No	No	No	Yes	Yes	No	Yes
Maine	No	No	No	Yes	Yes	No	Yes
Maryland	No	No	Yes	Yes	Yes	Yes	Yes
Massachusetts[37]	Depends	Depends	Depends	Depends	**Depends**	**Depends**	**Depends**
Michigan[38]	No[39]	No[40]	Yes[41]	Yes[42]	Yes[43]	Yes[44]	Yes[45]
Minnesota	No	No	No	Yes	Yes	No Response[46]	Yes
Mississippi	No	No	Yes	Yes	Yes	Yes	Yes
Missouri	No	No	Yes	Yes	Yes	Yes	Yes
Montana	No	No	Yes	Yes	Yes	No	Yes
Nebraska	No	Yes	No	Yes	Yes	No	Yes
New Hampshire	Depends	Depends	Yes	Yes	Yes	Yes	Yes

[28] GA: Assumes sale was de minimis in dollar amount.
[29] GA: Assuming no nonsolicitation activities are performed.
[30] HI: Activity as described in paragraph IV.B.9 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Pub. L. No. 86-272.
[31] HI: Costs are described in paragraph IV.B.13 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Pub. L. No. 86-272.
[32] ID: Assuming the free samples relate to soliciting.
[33] ID: Assuming this is done without compensation.
[34] ID: Depends on whether the office is publicly attributed to the company or to the salesperson as an employee or representative of the company and the activity from the office is limited to certain protected activities.
[35] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**
[36] **IN: All answers would change if the corporation was otherwise protected under Pub. L. No. 86.272.**
[37] **MA: Pursuant to 830 CMR 63.39.1(5), "A foreign corporation.....nevertheless is not subject to Massachusetts taxation if Massachusetts is precluded from exercising its jurisdiction by P.L. 86272 (15 U.S.C. §§381 et seq.). P.L. 86272 currently precludes the imposition of the excise under M.G.L. c. 63, §39, upon a foreign corporation if the sole activity of the corporation in Massachusetts is the solicitation by the corporation's representatives (in the name of the corporation or in the name of a prospective customer) of orders for the sale of tangible personal property, provided that the orders are sent outside Massachusetts for approval or rejection, and provided that the orders are filled by shipment or delivery by common carrier or contract carrier from a point outside of Massachusetts."**
[38] **MI: "Yes" answers would not change if corporation was otherwise protected under PL 86-272. *See* RAB 2014-5, Conclusion I.**
[39] MI: Only if samples are for display or distribution without charge.
[40] MI: Only if done without charge.
[41] MI: If physically present in Michigan 2 or more days.
[42] MI: *Id.*
[43] MI: *Id.*
[44] MI: *Id.*
[45] MI: *Id.*
[46] MN: Minnesota's statutes explicitly recognize Pub. L. No. 86-272.

State[1]	Maintain free samples[2]	Check customers' inventories[3]	Make one de minimis sale[4]	Make one non de minimis sale[5]	Solicit service sales one to 6 days[6]	In-home office[7]	Operate mobile stores[8]
New Jersey	Yes	No	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	No	Yes	Yes	Yes	Yes
New York City	Yes	Yes	No	Yes	Yes	Yes	Yes
North Carolina	No	No	Yes	Yes	Yes	No	Yes
North Dakota	No	Yes	No	Yes	Yes	No[47]	No Response[48]
Oklahoma	Yes	Yes	No	No	No	Yes	Yes
Oregon	No	No	No	Yes	Yes	No	Yes
Pennsylvania	No	No	Yes	Yes	Yes	No	Yes
Rhode Island	Yes	Yes	No	No	Yes	Yes	Yes
South Carolina[49]	No	No	No	Yes	Yes[50]	Yes	No Response
Tennessee	No	No	No	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes[51]
Utah[52]	No	No	No	Yes	Yes	No	Yes
Vermont[53]	No	No	No Response	No Response	No	No Response	Yes
Virginia	No[54]	No[55]	No	Yes	No	Yes	Yes[56]
West Virginia	Yes	No	Yes	Yes	Yes	Yes	Yes
Wisconsin[57]	No	No	No	No	Yes	No	Yes

[47] ND: Assuming the ''sales-related'' function is an activity protected by Pub. L. No. 86-272.
[48] ND: Uncertain what is meant by ''operate'' and what the nature of the employee activity would be.
[49] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[50] SC: Assuming not de minimis.
[51] TX: If mobile stores physically come into Texas to conduct business.
[52] **UT: The answers would not likely change if the corporation was otherwise protected under P L 86-272. In fact, the understood premise for these questions is that the specified activity is the only activity taken into consideration. That would suggest that the taxpayer is otherwise protected under 86-272 if it is engaged in selling tangible personal property.**
[53] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[54] VA: *See* P.D. 94-111.
[55] VA: *Id.*
[56] VA: The Department's long-standing policy is that the presence of any inventory in Virginia subjects a corporation to income tax. *See, e.g.*, P.D. 88-146, P.D. 97-447, and P.D. 02-132.
[57] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**

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Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 1 of 3)

State[1]	Collect delinquent accounts[2]	Repossess property[3]	Perform repair services regularly[4]	Perform repair services one to 4 times[5]	Set up product displays[6]	Supervise or inspect installation[7]
Alaska[8]	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes[9]	Yes[10]	Yes[11]	Yes[12]	Yes[13]	Yes[14]
Colorado	Yes[15]	Yes[16]	Yes[17]	Yes[18]	No	Yes[19]
Connecticut	Yes	Yes	Yes	No Response[20]	No Response[21]	Yes
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes
Illinois[22]	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Employees, while in your state, collect delinquent accounts.
[3] Employees, while in your state, repossess property.
[4] Employees, while in your state, regularly perform installation, repair, maintenance, or warranty services.
[5] Employees, while in your state, perform installation, repair, or warranty services one to four times per year.
[6] Employees, while in your state, set up promotional display of products (*e.g.*, end caps, etc.) and inspect inventory.
[7] Employees, while in your state, supervise or inspect installation.
[8] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**
[9] **CA: Yes, these activities would be outside the protection of P.L. 86-272. *See* FTB Publication 1050.**
[10] **CA: *Id.***
[11] **CA: *Id.***
[12] **CA: *Id.***
[13] **CA: Depends on the facts and circumstances. Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity. Checking of customer' inventories without a charge (for re-order, but not for other purposes such as quality control) is also protected. *See* FTB Publication 1050.**
[14] **CA: Yes, these activities would be outside the protection of P.L. 86-272. See FTB Publication 1050.**
[15] CO: If meets nexus dollar or percentage threshold.
[16] CO: *Id.*
[17] CO: *Id.*
[18] CO: *Id.*
[19] CO: *Id.*
[20] CT: DRS has no published position.
[21] CT: *Id.*
[22] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**

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State[1]	Collect delinquent accounts[2]	Repossess property[3]	Perform repair services regularly[4]	Perform repair services one to 4 times[5]	Set up product displays[6]	Supervise or inspect installation[7]
Indiana[23]	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	No	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes[24]
Massachusetts	Yes	Yes	Yes	**Yes**	**Yes**	**Yes**
Michigan	Yes[25]	Yes[26]	Yes	Yes[27]	Yes[28]	Yes[29]
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	Yes	No Response[30]	Yes
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota[31]	Yes	Yes	Yes	Yes	No[32]	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina[33]	Yes	Yes	Yes	Yes[34]	No Response[35]	Yes
Tennessee	Yes	Yes	Yes	Yes	No[36]	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	**Yes**	Yes

[23] **IN: All answers are "no" if the corporation is protected by P.L. 86–272.**
[24] MD: If not associated with solicitation and a protected activity.
[25] MI: If physically present in Michigan for more than 2 days.
[26] MI: *Id.*
[27] MI: *Id.*
[28] MI: *Id.*
[29] MI: *Id.*
[30] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002.
[31] ND: Assumption is the employee is a "sales" employee (performing non-sales related activities).
[32] ND: As long as there is no charge.
[33] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[34] SC: Unless de minimis.
[35] SC: The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.
[36] TN: Answer given assumes that there is no charge or other required consideration for setting up the displays or inventory inspections and that inventory inspections are for reorder purposes only and not for quality control or some other purpose.

State[1]	Collect delinquent accounts[2]	Repossess property[3]	Perform repair services regularly[4]	Perform repair services one to 4 times[5]	Set up product displays[6]	Supervise or inspect installation[7]
Vermont[37]	No Response	No Response	No Response	No Response	No Response	No Response
Virginia	Yes[38]	Yes[39]	Yes[40]	Yes[41]	Yes[42]	Yes
West Virginia	Yes	Yes	Yes	Yes	No	Yes
Wisconsin[43]	Yes	Yes	Yes	Yes	Yes	Yes

[37] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[38] VA: *See* P.D. 92-177 and P.D. 99-174.
[39] VA: *See* P.D. 99-174.
[40] VA: *See* P.D. 00-61.
[41] VA: *Id.*
[42] VA: *See* P.D. 88-146.
[43] WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.

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Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 2 of 3)

State[1]	Conduct training courses 2 times per year[2]	Provide design functions[3]	Handle customer complaints[4]	Pick up defective merchandise[5]	Pick up or replace merchandise[6]	Provide shipping information[7]	One to 6 employees telecommuting from home doing non-solicitation activities[8]	One employee telecommuting from home doing back office functions[9]	One employee telecommuting from home doing product development functions[10]
Alaska[11]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[12]	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes[13]	Yes	Yes
Arkansas	Yes[14]	Yes	Yes	Yes	Yes	Yes	Yes[15]	Yes	Yes
California	Yes[16]	Yes[17]	Yes[18]	Yes[19]	Yes[20]	Yes[21]	Yes[22]	Yes[23]	Yes[24]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Employees, while in your state, conduct training courses, seminars or lectures two times per year.

[3] Employees, while in your state, provide engineering or design functions related to customized products.

[4] Employees, while in your state, handle customer complaints.

[5] Employees, while in your state, pick up defective merchandise.

[6] Employees, while in your state, pick up or replace damaged or returned property.

[7] Employees, while in your state, provide shipping information and coordinate deliveries.

[8] Employees, while in your state, telecommute from their homes located in your state (assume that there are one to six such employees in your state and all of these employees perform non-solicitation activities).

[9] One employee telecommutes from a home located in your state and performs back office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.

[10] One employee telecommutes from a home located in your state and performs product development functions, such as computer coding.

[11] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[12] AK: No, Alaska does not have a de minimis standard and, therefore, the company would have nexus.

[13] AZ: There would still be nexus if the corporation made no sales in Arizona or if the employees telecommuted for only part of their total work time.

[14] AR: If training is sales related, no nexus is created, but, if training is not sales related, nexus may be created.

[15] **AR: The answer does not change [if the corporation was otherwise protected under Pub. L. NO. 86-272].**

[16] **CA: *Id.***

[17] **CA: *Id.***

[18] **CA: *Id.***

[19] **CA: *Id.***

[20] **CA: *Id.***

[21] **CA: Whether or not the answer would change if the corporation was otherwise protected under Pub. L No. 86-272 depends on the facts and circumstances. Coordinating shipment or delivery without payment or other consideration and providing information thereto either prior or subsequent to the placement of an order is a protected activity. *See* FTB Publication 1050.**

[22] **CA: Yes, these activities would be outside the protection of P.L. 86-272. *See* FTB Publication 1050. The answer would not change if the out-of-state corporation made no sales into California, or if the employees telecommute for only part of their total work time.**

[23] **CA: *Id.***

[24] **CA: *Id.***

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State[1]	Conduct training courses 2 times per year[2]	Provide design functions[3]	Handle customer complaints[4]	Pick up defective merchandise[5]	Pick up or replace merchandise[6]	Provide shipping information[7]	One to 6 employees telecommuting from home doing non-solicitation activities[8]	One employee telecommuting from home doing back office functions[9]	One employee telecommuting from home doing product development functions[10]
Colorado	Yes[25]	Yes[26]	Yes[27]	Yes[28]	Yes[29]	No	Yes[30]	Yes[31]	Yes[32]
Connecticut	No Response[33]	Yes	Yes	Yes	Yes	No Response[34]	No Response[35]	No Response[36]	No Response[37]
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	**Yes**[38]	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes	Yes[39]	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes[40]	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	No Response[41]	Yes	Yes	Yes
Idaho	Yes[42]	Yes	Yes	Yes	Yes	Yes[43]	Yes	Yes	Yes
Illinois[44]	**Yes**	Yes	Yes	Yes	**Yes**	Yes	Yes	Yes	Yes
Indiana[45]	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Iowa	No[46]	Yes	Yes	Yes	Yes	No	Yes[47]	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	No[48]	No	No

[25] CO: If meets nexus dollar or percentage threshold.
[26] CO: *Id.*
[27] CO: *Id.*
[28] CO: *Id.*
[29] CO: *Id.*
[30] CO: *Id.* Conclusion same regardless of whether corporation made sales in state or whether employee telecommutes.
[31] CO: If meets nexus dollar or percentage threshold.
[32] CO: *Id.*
[33] CT: DRS has no published position.
[34] CT: *Id.*
[35] CT: *Id.*
[36] CT: *Id.*
[37] CT: *Id.*
[38] **DC: Depends on facts and circumstances.**
[39] FL: There would still be nexus if the corporation made no sales in Florida or if the employees telecommuted for only part of their total work time.
[40] GA: The answer would not be different if the corporation made no sales in the state or if the employees telecommute for only part of their total work time.
[41] HI: Activity as described in paragraph IV.B.8 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Pub. L. No. 86-272.
[42] ID: Unless solely for personnel involved only in solicitation.
[43] ID: Assumes receiving compensation.
[44] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**
[45] **IN: All answers are "no" if the corporation is protected by P.L. 86-272.**
[46] IA: Training activities exempt due to Iowa Code section 422.34A(7).
[47] IA: There would still be nexus if the corporation made no sales in Iowa or if the employees telecommuted for only part of their total work time.
[48] KY: Employees telecommuting from their homes in Kentucky would not create nexus for a corporation regardless of the circumstances.

State[1]	Conduct training courses 2 times per year[2]	Provide design functions[3]	Handle customer complaints[4]	Pick up defective merchandise[5]	Pick up or replace merchandise[6]	Provide shipping information[7]	One to 6 employees telecommuting from home doing non-solicitation activities[8]	One employee telecommuting from home doing back office functions[9]	One employee telecommuting from home doing product development functions[10]
Louisiana	Yes	Yes	Yes	Yes	Yes	No	Yes[49]	Yes[50]	Yes[51]
Maine	Yes	Yes	Yes	Yes	Yes	No	Yes[52]	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	No	No[53]	Yes[54]	No[55]
Massachusetts	**Depends**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Michigan	Yes	Yes[56]	Yes[57]	Yes[58]	Yes[59]	No[60]	Yes[61]	Yes[62]	Yes[63]
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes	Yes[64]	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	No[65]	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes[66]	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	No	Yes[67]	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes[68]	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes	Yes[69]	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes[70]	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes[71]	Yes	Yes
New York City	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes

[49] **LA: No different answer [if the out-of-state corporation made no sales in Louisiana, or if the employees telecommute for only part of their total work time].**

[50] **LA: *Id.***

[51] **LA: *Id.***

[52] ME: There would still be nexus if the corporation made no sales in Maine or if the employees telecommuted for only part of their total work time.

[53] MD: But depends on the activities conducted by the employees.

[54] MD: Depends on whether portion of residence is used exclusively for business, is reimbursed by the corporation, is used to host meetings, or is used to store property of the corporation.

[55] MD: *Id.*

[56] MI: If physically present in Michigan for more than 2 days.

[57] MI: *Id.*

[58] MI: *Id.*

[59] MI: *Id.*

[60] MI: Only if the activity is conducted without payment or other consideration.

[61] MI: There would still be nexus if the corporation made no sales in Michigan or if the employees telecommuted for only part of their total work time.

[62] **MI: Answer would not change [if corporation was otherwise protected under PL 86-272.]**

[63] **MI: *Id.***

[64] MN: Nexus is established when any activity beyond solicitation occurs **as provided in PUB. L. NO. 86-272.**

[65] MS: The answer would not be different if the corporation made no sales in the state or if the employees telecommute for only part of their total work time.

[66] MO: There would still be nexus if the corporation made no sales in Missouri or if the employees telecommuted for only part of their total work time.

[67] MT: Answer would still be yes if the corporation made no sales in Montana or if the employees telecommute for only part of their total work time.

[68] NE: The corporation would still have nexus even if no sales were made in this state or the employees worked part time.

[69] NH: The answer would be the same if the corporation made no sales in New Hampshire or if the employees telecommute for only part of their total work time.

[70] NJ: The answer would not be different if the corporation made no sales in this state. *See Telebright Corporation v. Director, Division of Taxation*, NJ Tax Court Docket No. 011066-2008, decided March 24, 2010 [affirmed 38 A.3d 604, 2012 BL 52377 (N.J. Super. Ct. Div. 2012)].

[71] NM: There would still be nexus if the corporation made no sales in New Mexico or if the employees telecommuted for only part of their total work time.

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State[1]	Conduct training courses 2 times per year[2]	Provide design functions[3]	Handle customer complaints[4]	Pick up defective merchandise[5]	Pick up or replace merchandise[6]	Provide shipping information[7]	One to 6 employees telecommuting from home doing non-solicitation activities[8]	One employee telecommuting from home doing back office functions[9]	One employee telecommuting from home doing product development functions[10]
North Carolina	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes[72]	Yes
North Dakota[73]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[74]	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes	No	No Response	No Response
Oregon	Yes	Yes	Yes	Yes	Yes	Yes	Yes[75]	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	No	Yes[76]	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes[77]	Yes	Yes
South Carolina[78]	Yes[79]	Yes	Yes[80]	Yes	Yes	No	Yes	No Response	No Response
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes	Yes[81]	No[82]	No[83]
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes[84]	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	No	Yes[85]	Yes	Yes
Vermont[86]	No Response	No Response	No Response	No Response	No Response	No	No Response	Yes	Yes
Virginia	Yes	Yes	Yes[87]	Yes	Yes	Yes[88]	Yes[89]	Yes	Yes
West Virginia	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Wisconsin[90]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[91]	Yes	Yes

[72] NC: Depends on the facts and circumstances of each case.
[73] ND: Assumption is the employee is a ''sales'' employee (performing non-sales related activities).
[74] ND: There would still be nexus if the corporation made no sales in North Dakota. If only telecommuting for ''part'' of their work, determination would depend on whether a ''base of operations'' was established in a state.
[75] OR: There would still be nexus if the corporation made no sales in Oregon or if the employees telecommuted for only part of their total work time.
[76] PA: Sales and amount of time spent telecommuting have no impact on answer.
[77] RI: Same answer if no sales in state or employees telecommute for only part of their total work time.
[78] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[79] SC: Unless sales training.
[80] SC: Facilitating communication between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer, however, is a protected activity. *See* S.C. Rev. Rul. No. 97-15.
[81] TN: Answer would not change if the corporation made no Tennessee sales or if the employees telecommute for only part of their work time. However, a person living in Tennessee and doing work that does not involve contact with Tennessee customers or direct promotion of business in Tennessee, such as payroll, accounts payable, or planning projects for out-of-state headquarters would not result in nexus if no other Tennessee nexus activities exist.
[82] TN: Answers assume that no other nexus creating activities exist.
[83] TN: *Id.*
[84] TX: The answer will not change if no sales are made in Texas or if the employees telecommute for only part of their total work time.
[85] UT: If no sales are made into the state, nexus would still be created. If telecommuting part time in Utah, nexus would be created unless the Utah wages were de minimis.
[86] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[87] VA: *See* P.D. 92-150.
[88] VA: *See* P.D. 92-125.
[89] VA: Nexus requires at least one positive apportionment factor. If the corporation made no sales in Virginia, it would only have nexus if it had a positive property or payroll factor. The answer would not change if the employees telecommute for only part of their total work time.
[90] WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.
[91] WI: There would still be nexus if the corporation made no sales in Wisconsin or if the employees telecommuted for only part of their total work time.

Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 3 of 3)

State[1]	Assist legal counsel[2]	Purchase raw materials[3]	Attend seminars[4]	Attend meetings one to 14 days[5]	Attend seminar in corp. plane[6]	Attend sports event in corp. plane[7]	In state one to 14 days on yacht[8]	Hiring/ recruitment activities[9]	Hiring/ training employees[10]
Alaska[11]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	No	No	No	No	No[12]	No [13]
Arkansas	Yes	Yes	No	No	No	No	No	Yes	Yes
California	Yes[14]	Yes[15]	**Depends**[16]	**Depends**[17]	**Depends**[18]	Yes[19]	**Depends**[20]	Yes[21]	Yes[22]
Colorado	No	Yes[23]	No	No	No	No	Not Applicable	No Response[24]	No Response[25]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Employees, while in your state, assist the corporation defend a lawsuit (*e.g.*, legal staff and witnesses) while in your state for one to 30 days.

[3] Employees, while in your state, purchase raw materials and inventory while in your state for 20 or fewer days.

[4] Employees, while in your state, attend seminars.

[5] Employees, while in your state, attend an annual training seminar, convention, trade show, retreat, or board of directors' meeting for one to 14 consecutive days each year (assume that during their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone or fax machines in your state).

[6] Employees, while in your state, fly into your state on a company plane to attend a seminar.

[7] Employees, while in your state, fly into your state on a company plane to attend sports events at least four times, but fewer than 10 times per year.

[8] Employees, while in your state, attend seminars or social functions while staying on a company yacht docked in waters in your state for one to 14 days.

[9] Employees, while in your state, hold job fairs, hiring events, or other recruiting activities.

[10] Employees, while in your state, hire, supervise, or train other employees.

[11] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[12] AZ: If the company's business is hiring and recruiting, the answer is yes.

[13] AZ: For solicitation purposes only (tangible personal property). If for services or non solicitation purposes, the answer is yes.

[14] **CA: Yes, these activities would be outside the protection of P.L. 86-272. See FTB Publication 1050.**

[15] **CA: *Id.***

[16] CA: Doing Business exclusion of RTC §23104 may apply. **18 CCR §23101.5(c) might apply.**

[17] CA: *Id.*

[18] **CA: 18 CCR §23101.5(c) might apply**

[19] **CA: Yes, these activities would be outside the protection of P.L. 86-272. *See* FTB Publication 1050.**

[20] **CA: 18 CCR §23101.5(c) might apply.**

[21] **CA: Yes, these activities would be outside the protection of P.L. 86-272. *See* FTB Publication 1050.**

[22] **CA: *Id.***

[23] CO: If meets nexus dollar or percentage threshold.

[24] CO: Not unless taxpayer otherwise meets nexus dollar or percentage threshold.

[25] CO: *Id.*

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State[1]	Assist legal counsel[2]	Purchase raw materials[3]	Attend seminars[4]	Attend meetings one to 14 days[5]	Attend seminar in corp. plane[6]	Attend sports event in corp. plane[7]	In state one to 14 days on yacht[8]	Hiring/ recruitment activities[9]	Hiring/ training employees[10]
Connecticut	No Response[26]	No Response[27]	No Response[28]	No Response[29]	No Response[30]	No Response[31]	No Response[32]	No Response[33]	No Response[34]
Delaware	Yes	Yes	No	Yes	No	No	Yes	No	Yes
District of Columbia	**No**[35]	**No**[36]	**No**[37]	**No**	**No**[38]	**Yes**[39]	Yes	Yes	Yes
Florida	Yes	Yes	No	Yes	No	No	No	Yes	Yes
Georgia	Yes	Yes	No	Yes	No	No	No	No	Yes
Hawaii	Depends	No	No	Depends	No	No	No	No	No Response[40]
Idaho	Yes	Yes	No[41]	No[42]	No[43]	Depends	Depends	Depends	Yes
Illinois[44]	Yes	Yes	Yes	**No**	**No**	**No**	**No**	Yes	Yes
Indiana[45]	Yes	No	Yes	Yes	No	No	No	Yes	Yes
Iowa	No	Yes	No[46]	No	No	No	No	No [47]	No [48]
Kansas	No	Yes	No	No	No	No	No	No	Yes
Kentucky	No	No	No	No	No	No	No	No	Yes
Louisiana	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes
Maine	Yes	Yes	No	Yes	No	No	No	Yes [49]	Yes[50]
Maryland	Yes	Yes	No	No	No	No	No	Yes	Yes
Massachusetts	Depends	**Depends**	Depends	**Depends**	**Depends**	Depends	Depends	Yes	**Depends**
Michigan	Yes[51]	Yes[52]	No	No[53]	No[54]	No	No[55]	No[56]	Yes[57]
Minnesota	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes

[26] CT: DRS has no published position.
[27] CT: *Id.*
[28] CT: *Id.*
[29] CT: *See* Conn. Gen. Stat. § 12-213(a)(20)(C).
[30] CT: DRS has no published position.
[31] CT: *Id.*
[32] CT: *Id.*
[33] CT: *Id.*
[34] CT: *Id.*
[35] DC: Depends on facts and circumstances.
[36] DC: *Id.*
[37] DC: *Id.*
[38] DC: *Id.*
[39] DC: *Id.*
[40] HI: The supervision of employees in the state presumes nexus by presence.
[41] ID: So long as seminar/training is not conducted by employer/taxpayer.
[42] ID: Depends on facts and circumstances.
[43] ID: *Id.*
[44] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**
[45] **IN: All answers are "no" if the corporation is protected by P.L. 86-272.**
[46] IA: Training and education activities exempt due to Iowa Code section 422.34A(7).
[47] IA: Answer is no if hiring occurs outside the state per section 422.34A(6).
[48] IA: *Id.*
[49] ME: No, if limited to personnel involved only in solicitation of orders for sales of tangible personal property.
[50] ME: *Id.*
[51] MI: If physically present in Michigan for more than 2 days.
[52] MI: *Id.*
[53] MI: Only if the activity is conducted in Michigan for fewer than 10 days. If the activity is conducted in Michigan for more than 10 days, whether nexus is created will depend on the facts and circumstances.
[54] MI: *Id.*
[55] MI: *Id.*
[56] MI: *Id.*
[57] MI: If physically present in Michigan for more than 2 days.

State[1]	Assist legal counsel[2]	Purchase raw materials[3]	Attend seminars[4]	Attend meetings one to 14 days[5]	Attend seminar in corp. plane[6]	Attend sports event in corp. plane[7]	In state one to 14 days on yacht[8]	Hiring/ recruitment activities[9]	Hiring/ training employees[10]
Mississippi	Yes	No	No	No	No	No	No	Yes	Yes
Missouri	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
Montana	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
Nebraska	Yes	Yes	No	Yes[58]	No	No	No	No	Yes
New Hampshire	Yes	Yes	Yes	Depends	Depends	Yes	Depends	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	No	No	No	No	No	Yes	Yes
New York City	**No**	Yes	No	No	No	No	**No**	No Response[59]	Yes
North Carolina	Yes	No	No	No	No	No	No	Yes	Yes[60]
North Dakota[61]	No Response[62]	Yes	No	No	No	No	No	No[63]	No[64]
Oklahoma	Yes	Yes	No	No	No	No	No	Yes	Yes
Oregon	No	No	No	No	No	No	No	Yes	Yes
Pennsylvania	Yes	No	No	Yes	No	No	No	No	Yes
Rhode Island	Yes	No	No	No	No	No	No	Yes	Yes
South Carolina[65]	No[66]	No	No	No	No	No[67]	No	No Response	No Response
Tennessee	No	No	No	No	No	No	No	Yes[68]	Yes[69]
Texas	Yes	No	No	Yes	No	No	No	No	No Response[70]
Utah	Yes	No	No	No	No	No	No	No	Yes[71]
Vermont[72]	No	No Response	No	No	No	No	No	No	Yes[73]
Virginia	No	No	No	No	No	No	No	No [74]	Yes[75]
West Virginia	No	Yes	No	No	No	No	No	No	Yes
Wisconsin[76]	Yes	Yes	No	Depends	No	No	Depends	Yes	Yes

[58] NE: Board of director meeting creates nexus.
[59] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002.
[60] NC: If employees are engaged in activities outside of solicitation.
[61] ND: Assumption is the employee is a ''sales'' employee (performing non-sales related activities).
[62] ND: May be relevant of why the corporation is being sued in a state.
[63] ND: Answer assumes employee does not live in the state.
[64] ND: *Id.* Assume employees being trained are sales related. If employee being trained is not sales related, nexus would be created.
[65] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[66] SC: *See* S.C. Rev. Rul. No. 08-1 where it concluded that the use of the S.C. court system by an out of state company sending various employees to South Carolina to assist its independent legal counsel defend a lawsuit does not give the out of state company nexus with South Carolina. The law firm providing counsel is taxable in South Carolina.
[67] SC: Assuming the employees are attending as spectators.
[68] TN: Answers assume that employees recruited or hired are not sales personnel.
[69] TN: *Id.*
[70] TX: Hiring other employees does not create nexus, but coming into Texas to supervise or train other employees does.
[71] UT: If training is limited to employees that are engaged in the sale of tangible personal property and their activities do not exceed mere solicitation of sales, then nexus would not be created.
[72] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[73] VT: If the training takes place in state, nexus is established.
[74] VA: Probably de minimis.
[75] VA: The term ''supervise'' implies a continuous pattern of activities, which would not be de minimis. *See* P.D. 01-157.
[76] WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.

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Nexus-Creating Activities: Activities of Unrelated Parties

State[1]	Fulfillment services[2]	Collect delinquent accounts[3]	Investigate credit worthiness[4]	Repossess property one to 6 times[5]	Repair service one to 6 times[6]	Installation service[7]	Provide warranty repairs[8]	Close mortgage loans[9]	Service mortgage loans[10]
Alaska[11]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No[12]	No[13]	**No**	No[14]	Yes	No[15]	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California[16]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colorado[17]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut[18]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	**Yes**[19]	**Yes**[20]	Yes	Yes	Yes	Yes	**Yes**[21]	**Yes**[22]
Florida	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Depends	Depends
Idaho	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Illinois	Yes	No	No	Yes	No	No	No	No Response	No Response
Indiana[23]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Unrelated third parties located in your state provide fulfillment services (*i.e.*, fill product orders from corporate-owned inventory).

[3] Unrelated third parties located in your state collect regular or delinquent accounts.

[4] Unrelated third parties located in your state investigate credit worthiness of new customers.

[5] Unrelated third parties located in your state repossess property one to six times a year.

[6] Unrelated third parties located in your state repair or provide maintenance, including warranty services, one to six times per year.

[7] Unrelated third parties located in your state assist with the ''set-up'' or installation of the company's products.

[8] Unrelated third parties located in your state perform repairs under a standard or extended warranty.

[9] Unrelated third parties located in your state close mortgage loans for an out-of-state financial organization.

[10] Unrelated third parties located in your state service mortgage and/or consumer loans for an out-of-state financial organization.

[11] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[12] AZ: The answer is no if the unrelated party provides the same service to other entities unrelated to the taxpayer.

[13] AZ: *Id.*

[14] AZ: *Id.*

[15] AZ: *Id.*

[16] **CA: Yes. Whether the out-of-state corporation acts through third parties is irrelevant. *See* FTB Publication 1050.**

[17] CO: If meets nexus dollar or percentage threshold.

[18] CT: DRS has no published position.

[19] DC: Depends on the facts and circumstances. If activity performed in DC, then answer is Yes.

[20] DC: *Id.*

[21] DC: *Id.*

[22] DC: *Id.*

[23] **IN: All answers are "no" if the corporation is protected under P.L. 86-272.**

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State[1]	Fulfillment services[2]	Collect delinquent accounts[3]	Investigate credit worthiness[4]	Repossess property one to 6 times[5]	Repair service one to 6 times[6]	Installation service[7]	Provide warranty repairs[8]	Close mortgage loans[9]	Service mortgage loans[10]
Iowa	Yes[24]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Massachusetts[25]	**Depends**	Depends	Depends	Depends	Depends	**Depends**	**Depends**	**Depends**	**Depends**
Michigan[26]	Yes	Yes	Yes	Yes[27]	Yes[28]	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	No	No	Yes	Yes	Yes	Yes	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City[29]	No[30]	No	No	No Response	Yes	Yes	No Response	No Response	No Response
North Carolina	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	No	No	No	No	No	No
Oregon	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina[31]	Depends[32]	Yes[33]	Yes[34]	Yes[35]	Yes[36]	Yes[37]	Yes[38]	Yes	Yes
Tennessee[39]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[24] IA: Fulfillment services may not create nexus if criteria in Iowa Code section 422.34A(8) are met.

[25] **MA: Pursuant to 830 CMR 63.39.1(7) "the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. Activities of an independent contractor will not be imputed to the corporation."**

[26] MI: If the unrelated parties are acting on behalf of the taxpayer and constitute the taxpayer's agent or independent contractor acting in a representative capacity. **Answers would not change if corporation was otherwise protected under PL 86-272.**

[27] MI: And if physically present in Michigan for more than 2 days.

[28] MI: *Id.*

[29] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.

[30] NYC: N.Y.C. differs from New York State on this.

[31] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.

[32] SC: Depends upon facts that have not been provided.

[33] SC: Assuming the collection is being done on behalf of the out of state company.

[34] SC: Assuming the investigation is done on behalf of the out of state company.

[35] SC: If not de minimis.

[36] SC: If not de minimis and if conducted on behalf of the out-of-state company. Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.

[37] SC: *Id.*

[38] SC: *Id.*

[39] TN: Answers given assume the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are ''unrelated,'' it appears that there may be an agency relationship that would create tax nexus for the principal. Absent such an agency relationship, the activities stated will not create Tennessee franchise, excise tax nexus for the principal.

State[1]	Fulfillment services[2]	Collect delinquent accounts[3]	Investigate credit worthiness[4]	Repossess property one to 6 times[5]	Repair service one to 6 times[6]	Installation service[7]	Provide warranty repairs[8]	Close mortgage loans[9]	Service mortgage loans[10]
Vermont	No	No	No	No	No	No	No	No	No
Virginia	Yes[40]	No	No	No[41]	No[42]	No[43]	No[44]	No[45]	No[46]
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin[47]	Yes	No[48]	No[49]	Yes	Yes[50]	Yes[51]	Yes[52]	Depends	Depends

[40] VA: The Department's long-standing policy is that the presence of any inventory in Virginia subjects a corporation to income tax. *See, e.g.*,P.D. 88-146, P.D. 97-447, and P.D. 02-132.
[41] VA: Repossession could create nexus if the corporation takes title to the property.
[42] VA:*See*P.D. 01-136 and P.D. 10-252.
[43] VA: *See*P.D. 09-44.
[44] VA:*See* P.D. 01-136 and P.D. 08-184.
[45] VA:*See*P.D. 84-40.
[46] VA: *Id.*
[47] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**
[48] WI: No, provided there is not an agency relationship between the company and the unrelated third party.
[49] WI: *Id.*
[50] WI: Yes, provided the corporation supervises, monitors, inspects, approves, or is ultimately responsible for the work performed by the third party.
[51] WI: *Id.*
[52] WI: *Id.*

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Nexus-Creating Activities: Distribution and Delivery (Part 1 of 2)

State[1]	Ships in returnable containers[2]	Delivers in corp.-owned trucks[3]	Picks up defective goods in corp.-owned trucks[4]	Picks up raw materials in corp.-owned trucks[5]
Alaska[6]	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes[7]	Yes[8]	Yes[9]	Yes[10]
Colorado	No	Yes[11]	Yes[12]	Yes[13]
Connecticut	No Response[14]	No Response[15]	Yes	No Response[16]
Delaware	Yes	Yes	Yes	**No Response**
District of Columbia	No[17]	Yes	Yes	**No**
Florida	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes
Hawaii	No	Not Applicable	Yes	No
Idaho	Yes	No	Yes	Yes
Illinois[18]	No	No	Yes	Yes
Indiana[19]	No	Yes	Yes	No
Iowa	Yes	No	Yes	Yes
Kansas	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation ships products into your state in returnable containers.

[3] The corporation delivers goods into your state (from a point outside your state) to customers in the corporation's owned or leased vehicles.

[4] The corporation picks up defective products or scrap materials in your state in taxpayer-owned vehicles.

[5] The corporation picks up raw materials in your state in taxpayer-owned vehicles.

[6] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[7] **CA: No, the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[8] **CA: *Id.***

[9] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[10] **CA: *Id.***

[11] CO: If meets nexus dollar or percentage threshold.

[12] CO: *Id.*

[13] CO: *Id.*

[14] CT: DRS has no published position.

[15] CT: *Id.*

[16] CT: *Id.*

[17] DC: Depends who pays returned cost.

[18] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**

[19] **IN: All answers are no if the corporation is protected by P.L. 86-272.**

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State[1]	Ships in returnable containers[2]	Delivers in corp.-owned trucks[3]	Picks up defective goods in corp.-owned trucks[4]	Picks up raw materials in corp.-owned trucks[5]
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	No	Yes	Yes
Maryland	No	No	Yes	Yes
Massachusetts[20]	Depends	Depends	Depends	Depends
Michigan[21]	Yes	Yes[22]	Yes[23]	Yes[24]
Minnesota	Yes	No	Yes	Yes
Mississippi	Yes	Yes	Yes	No
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	No	Yes	Yes
Nebraska	Yes	No	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	No
New Mexico	Yes	Yes	Yes	Yes
New York City	No	No Response[25]	Yes[26]	Yes[27]
North Carolina	No[28]	No[29]	Yes	No
North Dakota	No[30]	No	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes
Oregon	No	No	Yes	No
Pennsylvania	Yes	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes
South Carolina[31]	Yes	No	Yes	No[32]
Tennessee	No	No	Yes	No
Texas	No	Yes	Yes	No
Utah	Yes	No	Yes	Yes

[20] MA: *See* TIR Nos. 98-13 and 06-9, D.D. Corp. No. 95-7, and 830 CMR 63.38.10. **Pursuant to 830 CMR 63.39.1(6), "A foreign corporation is not subject to the corporate excise under M.G.L. c. 63, §39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by M.G.L. c. 63, §39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extent to foreign carriers whose vehicles enter Massachusetts)."**

[21] **MI: Answers would not change if corporation was otherwise protected under PL 86-272.**

[22] MI: If physically present in Michigan 2 or more days.

[23] MI: *Id.*

[24] MI: *Id.*

[25] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.

[26] NYC: *Id.*

[27] NYC: *Id.*

[28] NC: Although this activity does not subject a taxpayer to income tax because of the protection provided by Pub. L. No. 86-272, it does give the taxpayer nexus for franchise tax purposes.

[29] NC: *Id.*

[30] **ND: Assuming returnable containers are returned and have no other use for either customer or taxpayer, while located at the customer.**

[31] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.

[32] SC: Assuming the pickup is not a backhaul.

State[1]	Ships in returnable containers[2]	Delivers in corp.-owned trucks[3]	Picks up defective goods in corp.-owned trucks[4]	Picks up raw materials in corp.-owned trucks[5]
Vermont[33]	No	Yes	No Response	No
Virginia	No	No[34]	No[35]	No[36]
West Virginia	No	Yes	**Yes**	Yes
Wisconsin[37]	Yes	No	Yes	Yes

[33] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.

[34] **VA: *See Commonwealth v. Nat'l Private Truck Council,*. 253 Va. 74, 480 S.E.2d 500 (1997). Assumes corporation is otherwise protected by P. L. 86-272 and is not conducting a transportation business.**

[35] VA: Assumes corporation is otherwise protected by P. L. 86-272 and is not conducting a transportation business.

[36] VA: *Id.*

[37] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**

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Nexus-Creating Activities: Distribution and Delivery (Part 2 of 2)

State[1]	Is in state one to 6 days in corp. owned trucks[2]	Is in state > 6, but < 12 days in corp. owned trucks[3]	Is in state > 12 days in corp. owned trucks[4]	"Backhauls" in corp. owned trucks[5]	Holds title to electricity[6]	Holds title to natural gas[7]
Alaska[8]	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	Yes	No	No
Arkansas	No	No	No	Yes	No[9]	No[10]
California	Yes[11]	Yes[12]	Yes[13]	Yes[14]	No[15]	Yes[16]
Colorado	No	No	No	Yes[17]	No[18]	Yes[19]
Connecticut[20]	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	No	No	No	Yes	Yes	Yes
District of Columbia	No	No	No	**No**	**No**	**No**
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No	No	No	Yes	No	No
Hawaii	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[3] The corporation travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[4] The corporation travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[5] The corporation "backhauls" (*i.e.*, pick up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.

[6] The corporation holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).

[7] The corporation holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).

[8] **AK: No, the answers would not change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[9] AR: Owning or renting pipelines or electric lines in Arkansas does create nexus.

[10] AR: *Id.*

[11] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[12] **CA: *Id.***

[13] **CA: *Id.***

[14] **CA: *Id.***

[15] CA: The presence of tangible personal property in state gives rise to nexus. However, the California State Board of Equalization has held that electricity is not tangible personal property. *See Appeal of PacifiCorp*, 2002-SBE-005.

[16] **CA: Yes, the answer would change if the corporation was otherwise protected under Pub. L. No. 86-272.**

[17] CO: If meets nexus dollar or percentage threshold.

[18] CO: *But see Xcel v. Dept. of Revenue*, currently on appeal.

[19] CO: If inventory. If meets nexus dollar or percentage threshold.

[20] CT: DRS has no published position.

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State[1]	Is in state one to 6 days in corp. owned trucks[2]	Is in state > 6, but < 12 days in corp. owned trucks[3]	Is in state > 12 days in corp. owned trucks[4]	"Backhauls" in corp. owned trucks[5]	Holds title to electricity[6]	Holds title to natural gas[7]
Idaho	Depends[21]	Depends[22]	Depends[23]	Yes	Yes	Yes
Illinois[24]	Yes	Yes	Yes	Yes	No	Yes
Indiana[25]	No	No	No	Yes	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	No	No	No	Yes	No	No
Kentucky	No	No	No	Yes	Yes	Yes
Louisiana	Yes[26]	Yes[27]	Yes	Yes	Yes	Yes
Maine	No	No	No	Yes	Yes	Yes
Maryland	No	No	No	Yes	Yes	Yes
Massachusetts[28]	**Depends**	**Depends**	Depends	Depends	Depends	Depends
Michigan[29]	Yes[30]	Yes	Yes	Yes[31]	No Response[32]	No Response[33]
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	No	No	No	Yes	No	No
Missouri	No	No	Yes	Yes	No	No
Montana	No Response[34]	No Response[35]	Yes	Yes	Depends	Depends
Nebraska	Yes	No	Yes	Yes	Yes	Yes
New Hampshire	No	No	No	Yes	No	No
New Jersey	No	No	No	Yes	No	No
New Mexico	No	No	Yes	Yes	Yes	Yes
New York City[36]	No	No	No	**Yes**	No	No
North Carolina	No	No	No	Yes	No	No

[21] ID: Depends on total miles driven in state and percent of total miles driven in state. Nexus for trucking companies exists if any of the following applies: (a) Trucks owned or rented that travel more than 25,000 miles in Idaho during a taxable year; (b) Total miles traveled in Idaho by owned or rented trucks exceeds 3% of the total truck miles traveled during the taxable year; or (c) the company makes more than 12 trips in Idaho during the taxable year.

[22] ID: *Id.*

[23] ID: *Id.*

[24] **IL: All answers assume that Pub. L. 86-272 does not apply to the taxpayer.**

[25] **IN: All answers are "no": if the corporation is protected by P.L. 86-272.**

[26] LA: Unless the taxpayer is a trucking company. *See* La. Rev. Stat. Ann. §47:287.95(C)(2)(A).

[27] LA: *Id.*

[28] MA: *See* TIR Nos. 98-13 and 06-9, D.D. Corp. No. 95-7, and 830 CMR 63.38.10. **Pursuant to 830 CMR 63.39.1(6), "A foreign corporation is not subject to the corporate excise under M.G.L. c. 63, §39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by M.G.L. c. 63, §39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extent to foreign carriers whose vehicles enter Massachusetts)."**

[29] **MI: Answers would not change if corporation was otherwise protected under PL 86-272.**

[30] MI: If physically present in Michigan 2 or more days.

[31] MI: *Id.*

[32] MI: Policy under review.

[33] MI: *Id.*

[34] MT: Depends on number of miles driven. *See* Administrative Rule of Montana 42.26.706.

[35] MT: *Id.*

[36] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.

State[1]	Is in state one to 6 days in corp. owned trucks[2]	Is in state > 6, but < 12 days in corp. owned trucks[3]	Is in state > 12 days in corp. owned trucks[4]	''Backhauls'' in corp. owned trucks[5]	Holds title to electricity[6]	Holds title to natural gas[7]
North Dakota	No[37]	No[38]	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	Yes	Yes	Yes
Oregon	No	No	No	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Depends	Depends
Rhode Island	No	No	No	Yes	No	No
South Carolina[39]	No Response[40]	No Response[41]	No Response[42]	No	No[43]	No[44]
Tennessee	No	No	No	Yes	No	No
Texas	No Response[45]	No Response[46]	No Response[47]	Yes	No	No
Utah	No	No	Yes	Yes	Yes	Yes
Vermont[48]	No	No	No	No	No Response	No Response
Virginia	No	No	No	Yes[49]	No	No
West Virginia	No	No	No	No	No	No
Wisconsin[50]	Yes[51]	Yes[52]	Yes[53]	Yes	No	No

[37] ND: No, if less than 25,000 miles in state per year.
[38] ND: *Id.*
[39] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[40] SC: *See* S.C. Code §12-6-4920.
[41] SC: *Id.*
[42] SC: *Id.*
[43] SC: Assuming the corporation does not own or lease the transmission wire.
[44] SC: Assuming the corporation does not own or lease the pipeline.
[45] TX: Merely traveling through Texas does not create nexus. If ''traveling to the state,'' additional information regarding activities performed in Texas is required to determine nexus activities.
[46] TX: *Id.*
[47] TX: *Id.*
[48] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[49] VA: *Cf.* P.D. 99-116 (ruling the shipment of tangible personal property to the taxpayer's salesperson in Virginia for delivery to customer constitutes the receipt and maintenance of inventory in Virginia).
[50] **WI: Wisconsin adheres to Public Law 86-272 and we have taken that into consideration for our answers in this survey.**
[51] WI: Creates nexus if taxpayer is a common or contract carrier.
[52] WI: *Id.*
[53] WI: *Id.*

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Nexus-Creating Activities: Financial Activities/Transactions (Part 1 of 2)

State[1]	Negotiates bank loans[2]	Makes mortgage loans[3]	Makes secured personal loans[4]	Issues credit cards[5]	Purchases mortgage loans [6]	Purchases personal loans[7]
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	Yes	Yes	Yes	No	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	**No Response**[9]	Depends	No
Colorado	No	No	No	Yes[10]	No	No
Connecticut	No	Depends[11]	Depends[12]	Depends[13]	Depends[14]	Depends[15]
Delaware	No	Yes	Yes	No	Yes	Yes
District of Columbia	**No**[16]	**Yes**[17]	**Yes**[18]	Yes	**Yes**[19]	**Yes**[20]
Florida	No	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	No	Yes	No
Hawaii	Depends	Depends	Depends	Depends	Depends	Depends
Idaho	No	Yes	Yes	Yes	Yes	No
Illinois	No Response[21]	Yes	Yes	Yes	Yes	No Response[22]
Indiana	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
AL did not participate in this portion of the survey.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation negotiates and obtains bank loans from a bank located in your state (assume officers of the corporation visit the bank at least twice a year to discuss business).

[3] The corporation makes loans secured by real estate located in your state.

[4] The corporation makes personal loans secured by tangible property located in your state.

[5] The corporation issues credit cards to residents of your state.

[6] The corporation purchases, via the secondary market, loans secured by real estate located in your state.

[7] The corporation purchases, via the secondary market, credit account balances of residents of your state.

[9] CA: There may be nexus if the credit cards are used and the corporation generates receipts therefrom at levels above RTC section 23101(b).

[10] CO: If meets nexus dollar or percentage threshold.

[11] CT: There may be nexus, depending on facts and circumstances. Conn. Gen. Stat. §12-216a; IP 2010(29.1).

[12] CT: *Id.*

[13] CT: *Id.*

[14] CT: *Id.*

[15] CT: *Id.*

[16] DC: Depends on facts and circumstances.

[17] DC: *Id.*

[18] DC: *Id.*

[19] DC: *Id.*

[20] DC: *Id.*

[21] IL: Insufficient information.

[22] IL: *Id.*

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State[1]	Negotiates bank loans[2]	Makes mortgage loans[3]	Makes secured personal loans[4]	Issues credit cards[5]	Purchases mortgage loans [6]	Purchases personal loans[7]
Iowa	No	Yes	Yes	Yes[23]	Yes	Yes
Kansas	No	Yes	Yes	Yes	No	No
Kentucky	No	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	No	No	No
Maine	Depends	Depends	Depends	Depends	Depends	Depends
Maryland	No	Yes	Yes	No	Yes	No
Massachusetts[24]	**No**	Yes	Yes	Yes	Yes	Yes
Michigan	No[25]	No	No	No	No	No
Minnesota	No	Yes	Yes	Yes	No	No
Mississippi	No	No	No	No	No	No
Missouri	No	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	**Yes**	Yes	Yes	Yes	Yes	**Yes**
New Hampshire[26]	Yes	Yes	Yes	Yes	Depends	Depends
New Jersey	No	Yes	Yes	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York City[27]	No	Yes	Yes	Yes[28]	Yes	**No Response**
North Carolina	No	Yes[29]	No	Yes[30]	No	No
North Dakota	No	Yes	Yes	Yes	Yes	Yes
Ohio[31]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma	No	No	No	No	No	No
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	Yes	Yes	Depends	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	No

[23] IA: Economic nexus standard is used.
[24] MA: *See* TIR Nos. 95-6 and 00-6.
[25] MI: If visits to bank are fewer than 10 per year.
[26] NH: *See* RSA 77-A:1, XII.
[27] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[28] NYC: Effective for tax years beginning on or after Jan. 1, 2011, the Administrative Code relating to Bank Tax has been amended to tax credit card companies with customers having a mailing address in New York City regardless of whether the credit card company has a physical location in the City.
[29] NC: *See* Directive 99-1.
[30] NC: Provided issuer has substantial nexus in the state through its physical presence or its representative's physical presence in the state or its active solicitation of North Carolina residents.
[31] OH: A new financial institution tax was signed into law on December 27, 2012, with the first return due in 2014 calculated upon calendar year 2013 information. Financial institution is defined at R.C. 5726.05(H). For entities meeting the definition, the responses to these questions will be ''Yes.'' Other financial services companies that do not meet the definition are subject to the CAT. Ohio's CAT applies a factor presence test. The activities listed above would not subject a corporation to an income-based tax as FIT is calculated based on total equity capital.

State[1]	Negotiates bank loans[2]	Makes mortgage loans[3]	Makes secured personal loans[4]	Issues credit cards[5]	Purchases mortgage loans [6]	Purchases personal loans[7]
South Carolina[32]	No	Depends[33]	Depends[34]	Yes	Depends[35]	No Response[36]
Tennessee[37]	No	No	No	No	No	No
Texas	No	No	No	No	No	No
Utah	No	Yes	Yes	Yes	Yes	Yes
Vermont[38]	No	No	No	No	No	No
Virginia	No	No[39]	No[40]	No[41]	No[42]	No
West Virginia	Yes	Yes	No	Yes	Yes	No
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes

[32] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[33] SC: Depends on facts that are not provided.
[34] SC: Depends on facts that are not provided. S.C. Revenue Ruling No. 08-1 provides an example where a N.C. finance company does business in N.C. and T.N. The company makes a personal loan to a N.C. resident who moves to S.C. the following year. The finance company does not have nexus with South Carolina. The result would not change if the N.C. resident who moved to S.C. had his personal car secured by the N.C. loan. Further, the finance company does not have nexus with S.C. if the S.C. borrower contacts the N.C. finance company to renew the loan.
[35] SC: Depends on facts that are not provided. S.C. Revenue Ruling No. 08-1 provides an example where a N.Y. company is in the business of packaging and selling credit card and mortgage loans throughout the U.S. as passive investments. An insignificant number of the debtors and an insignificant amount of the property securing the loans are located in S.C. The passive investors who purchase these securities do not have nexus with S.C. Note, however, if the purchasers ''services'' the loans in S.C., there may be nexus depending on the facts and circumstances.
[36] SC: *Id.*
[37] TN: Answers given assume that the corporation has no other physical presence in Tennessee other than that allowed by Pub. L. No. 86-272.
[38] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[39] VA: *See* 23 VAC 10-120-20(B)(2).
[40] VA: *Id.*
[41] VA: *Cf.* P.D. 08-63.
[42] VA: *See* 23 VAC 10-120-20(B)(2).

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Nexus-Creating Activities: Financial Activities/Transactions (Part 2 of 2)

State[1]	Makes personal loans to 20 or more residents[2]	Makes personal loans to 20 or more new residents[3]	Makes car loans to 20 or more new residents[4]	Sells debts[5]	Forecloses on one parcel of real estate[6]	Forecloses on several parcels of real estate[7]
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	No	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Depends	No	No	Depends	Yes	Yes
Colorado	No	No	No	No	Yes[8]	Yes[9]
Connecticut[10]	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	No	Yes	Yes	No	Yes	Yes
District of Columbia	**No**[11]	**No**[12]	**Yes**[13]	**Yes**	**Yes**	**Yes**
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No	No	Yes	Yes	Yes	Yes
Hawaii	Depends	Depends	Depends	Depends	Depends	Depends
Idaho	No	No	No	Yes[14]	Yes	Yes
Illinois	No Response[15]	No	No Response[16]	No Response[17]	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	No	No	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation makes personal loans to 20 or more residents of your state who traveled across the state border to obtain the loans.

[3] The corporation makes personal loans to 20 or more out-of-state residents who over a number of years subsequently move to your state.

[4] The corporation makes automobile loans to 20 or more out-of-state residents who over a number of years subsequently move to your state.

[5] The corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States (assume a few of the debtors and some of the property securing the loans are located in your state).

[6] The corporation forecloses on one parcel of real estate located in your state.

[7] The corporation forecloses on several parcels of real estate located in your state.

[8] CO: If meets nexus dollar or percentage threshold.

[9] CO: *Id.*

[10] CT: There may be nexus, depending on facts and circumstances. Conn. Gen. Stat. §12-216a; IP 2010(29.1).

[11] DC: Depends on facts and circumstances.

[12] DC: *Id.*

[13] DC: Depends on the facts and circumstances. Lien now in D.C.

[14] ID: Depends on the facts and circumstances.

[15] IL: Insufficient information.

[16] IL: *Id.*

[17] IL: *Id.*

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State[1]	Makes personal loans to 20 or more residents[2]	Makes personal loans to 20 or more new residents[3]	Makes car loans to 20 or more new residents[4]	Sells debts[5]	Forecloses on one parcel of real estate[6]	Forecloses on several parcels of real estate[7]
Kentucky	No	No	No	Yes	Yes	Yes
Louisiana	No	No	No	No	**No**[18]	Yes[19]
Maine	Depends	Depends	Depends	Depends	Depends	Depends
Maryland	No	No	Yes	Yes	Yes	Yes
Massachusetts[20]	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	No	No	No	No	Yes	Yes
Minnesota	Yes	No	No	No	No	No
Mississippi	No	No	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	**Yes**[21]	**Yes**[22]	Yes	Yes	Yes	Yes
New Hampshire[23]	Depends	Depends	Depends	Depends	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City[24]	**No**	No	No	No	Yes	Yes
North Carolina	No	No	No	No	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Ohio[25]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma	No	No	No	No	Yes	Yes
Oregon	Yes	No	No	Yes	Yes	Yes
Pennsylvania	No	No	No	Depends	Yes	Yes
Rhode Island	No	No	No	No	Yes	Yes
South Carolina[26]	Depends[27]	No[28]	No[29]	No[30]	Depends[31]	Yes

[18] LA: Unless the taxpayer is an organization described in La. Rev. Stat. Ann. §§12:302(k) and (l).
[19] LA: *Id.*
[20] MA: *See* TIR Nos. 95-6 and 00-6.
[21] **NE: If the loan is secured by property in this state, there is nexus.**
[22] **NE:** *Id.*
[23] NH: *See* RSA 77-A:1, XII.
[24] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[25] OH: A new financial institution tax was signed into law on December 27, 2012, with the first return due in 2014 calculated upon calendar year 2013 information. Financial institution is defined at R.C. 5726.05(H). For entities meeting the definition, the responses to these questions will be ''Yes.'' Other financial services companies that do not meet the definition are subject to the CAT. Ohio's CAT applies a factor presence test. The activities listed above would not subject a corporation to an income-based tax as FIT is calculated based on total equity capital.
[26] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[27] SC: Depends on facts that are not provided.
[28] SC: *See* S.C. Rev. Rul. No. 08-1 debt examples.
[29] SC: *Id.*
[30] SC: *Id.*
[31] SC: Depends on facts that are not provided.

State[1]	Makes personal loans to 20 or more residents[2]	Makes personal loans to 20 or more new residents[3]	Makes car loans to 20 or more new residents[4]	Sells debts[5]	Forecloses on one parcel of real estate[6]	Forecloses on several parcels of real estate[7]
Tennessee	No[32]	No[33]	No[34]	No[35]	Yes[36]	Yes[37]
Texas	No	No	No	No	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont[38]	No	No	No	No	No Response	No Response
Virginia	No	No	No	No[39]	Yes[40]	Yes[41]
West Virginia	Yes	No	No	No	Yes	Yes
Wisconsin	Depends	Depends	Depends	Depends	Yes	Yes

[32] TN: Answers given assume that the corporation has no other physical presence in Tennessee other than that allowed by Pub. L. No. 86-272.
[33] TN: *Id.*
[34] TN: *Id.*
[35] TN: *Id.*
[36] TN: Answers given assume that the foreclosure(s) involve in-state activities and physical presence by the corporation or its agent(s).
[37] TN: *Id.*
[38] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[39] VA: *Cf.* P.D. 08-63.
[40] VA: Foreclosures that result in the corporation acquiring real or tangible personal property in Virginia would result in a positive property apportionment factor thereby creating nexus. *See* 23 VAC 10-120-20(B)(2).
[41] VA: *Id.*

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Nexus-Creating Activities: Transactions With In-State Printers

State[1]	Leases printing property[2]	Owns raw material at printer[3]	Makes quality control visits to printer[4]
Alaska	Yes	Yes	Yes
Arizona	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes
California	Yes	Yes	Yes
Colorado	Yes[5]	Yes[6]	No
Connecticut[7]	No	No	No
Delaware	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes
Florida	Yes	Yes	Yes
Georgia[8]	No	No	No
Hawaii	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
Illinois	No	No	No
Indiana	No	No	No
Iowa	Yes	Yes	Yes
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	No
Louisiana	Yes	Yes	Yes
Maine	Yes	Yes	Depends
Maryland	Yes	Yes	No
Massachusetts	Yes	**Depends**	**Depends**
Michigan	Yes	Yes	No
Minnesota	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation leases tangible personal property located at a printer in your state for use in connection with a printing contract (assume that once the work is complete, the printer ships the printed material out of your state for addressing and mailing).

[3] The corporation owns raw materials at an in-state printer.

[4] The corporation visits in-state printers for quality control purposes one to six times per year.

[5] CO: If meets nexus dollar or percentage threshold.

[6] CO: *Id.*

[7] **CT: *See* Conn. Gen. Stat. §12-213(a)(20)(B).**

[8] GA: A specific exemption applies pursuant to Ga. Ann. Code §48-7-1(7.1).

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State[1]	Leases printing property[2]	Owns raw material at printer[3]	Makes quality control visits to printer[4]
Mississippi	No	No	No
Missouri	Yes	Yes	No
Montana	Yes	Yes	Yes
Nebraska	Yes	Yes	No
New Hampshire	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes
New Mexico	Yes	Yes	No
New York City[10]	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes[11]
North Dakota	Yes	Yes	Yes
Oklahoma	No	No	No
Oregon	Yes	Yes	Yes
Pennsylvania[12]	No	No	No
Rhode Island	Yes	Yes	Yes
South Carolina[13]	No[14]	No[15]	No
Tennessee[16]	No	No	No
Texas	Yes	Yes	Yes
Utah[17]	No	No	No
Vermont[18]	No Response	No Response	No
Virginia[19]	No	No	No
West Virginia	No	No	No
Wisconsin	No	No	Yes

[10] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.
[11] NC: Depends on whether this unprotected activity is performed systematically.
[12] PA: 72 P.S. § 10003.10.
[13] SC: *See* S.C. Rev. Rul. No. 03-4 for official responses of the department.
[14] SC: *See* SC Code § 12-6-555.
[15] SC: *Id.*
[16] TN: *See* Tenn. Code Ann. Sec. 67-4-2004(14)(E)(ii) concerning doing business in Tennessee and contacts with Tennessee printers.
[17] UT: Utah Code Annotated Section 59-7-102(2) expressly exempts entities that own printing materials or perform certain services at an in-state printer's facility.
[18] VT: As nexus determinations depend on the totality of the circumstances statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.
[19] VA: *See* Va. Code § 58.1-401(7); P.D. 95-200.

Nexus-Creating Activities: Cloud Computing or Software as a Service (SaaS) Transactions

State[1]	Independent contractors perform services[2]	Employees solicit business and sale is not one of tangible property[3]	Customers with in-state billing addresses[4]	Earns substantial revenue from in-state customers[5]	Rents space on third party server[6]	Employees solicit business and sale is one of tangible property[7]
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	No Response[8]
Arkansas	Yes	Yes	Yes	Yes	Yes	No
California	Yes	Yes	Depends[9]	Depends[10]	Depends[11]	Depends
Colorado	Yes[12]	Yes[13]	No Response[14]	No Response[15]	No Response[16]	No Response[17]
Connecticut[18]	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	Yes	Yes	No	No	Yes	**No**
District of Columbia[19]	No	Yes	**Yes**	**Yes**	Yes	**No**
Florida	Yes	Yes	Yes	Yes	Yes	Yes[20]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
SC did not participate in this portion of the survey.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation provides access to its software to in-state customers and pays independent contractors to perform configuration/set-up services in the state.

[3] The corporation provides access to its software to in-state customers and has employees solicit business in the state (*i.e.*, the sale is *NOT* one of tangible property protected under Pub. L. No. 86-272).

[4] The corporation provides access to its software to in-state customers and lacks a physical presence in the state, but has a substantial number of customers with billing addresses in the state.

[5] The corporation provides access to its software to in-state customers and lacks a physical presence in the state, but earns a substantial amount of revenue from customers in the state.

[6] The corporation rents space on a third party server located in the state and lacks a physical presence in the state.

[7] The corporation provides access to its software to in-state customers and has employees solicit business in the state (*i.e.*, the sale *IS* one of tangible property protected under Pub. L. No. 86-272).

[8] AZ: Not yet determined.

[9] CA: Depends on facts and circumstances. *See also* RTC §23101(b).

[10] CA: *Id.*

[11] CA: Depends on facts and circumstances. This response assumes that the server is owned by a third party unrelated to the entity. *See also* RTC §23101(b).

[12] CO: If meets nexus dollar or percentage threshold. Independent contractor treated as employee for payroll test.

[13] CO: If meets nexus dollar or percentage threshold.

[14] CO: No determination yet.

[15] CO: *Id.*

[16] CO: *Id.*

[17] CO: *Id.*

[18] CT: There may be nexus, depending on facts and circumstances. Conn. Gen. Stat. §12-216a; IP 2010(29.1).

[19] DC: Answer depends if server and/or software to provide access is located in this state.

[20] FL: Likely not considered tangible personal property.

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State[1]	Independent contractors perform services[2]	Employees solicit business and sale is not one of tangible property[3]	Customers with in-state billing addresses[4]	Earns substantial revenue from in-state customers[5]	Rents space on third party server[6]	Employees solicit business and sale is one of tangible property[7]
Georgia	Yes	Yes	No Response	No Response	Depends[21]	No Response
Hawaii	Yes	Yes	Yes	Yes	Yes[22]	Yes
Idaho[23]	No Response	No Response	No Response	No Response	No Response	No Response
Illinois	Yes	Yes	**Yes**	**Yes**	**Yes**	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	**No**
Iowa[24]	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No Response	No Response	No Response	Yes
Kentucky	Yes	Yes	No	No	Yes	No
Louisiana	Yes	No Response[25]	No Response[26]	No Response[27]	Yes	No Response[28]
Maine	Yes	Yes	No	No	Yes	Yes
Maryland	No[29]	No	No	No	Yes	Yes
Massachusetts[30]	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	Yes	Yes	No[31]	No[32]	Yes	No
Minnesota	Yes	Yes	Yes	Yes	Yes	No
Mississippi	No Response	No Response	No Response	No Response	No Response	No Response
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	No Response
Nebraska	No Response	No Response	No Response	No Response	No Response	No Response
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No Response	Yes	No	No	**No**	No

[21] GA: If the server is owned or leased by the corporation, then nexus would be created.
[22] HI: Renting space on a third party server located in Hawaii state establishes physical presence.
[23] ID: The Tax Commission has made no ruling on this fact situation.
[24] IA: Physical presence not required for corporation income tax nexus per Iowa Supreme Court decision in KFC Corporation.
[25] LA: The department has no position on this issue at this time.
[26] LA: *Id.*
[27] LA: *Id.*
[28] LA: Id.
[29] MD: Only if configuration/set-up services involve minimal activity.
[30] MA: *See generally*, 830 CMR 64H.1.3.
[31] MI: Unless software constitutes prewritten software located on a server located in Michigan. Also, these activities may constitute ''active solicitation.'' *See* MCL 206.621(1).
[32] MI: *Id.*

State[1]	Independent contractors perform services[2]	Employees solicit business and sale is not one of tangible property[3]	Customers with in-state billing addresses[4]	Earns substantial revenue from in-state customers[5]	Rents space on third party server[6]	Employees solicit business and sale is one of tangible property[7]
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes[33]
North Dakota	Yes	Yes[34]	No	No	Yes	No[35]
Oklahoma[36]	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	No Response[37]	No Response[38]	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes[39]	Yes	No[40]	No[41]	Yes	Yes
Texas	Yes	Yes	No	No	Yes	Yes
Utah	Yes	Yes	Yes	Yes	**Depends**[42]	**No**
Vermont	Yes	No	No	No	No Response[43]	No
Virginia[44]	No[45]	Yes[46]	No[47]	No	No[48]	No
West Virginia	No	No	No	No	No	No
Wisconsin[49]	Yes	Yes	Yes	Yes	Yes	Yes

[33] NC: The answer depends on the facts. Because the employee will be soliciting orders for tangible personal property that is protected under Public Law 86-272, we will not subject the taxpayer to income tax unless there is a licensing agreement under which the taxpayer receives licensing fees for the access to the software.

[34] ND: If the employee lives and works in North Dakota, the cost of performance would be sourced there and would create nexus.

[35] ND: Confused on how ''access'' in [question] #2 [on providing access to software to in-state customers and having employees solicit business in state where the sale is not one of tangible property] is different than [question] #6 [on providing access to software to in-state customers and having employees solicit business in state where the sale is one of tangible property] such that [question #6] is tangible property and the other is not. Answer is no with assumption that something more than ''access'' occurs such that it is tangible property.

[36] OK: Policy not yet developed.

[37] PA: Undetermined.

[38] PA: *Id.*

[39] TN: Answer given assumes the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are ''independent,'' it appears that there is probably an agency relationship that would create tax nexus for the principal.

[40] TN: Answers assume that access to software is not provided by a server located in Tennessee.

[41] TN: *Id.*

[42] **UT: Answer would depend on whether amount of activity into the state exceeds de minimis.**

[43] VT: The consideration of the full set of circumstances is necessary for the determination of nexus.

[44] VA: The Department has never ruled specifically on the corporate income tax implications of cloud computing or SaaS transactions. Accordingly, the responses above are based on current Department policy regarding software services.

[45] VA: P.D. 01-173.

[46] VA: Virginia extends the ''solicitation test'' to sales of intangibles, but certain activities, such as configuration and setup by employees, exceed solicitation. *See* P.D. 98-176.

[47] VA: P.D. 01-136 and P.D. 04-173.

[48] VA: P.D. 05-128.

[49] WI: The licensing of intangible rights for use in Wisconsin creates nexus. Section Tax 2.82(4)(a)9 & 2.82(4)(b)5, Wis. Adm. Code (July 2012 Register).

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Nexus-Creating Activities: Internet-Based Activities

State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid web-hosting provider with server[8]
Alaska[9]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	No
Arkansas[10]	Yes	Yes	Yes	Yes	Yes	Yes	No
California[11]	Yes	Yes	Yes	No	No	No	Depends
Colorado	Yes[12]	Yes[13]	Yes[14]	Yes[15]	Yes[16]	Yes[17]	No Response[18]
Connecticut[19]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answers would depend on the facts and circumstances.
AL did not participate in this portion of the survey. However, the state noted that it interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.
SC did not participate in this portion of the survey.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] The corporation owns an Internet server located in your state.

[3] The corporation owns an Internet server located in your state and hires third-party technicians located in your state to keep the server functioning.

[4] The corporation leases a third-party's Internet server located in your state. Assume that the server is used exclusively by the corporation.

[5] The corporation leases space on a third-party's Internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.

[6] The corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server in your state for less than six months during the year.

[7] The corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server for more than six months during the year.

[8] The corporation does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the corporation web services to sell products over the Internet.

[9] **AK: The answers do not depend on whether the out-of-state corporation made sales into Alaska.**

[10] AR: The answers do not depend on whether the corporation made sales into Arkansas.

[11] CA: The answers do not depend on whether the corporation made sales into this state, and are subject to change based on additional facts and circumstances.

[12] CO: If meets nexus dollar or percentage threshold.

[13] CO: *Id.*

[14] CO: *Id.*

[15] CO: *Id.*

[16] CO: *Id.*

[17] CO: *Id.*

[18] CO: No determination yet.

[19] CT: DRS has no published position.

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State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid web-hosting provider with server[8]
District of Columbia[20]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida[21]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia[22]	Yes	Yes	Yes	Yes	Yes	Yes	No Response
Hawaii[23]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	No Response[24]	No Response[25]	No Response[26]	No Response[27]
Illinois	Yes	Yes	Yes	No Response[28]	No Response[29]	No Response[30]	No
Indiana[31]	Yes	Yes	Yes	Yes	No	No	No
Iowa[32]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No Response	No Response	No Response	No Response
Kentucky[33]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana[34]	Yes	Yes	Yes	Yes	Yes	Yes	No Response[35]
Maine	Yes	Yes	Yes	Yes	No Response[36]	No Response[37]	No Response[38]
Maryland[39]	Yes	Yes	Yes	Yes	Yes	Yes	No
Massachusetts[40]	Yes	Yes	Depends	Depends	Depends	Depends	No
Michigan[41]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[42]

[20] DC: The answer depends on whether the out-of-state corporation made sales into the state, and it depends if it owned property located in this state.
[21] FL: The answers do not depend on whether the corporation made sales into the state.
[22] GA: The answers do not depend on whether the corporation made sales into the state.
[23] HI: These activities create nexus for Hawaii and, if the corporation made sales into Hawaii, it will be subject to tax.
[24] ID: The Tax Commission has made no ruling on this fact situation.
[25] ID: *Id.*
[26] ID: *Id.*
[27] ID: *Id.*
[28] IL: Not enough information.
[29] IL: *Id.*
[30] IL: *Id.*
[31] **IN: No, the answers do not depend on whether the out-of-state corporation made sales into Indiana.**
[32] IA: Physical presence not required for corporation income tax nexus per Iowa Supreme Court decision in KFC Corporation.
[33] KY: It does not depend on whether the out-of-state corporation made sales into this state.
[34] LA: The answers do not depend on whether the corporation made sales into the state.
[35] LA: The department has no position on this issue at this time.
[36] ME: Would need more info to make a nexus determination.
[37] ME: *Id.*
[38] ME: *Id.*
[39] MD: The answers do not depend on whether the corporation made sales into Maryland.
[40] MA: The answers do not depend on whether the corporation made sales into the state.
[41] **MI: Answers do not depend on whether corporation made sales into Michigan.**
[42] MI: If web services constitute ''active solicitation'' and taxpayer has $350,000 or more in gross receipts sourced to Michigan. *See* MCL 206.621(1).

State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid web-hosting provider with server[8]
Minnesota	Yes	Yes	Yes	No Response[43]	No Response[44]	No Response[45]	No Response[46]
Mississippi[47]	No	No	No	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	Yes	Yes	Yes	**Yes**	**Yes**	**Yes**	**No**[48]
New Hampshire[49]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey[50]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	No Response	Yes	Yes	No
North Carolina[51]	Yes	Yes	Yes	Yes	Yes	Yes	No
North Dakota[52]	Yes	Yes	Yes	Yes	Yes	Yes	No
Oklahoma[53]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon[54]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	**Yes**
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes[55]	Yes[56]	Yes[57]	Yes[58]	Yes[59]	Yes[60]	Yes[61]

[43] MN: These answers do not depend on whether the corporation made sales into the state. The answers depend on whether the corporation is leasing property in the state **and is not based on a** service performed in the state which is received by the corporation outside the state.
[44] MN: *Id.*
[45] MN: *Id.*
[46] MN: *Id.*
[47] MS: These questions are not nexus-creating activities.
[48] NE: Assuming the web-hosting provider is not an agent or representative of the out-of-state corporation.
[49] NH: The answers are the same regardless of whether the corporation made sales into the state.
[50] NJ: The answer does not depend on whether the out-of-state corporation made sales into the State.
[51] NC: The answers provided above do not depend on whether the company has sales in North Carolina.
[52] ND: None of the answers were dependent on whether sales were made into the state.
[53] OK: Policy not yet developed.
[54] OR: Answers do not depend on whether the corporation made sales into the state.
[55] TN: The corporation owns or leases income producing property in Tennessee which creates franchise, excise tax nexus in Tennessee regardless of whether the corporation makes Tennessee sales.
[56] TN: *Id.*
[57] TN: *Id.*
[58] TN: *Id.*
[59] TN: *Id.*
[60] TN: *Id.*
[61] TN: The corporation is conducting business in Tennessee through a web-hosting provider which creates nexus in Tennessee regardless of whether the corporation makes Tennessee sales.

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State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid web-hosting provider with server[8]
Texas	Yes[62]	Yes[63]	Yes[64]	No Response	No Response	No Response	No
Utah[65]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont	Yes[66]	Yes[67]	No	No	No	No	No
Virginia[68]	Yes[69]	Yes[70]	No	No	No	No	No
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	No
Wisconsin[71]	Yes	Yes	Yes	Depends	Depends	Depends	No

[62] TX: The answer to this question does not depend on whether the corporation makes sales into Texas.
[63] TX: *Id.*
[64] TX: *Id.*
[65] **UT: Answer would be affected by whether the corporation made sales into the state as well as whether the server related operations exceeded a de minimis level.**
[66] VT: Ownership of an Internet server creates nexus because its in-state presence requires either ownership or lease of real property.
[67] VT: *Id.*
[68] VA: Answers to the above questions do not depend on whether the out-of-state corporation made sales in Virginia. Nexus requires at least one positive apportionment factor. Accordingly, the out-of-state corporation could still have nexus if it had a positive property or payroll factor.
[69] VA: *See* P.D. 05-128.
[70] VA: *See* P.D. 12-36.
[71] **WI: No, the answer does not depend on whether the out-of-state corporation made sales in Wisconsin.**

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State Tax Add-Backs

Disallowance of Income-Based State, Local Taxes Varies Among the States, Survey Results Show

In most states, the computation of taxable corporate income begins with either federal taxable income before net operating losses and special deductions (*i.e.*, federal Form 1120, line 28) or federal taxable income after net operating losses and special deductions (*i.e.*, federal Form 1120, line 30). Several states, however, do not use federal taxable income as a starting point and instead require taxpayers to separately compute taxable income using principles similar to those employed in computing federal taxable income.

State Adjustments to Federal Income

States that use federal taxable income as a starting point require taxpayers to make a number of addition or subtraction modifications. Addition modifications may include, but are not limited to:

- the state and local interest income exempt from tax at the federal level,
- the income-based taxes deducted in computing federal taxable income,
- the federal net operating loss deduction, and
- the federal dividends received deduction.

Subtraction modifications may include, but are not limited to:

- the deduction for income received from investments in federal obligations in those states that impose a direct tax on income rather than a franchise tax based on income;
- the deduction for certain types of income, such as income earned in an enterprise zone;
- the deduction for expenses that were limited at the federal level due to the election of certain federal tax credits; and
- the I.R.C. § 78 dividend gross-up.

States Disallow State Tax Deductions

Many states do not allow a deduction for income-based taxes imposed by states or localities, even though such taxes generally are deductible for federal purposes. While some states do not allow a deduction for any income-based state or local tax, other states only disallow income-based taxes paid to their own state.

States that disallow state and local taxes, and that begin the computation of state taxable income with federal taxable income, will require an addback for state and local taxes. In other words, these states require nondeductible state and local taxes to be added back to federal taxable income in the computation of state taxable income.

State tax practitioners must understand the differences between state laws in determining the deductibility of state and local taxes.

Moreover, practitioners must be aware of whether a state determines another state's corporate tax to be ''income based.'' Because some state corporate taxes (*e.g.*, the Texas Margin Tax) have an income component, but are not entirely based on income, the determination of whether the tax is based on income varies among the states.

Bloomberg BNA Survey Offers Clarity, Identifies Addbacks

We asked the states questions about what taxes they allow or disallow as deductions in arriving at their corporate income-based tax. Specifically, we asked the states to identify the types of state and local income-based taxes that are disallowed as deductions and, therefore, must be added back when computing state taxable income.

We also surveyed the states on their treatment of deductions claimed for amounts representing payment of the New York City Unincorporated Business Tax, Ohio Commercial Activity Tax, and Texas Margin Tax.

The state responses, which are presented in the following charts, offer additional insight for tax practitioners in dealing with this often troublesome issue.

State Tax Add-Backs (Part 1 of 2)

State[1]	State tax imposed by your state[2]	State tax imposed by other states[3]	In-state local taxes[4]	Out-of-state local taxes[5]	Foreign taxes[6]	Franchise taxes[7]	Gross receipts taxes[8]	District of Columbia UBT[9]	Kentucky license tax[10]
Alabama	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Alaska	Yes	Yes	Yes	Yes	Yes[11]	No	No	Yes	No Response[12]
Arizona	Yes	Yes	Yes	Yes	Yes[13]	No	No	Yes	No
Arkansas	Yes	No	Yes	No	No	No	No	No	No
California	Yes	Yes	Yes	Yes	Yes[14]	No	No	Yes	No
Colorado	Yes	No	Not Applicable	No	Yes[15]	No	No	No	No
Connecticut	Yes	Yes	Yes	Yes	No Response[16]	No Response[17]	No Response[18]	No Response[19]	No Response[20]
Delaware	Yes	**No**	No	No	No	No	No	No	No
District of Columbia[21]	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Florida	Yes	Yes	No	No	No	No	No	No	No
Georgia	No	Yes	Yes	Yes	Yes	No	No	**No Response**	No
Hawaii	No	No	No	No	No	No	No	No	No
Idaho[22]	Yes	Yes	Yes	Yes	No	No	No	Yes	No
Illinois	Yes	No	No	No	No	No	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] State income-based taxes imposed by your state.
[3] State income-based taxes imposed by other states.
[4] Local income-based taxes imposed by in-state local governments.
[5] Local income-based taxes imposed by out-of-state local governments.
[6] Foreign taxes (other countries).
[7] State franchise taxes based on capital stock or net worth.
[8] State gross receipts taxes.
[9] District of Columbia unincorporated business tax.
[10] Kentucky license tax.
[11] AK: If based on or measured by net income.
[12] AK: Alaska has not recently evaluated the statutes of these specific states and doesn't know if changes have been made to the statutes governing these tax types. All taxes based on or measured by net income are disallowed as a deduction.
[13] AZ: Foreign taxes are added back if they are based on income and deducted in computing federal taxable income.
[14] CA: Disallowed to the extent the tax is based on income. However, under Reg. 24345-7, foreign taxes are presumed to be based on income.
[15] CO: Allowed if taken as a deduction on federal income tax return. [If taken as a credit, *see* 39-22-303(10)(a) and (b) CRS].
[16] CT: DRS has no published position.
[17] CT: *Id.*
[18] CT: *Id.*
[19] CT: *Id.*
[20] CT: *Id.*
[21] DC: D.C. Code Section 47-1803.03 - Any tax measured by net income not allowed. **Washington does not impose corporate income tax.**
[22] **ID: Idaho code section 63-3022 (a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income...**

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State[1]	State tax imposed by your state[2]	State tax imposed by other states[3]	In-state local taxes[4]	Out-of-state local taxes[5]	Foreign taxes[6]	Franchise taxes[7]	Gross receipts taxes[8]	District of Columbia UBT[9]	Kentucky license tax[10]
Indiana	Yes	Yes	Not Applicable[23]	No	No	No	Yes	No	Yes
Iowa	Yes	No	No	No	No[24]	No	No	No	No
Kansas	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Kentucky	Yes	Yes	No	No	Yes	No	No	Yes	No
Louisiana	Yes[25]	No[26]	No[27]	No[28]	No[29]	No[30]	No[31]	No	No
Maine	Yes	Yes	No	No	Yes[32]	No	No	Yes	No
Maryland	Yes[33]	Yes[34]	Yes[35]	Yes[36]	No	No	No	Yes[37]	No
Massachusetts[38]	Depends	Depends	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	Yes	Yes	Yes	Yes	Yes[39]	Yes	No	Yes	No
Minnesota	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Mississippi	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	No	No	No	No	No
Montana	Yes	Yes	Yes	Yes	Yes[40]	No	No	Yes	No
Nebraska[41]	No	No	No	No	No	No	No	No	No
New Hampshire	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No Response[42]
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes[43]	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No Response	Yes	**Yes**	Yes	No Response	No	No	No Response	No Response
North Carolina	Yes	Yes	Yes	Yes	No	No	No	Yes	No
North Dakota	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Oklahoma	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
Oregon	Yes	Yes	No	No	Yes	No	No	No	No

[23] IN: There are not local income taxes for corporations.
[24] IA: Foreign tax deduction allowed only if deduction allowed for federal tax purposes.
[25] LA: Taxes allowed as a deduction for Louisiana are the same as for federal except income based taxes imposed by Louisiana. La. Rev. Stat. Ann. §47:287.73.
[26] LA: *Id.*
[27] LA: *Id.*
[28] LA: *Id.*
[29] LA: *Id.*
[30] LA: *Id.*
[31] LA: *Id.*
[32] ME: Add-back is required if similar taxing jurisdiction to Maine.
[33] MD: Add-back required for any tax based on net income that is imposed by any state or by a political subdivision of any state.
[34] MD: *Id.*
[35] MD: *Id.*
[36] MD: *Id.*
[37] MD: *Id.*
[38] MA: GL c. 63, S. 31(k), D.D. Corp. No. 99-9. **Pursuant to G.L. c. 63, s. 30(4)(iii) in determining a corporation's net income, a deduction is not allowed for "taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by any state."**
[39] MI: Foreign income taxes.
[40] MT: Deduction disallowed to the extent the tax is based on income.
[41] NE: Nebraska allows up to the amount allowed on the corporation's federal return.
[42] NH: Unable to answer unless broken down.
[43] **NJ: But *see* PPL Electric Utilities Corporation v. Director, Division of Taxation, 000005-2-11 (NJ Tax 2014) for an exception.**

State[1]	State tax imposed by your state[2]	State tax imposed by other states[3]	In-state local taxes[4]	Out-of-state local taxes[5]	Foreign taxes[6]	Franchise taxes[7]	Gross receipts taxes[8]	District of Columbia UBT[9]	Kentucky license tax[10]
Pennsylvania	Yes	Yes	Yes	Yes	Yes[44]	No	No	Not Applicable	Not Applicable
Rhode Island	Yes	No	No	No	No	No	No	No	No
South Carolina[45]	Yes	Yes	Not Applicable[46]	Yes	Depends[47]	No	No	Yes	No
Tennessee[48]	Yes[49]	No	No	No	No	No	No	No	No
Texas[50]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Utah	Yes	Yes	No	No	Yes	Yes	Yes[51]	Yes	Yes
Vermont	Yes	Yes	Yes	Yes	No Response	Yes	No Response	Yes	No Response
Virginia	Yes	Yes	Yes	Yes	Yes[52]	No	No	Yes	No
West Virginia	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	No	No	Yes[53]	Yes	Yes	Yes	Yes

[44] PA: Disallow deduction for income tax.
[45] SC: *See* S.C. Rev. Rul. No. 09-10 for official responses of the department.
[46] SC: South Carolina does not have any local income based taxes imposed by S.C. local governments, but if it did, the deduction would be disallowed.
[47] SC: The treatment of foreign taxes depends on facts.
[48] TN: All answers assume that the tax at issue is deductible when computing federal net earnings before the NOL and special deductions. If the tax is not deductible for federal purposes, it is not deductible for Tennessee excise tax purposes.
[49] TN: Assumes that the only state income-based tax is the Tennessee excise tax.
[50] TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. *See* Texas Tax Code §171.1011. There is no statutory exclusion for the taxes listed. Thus, the taxes listed are not allowed as deductions in computing margin.
[51] UT: Gross receipts taxes added back if the tax is a franchise or privilege tax.
[52] VA: Foreign taxes must be added back if they are measured by net income or net profits.
[53] WI: Foreign taxes are not deductible unless the income on which the tax is based is taxable by Wisconsin.

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State Tax Add-Backs (Part 2 of 2)

State[1]	New Hampshire business profits tax[2]	Washington B&O tax[3]	West Virginia B&O tax[4]	New York City UBT[5]
Alabama	Yes	No	Yes	**Yes**
Alaska	Yes	No Response[6]	No Response[7]	**No Response**[8]
Arizona	No	No	No	**Yes**
Arkansas	No	No	No	**No**
California	Yes[9]	No	Yes[10]	**Yes**
Colorado	No	No	No	**No**
Connecticut[11]	No Response	No Response	No Response	No Response
Delaware	No	No	No	**No**
District of Columbia[12]	Yes	**No**	Yes	**Yes**
Florida	Yes	No	No	**Yes**
Georgia	Yes	No	No	**No Response**
Hawaii	No	No	No	**No**
Idaho [13]	Yes	No	No	**Yes**
Illinois	No	No	No	**No**
Indiana	Yes	Yes	Yes	**Yes**
Iowa	No	No	No	**No**
Kansas	No	No	No	**Yes**
Kentucky	Yes	Yes	Yes	**Yes**
Louisiana	No	No	No	**No**
Maine	Yes	No	No	**Yes**
Maryland	Yes[14]	No	No	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] New Hampshire business profits tax.

[3] Washington business and occupation tax.

[4] West Virginia business and occupation tax.

[5] New York City unincorporated business tax.

[6] AK: Alaska has not recently evaluated the statutes of these specific states and doesn't know if changes have been made to the statutes governing these tax types. All taxes based on or measured by net income are disallowed as a deduction.

[7] AK: *Id.*

[8] **AK: *Id.***

[9] CA: **Deduction allowed to the extent there is a return of capital in the form of labor cost of goods sold. *See* FTB Notice 94-4.**

[10] CA: Disallowed to the extent based on income.

[11] CT: DRS has no published position.

[12] DC: D.C. Code section 47-1803.03 - Any tax measured by net income not allowed. **Washington does not impose corporate income tax.**

[13] **ID: Idaho code section 63-3022 (a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income...**

[14] MD: *Id.*

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State[1]	New Hampshire business profits tax[2]	Washington B&O tax[3]	West Virginia B&O tax[4]	New York City UBT[5]
Massachusetts[15]	Yes	Yes	Yes	**Depends**
Michigan	No	No	No	**No Response**[16]
Minnesota	No	No	No	**Yes**
Mississippi	Yes	No	No	**No Response**
Missouri	No	No	No	**No**
Montana	Yes	No	No[17]	**Yes**
Nebraska[18]	No	No	No	**No**
New Hampshire	Yes	No	No	**Yes**
New Jersey	Yes	Yes	Yes	**Yes**
New Mexico	Yes	Yes	Yes	**Yes**
New York City	No Response	No Response	No Response	**No Response**
North Carolina	No	No	No	**Yes**
North Dakota	No	No	No	**Yes**
Oklahoma	Yes	Yes	Yes	**No Response**
Oregon	Yes	No	No	**No Response**[19]
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	**Yes**
Rhode Island	No	No	No	**No**
South Carolina	Yes[20]	No[21]	No[22]	**No Response**
Tennessee[23]	No	No	No	**No**
Texas[24]	No Response	No Response	No Response	**No Response**
Utah	Yes	Yes	Yes	**No**
Vermont	Yes	Yes	Yes	**Yes**
Virginia	Yes	No	No	**Yes**
West Virginia	Yes	Yes	Yes	**No Response**
Wisconsin	Yes	No	No[25]	**Yes**

[15] MA: GL c. 63, S. 31(k), D.D. Corp. No. 99-9. **Pursuant to G.L. c. 63, s. 30(4)(iii) in determining a corporation's net income, a deduction is not allowed for "taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by any state."**

[16] **MI: Policy under review.**

[17] MT: Deduction disallowed to the extent the tax is based on income.

[18] NE: Nebraska allows up to the amount allowed on the corporation's federal return.

[19] **OR: Oregon does not allow a deduction for any taxes upon or measured by net income or profits that is imposed by any foreign country or any state or territory (ORS 317.314). Oregon is evaluating whether this falls within the provisions.**

[20] SC: *See* S.C. Rev. Rul. No. 09-10 for official responses of the department.

[21] SC: *Id.*

[22] SC: *Id.*

[23] TN: All answers assume that the tax at issue is deductible when computing federal net earnings before the NOL and special deductions. If the tax is not deductible for federal purposes, it is not deductible for Tennessee excise tax purposes.

[24] TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. *See* Tex. Tax Code §171.1011. There is no statutory exclusion for the taxes listed. Thus, the taxes listed are not allowed as deductions in computing margin.

[25] WI: If the expenditure is capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.

State Tax Add-Backs: Ohio and Texas

State[1]	Ohio Commercial Activity Tax[2]	Texas Margin Tax[3]
Alabama[4]	Yes	Yes
Alaska	No Response[5]	Yes[6]
Arizona	No	Yes[7]
Arkansas	No	No
California	No	Yes[8]
Colorado	No	No
Connecticut[9]	No Response	No Response
Delaware	Yes	Yes
District of Columbia	**Yes**	**No**
Florida	No	Yes
Georgia	No	No
Hawaii	No	No
Idaho	No	No Response[10]
Illinois	No	No
Indiana	Yes[11]	Yes[12]
Iowa	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
OH did not participate in this portion of the survey because most corporations are now subject to the CAT, rather than a corporate income tax.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Your state requires the add-back (*i.e.*, disallows the deduction) of amounts representing the payment of the Ohio Commercial Activity Tax (CAT) in arriving at your state's corporate-based income tax.

[3] Your state requires the add-back (*i.e.*, disallows the deduction) of amounts representing the payment of the revised Texas Franchise Tax in arriving at your state's corporate-based income tax.

[4] AL: Add back any portion related to business income.

[5] AK: Alaska has not recently evaluated the statutes of this specific state's tax and cannot provide a response at this time.

[6] AK: To the extent based on or measured by net income.

[7] AZ: Appears to be based on income.

[8] CA: Deduction disallowed to the extent the tax is based on income.

[9] CT: DRS has no published position on this question.

[10] ID: In 2012, legislation was passed amending the language contained within section 63-3029, Idaho Code, which would treat certain of the Texas Margins Tax calculations as a creditable tax. Section 63-3029(8), Idaho Code. In 2013, legislation was passed that requires a creditable tax to be added back when calculating Idaho Taxable Income. Section 63-3022(a).

[11] IN: The 2013 answer should be yes as well.

[12] IN: *Id.*

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State[1]	Ohio Commercial Activity Tax[2]	Texas Margin Tax[3]
Kansas	Yes[13]	Yes[14]
Kentucky	Yes	Yes
Louisiana	No	No
Maine	No	No Response[15]
Maryland	No	Yes
Massachusetts	Yes	Yes
Michigan	No	No
Minnesota	No	No Response[16]
Mississippi	No Response	No Response
Missouri	No	Yes
Montana	No	Yes[17]
Nebraska[18]	No	No
New Hampshire	No	No
New Jersey	Yes	Yes
New Mexico	No	No
New York City	No Response	No Response
North Carolina	No	No
North Dakota	No	No Response[19]
Oklahoma	Yes	Yes
Oregon	No	Depends[20]
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	No[21]	Yes[22]

[13] KS: We are not very familiar with this tax but believe a portion of it is based on income. If so, an add-back would be required as to at least that portion.
[14] KS: *Id.*
[15] ME: Deduction is allowed for gross receipts portion; net income portion must be added back.
[16] MN: For corporations, Minnesota Statutes, section 290.01, subdivision 19c(1), requires an addition to federal taxable income for ''taxes based on net income'' paid by a corporation to another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States. Under Texas Tax Code, section 171.101, starting in 2007, Texas imposed a ''business margin tax'' on the lesser of 70 percent of business gross receipts or business gross receipts less deductions. Although the latter calculation provides some deductions for compensation and cost-of-goods sold, it does not provide other deductions, such as interest, depreciation, and most other business expenses generally associated with a computation of net income. It is the department's position that the Texas business margin tax is not a tax based on net income.
[17] MT: Deduction disallowed to the extent the tax is based on income.
[18] NE: Nebraska allows the deduction of the tax up to the amount allowed on the federal return.
[19] ND: No, to the extent the tax is calculated on total revenue.
[20] OR: Oregon is currently evaluating whether Texas Margin Tax falls within add-back provisions of ORS 317.314.
[21] SC: *See* S.C. Rev. Rul. No. 09-10 for official responses of the department.
[22] SC: *Id.*

State[1]	Ohio Commercial Activity Tax[2]	Texas Margin Tax[3]
Tennessee[23]	No	No
Texas	No Response[24]	No Response[25]
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	Not Applicable[26]	No[27]
West Virginia	No	No
Wisconsin	No	Yes

[23] TN: Answers assume that the tax is deductible in determining federal net earnings before the net operating loss deduction and special deductions.

[24] TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. *See* Texas Tax Code §171.1011. There is no statutory exclusion for the Ohio Commercial Activity Tax. Thus, the tax is not allowed as a deduction in computing margin.

[25] TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. *See* Texas Tax Code §171.1011. There is no statutory exclusion for the Texas Margin Tax. Thus, the tax is not allowed as a deduction in computing margin.

[26] VA: No ruling has been issued.

[27] VA: *See* P.D. 08-169.

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338(h)(10) Elections

Almost All States Conform to Federal Treatment Of Corporate Transactions Under I.R.C. §338(h)(10)

In an I.R.C. §338 transaction, a target corporation is treated as if it sells its assets to itself, as a new corporation, in a taxable transaction and then is liquidated. If a regular I.R.C. §338 election is made, the tax is borne by the buyer because the taxable transaction occurs after the target leaves the seller's control. In contrast, if an I.R.C. §338(h)(10) election is made, the liability is borne by the selling consolidated group. This would appear at first glance to be a significant difference, but in fact, the parties are aware of the differences, and the tax burden becomes part of the overall price that is subject to negotiation.

When I.R.C. §338 was first adopted, the toll charge — a tax on recapture items — was often viewed as a reasonable price to pay for the tax benefits resulting from enhanced depreciation deductions in the future. Congress changed this in the Tax Reform Act of 1986 (1986 TRA). Beginning in 1987, subject to certain transitional rules, the law provided that a target in an I.R.C. §338 transaction was taxable on its entire gain on the deemed sale of its assets, not just on recaptured items. The 1986 TRA also eliminated the preferential tax rate for long-term capital gains.

As a result of these changes, standard I.R.C. §338 elections are rarely used. The target in its capacity as seller must pay tax on its entire gain and that tax must be paid immediately. The tax benefits resulting from the stepped-up basis of the target's assets are received only gradually over a period of time as those assets are depreciated. When capital gains and ordinary income for corporations are taxed at the same rates, it is obvious that a straight I.R.C. §338 election will rarely be advantageous. It may be used where the target has net operating losses that can offset its gain on the deemed sale of its assets, but it is hard to imagine another circumstance in which a straight I.R.C. §338 election will make sense.

I.R.C. §338(h)(10) Elections Retain Usefulness

Conversely, an I.R.C. §338(h)(10) election is an effective tax planning technique. In an I.R.C. §338(h)(10) transaction, tax is only imposed on the target's deemed sale of its assets while a member of the selling parent's consolidated group. The deemed liquidation of the target is tax-free under I.R.C. §332, and the parent's gain or loss on the sale of the target's stock is disregarded for tax purposes. Although in theory the values reflected by any appreciation in the target's assets will eventually be taxed when the parent is liquidated or sold, this may not happen for a long time and the double tax may be more of an abstraction than a practical reality.

If a parent corporation sells a subsidiary's stock and an I.R.C. §338(h)(10) election is not made, its gain or loss will depend on the difference between the sales price and its adjusted basis in the subsidiary's stock. If an I.R.C. §338(h)(10) election is made, the parent's taxable gain will be a function of the difference between the sale price and the target's basis in its assets. Thus, the desirability of making an I.R.C. §338(h)(10) election for the parent will depend on the relative bases of the subsidiary's stock and the subsidiary's assets.

Even if the basis of the stock is higher than the basis of the assets, so that an I.R.C. §338(h)(10) election is not desirable for the selling parent, the buyer may be willing to pay a higher price if the I.R.C. §338(h)(10) election is made because the buyer stands to gain significant tax benefits from stepping up the basis of a subsidiary's assets. I.R.C. §338(h)(10) transactions are therefore still common, although straight I.R.C. §338 transactions are rare.

Bloomberg BNA Survey Identifies State Positions

An I.R.C. §338(h)(10) election at the federal level raises issues at the state level, beginning with whether the state will conform to the federal election and whether such conformity is mandatory. If the state does permit an I.R.C. §338(h)(10) election, taxpayers must understand the state's treatment of the gain and how the gross proceeds from the deemed sale will affect the apportionment factors.

Bloomberg BNA asked the states a series of questions about their treatment of I.R.C. §338(h)(10) elections and their responses appear in the following charts.

I.R.C. §338(h)(10) Elections: Conformity to the Election and Treatment

State[1]	State conforms to federal treatment for C corporations[2]	State conforms to federal treatment for S corporations[3]	State requires separate election[4]	Taxpayer can make federal but not state election[5]	Taxpayer can make state but not federal election[6]
Alabama	Yes	Yes	No	No	No
Alaska	Yes	Yes	No	No	No
Arizona	Yes	Yes	No	No	No
Arkansas[7]	Yes	Yes	Yes[8]	Yes[9]	Yes[10]
California	Yes	Yes	No	Depends[11]	Depends[12]
Colorado	Yes	Yes	No	No	No
Connecticut	Yes[13]	Yes[14]	No[15]	No	No[16]
Delaware	Yes	Yes	No	No	No
District of Columbia	**Yes**[17]	**No**	**Not Applicable**	**No**	**No**
Florida[18]	Yes	Yes	No	No	No
Georgia	Yes	Yes	No	No	No
Hawaii	Yes	Yes	Yes	No	No
Idaho	Yes	Yes	No	No	No
Illinois	Yes	Yes	No	No	No
Indiana	Yes	Yes	No	No	No
Iowa	Yes	Yes	No	No	No
Kansas	Yes	Yes	No	No	No
Kentucky	Yes	Yes	No	No	No
Louisiana[19]	No	No	No	No	No
Maine	Yes	Yes	No	No	No
Maryland	Yes	Yes	No	No	No
Massachusetts[20]	Yes	Yes	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
[2] Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for regular (Subchapter C) corporations?
[3] Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for S corporations?
[4] Must a separate state election be made?
[5] If an election is made for federal tax purposes, can a taxpayer elect NOT to make the election for state tax purposes?
[6] If an election is NOT made for federal tax purposes, can a taxpayer elect to make the election for state tax purposes?
[7] AR: Regulation 2.26-51-413.
[8] AR: The questions only apply if the corporations are federal S corporations that are Arkansas C corporations, and, if the corporation is not making an Arkansas 338(h)(10) election, the transaction is treated as a sale of stock for Arkansas purposes.
[9] AR: *Id.*
[10] AR: *Id.*
[11] CA: Yes for California C corporations; No for California S corporations.
[12] CA: *Id.*
[13] CT: Ruling 89-46; Ruling 2003-3.
[14] CT: *Id.*
[15] CT: *Id.*
[16] CT: *Id.*
[17] DC: IRS reference should be §338(g).
[18] FL: Generally, Florida follows the federal treatment, however, the facts and circumstances of the transaction are subject to evaluation to ensure consistency with Florida statutes.
[19] LA: Louisiana does not conform to the federal treatment of I.R.C. §338 elections, but if a corporation recognizes a gain from the transaction then it will be taken into account in determining gross income.
[20] MA: *See* TIR 04-22.

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State[1]	State conforms to federal treatment for C corporations[2]	State conforms to federal treatment for S corporations[3]	State requires separate election[4]	Taxpayer can make federal but not state election[5]	Taxpayer can make state but not federal election[6]
Michigan	Yes	Yes	No	No	No
Minnesota	Yes	Yes	No	No	No
Mississippi	Yes	Yes	No	No	No
Missouri	Yes	Yes	No	No	No
Montana	Yes	Yes	No	No	No
Nebraska	Yes	Yes	No	No	No
New Hampshire	Yes	Yes	No	No	No
New Jersey	Yes	No[21]	No	No	No
New Mexico	Yes	Yes	No	No	No
New York City[22]	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes[23]	Yes[24]	No	No	No
North Dakota	Yes	Yes	No	No	No
Ohio[25]	Yes	Yes	No	No	No
Oklahoma	Yes	Yes	No	No	No
Oregon	Yes	Yes	No	No	No
Pennsylvania	Yes	No	No	No	No
Rhode Island	Yes	Yes	No	No	No
South Carolina[26]	Yes	Yes	No	No	No
Tennessee	Yes	No[27]	No	No	No
Texas	Depends[28]	Depends[29]	No	No	No
Utah	Yes	Yes	No	No	No
Vermont	Yes	Yes	No	No	No
Virginia	Yes	Yes	No	No	No
West Virginia	Yes	Yes	No	No	No
Wisconsin	Yes	Yes	No	Yes	Yes

[21] NJ: *See* N.J.A.C. 18:7-1.5.

[22] NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, §11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website but the entire chapter is only available through various legal research services.

[23] NC: *See* Directive CD 02-03.

[24] NC: *Id.*

[25] OH: In the case of S Corporations paying PTE income tax withholding, Ohio generally recognizes valid I.R.C. §338(h)(10) elections. However, no official promulgated regulations or pronouncements have been released on the issue for S Corps. Because most C corporations now are subject to the CAT, rather than the corporation franchise tax (CFT), these questions are not applicable for most C Corporations. However, *see* Information Release CFT 2004-02 (Corporation Franchise Tax) for Ohio's treatment of §338(h)(10) elections for CFT purposes.

[26] SC: *See* S.C. Rev. Rul. No. 09-4 for official responses of the department.

[27] TN: S corporations are required to include in the computation of net earnings or losses any gain or loss attributable to an I.R.C. §338(h)(10) election. *See* Tenn. Code Ann. §67-4-2006(b)(1)(M) and (b)(2)(Q).

[28] TX: As a general rule, the answer is yes. However, there are certain exceptions. For example, there is no deemed liquidation of the target corporation. Also, there is elimination of revenue received from a member of a combined group. *See* Tex. Tax Code §171.1014(c).

[29] TX: *Id.*

I.R.C. § 338(h)(10) Elections: Treatment of Gain

State[1]	Apportionable business income	Allocable nonbusiness income	Depends on facts and circumstances
Alabama	No	No	Yes
Alaska[2]	No	No	Yes
Arizona	No	No	Yes
Arkansas	No	No	Yes
California	Yes	No	No
Colorado	Yes[3]	No	Yes[4]
Connecticut	Yes[5]	No	No
Delaware[6]	No	No	Yes
District of Columbia[7]	**Yes**	**No**	**No**
Florida	No	No	Yes
Georgia	No	No	Yes
Hawaii	No	No	Yes
Idaho	Yes[8]	No	No
Illinois	No	No	Yes
Indiana	No	No	Yes
Iowa	Yes	No	No
Kansas	No	No	Yes
Kentucky	Yes	No	No
Louisiana[9]	No	No	Yes
Maine	Yes[10]	No	No
Maryland	Yes	No	No
Massachusetts[11]	Yes	No	No
Michigan	Yes	No	No
Minnesota	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] AK: Generally, the sale of assets used in the business produces business income.

[3] CO: Depends on facts and circumstances; normally will be apportionable business income.

[4] CO: *Id.*

[5] CT: Ruling 2003-3.

[6] DE: Delaware taxes the net gain or loss. Depending on whether the gain/loss is tangible or intangible determines whether it gets apportioned (intangible) or allocated (tangible).

[7] **DC: Depends on facts and circumstances.**

[8] ID: Generally it would be apportionable business income, but it would depend on the facts and circumstances.

[9] LA: For tax years beginning after Dec. 31, 2005, profits or losses from sales/exchanges not made in the regular course of business are subject to apportionment.

[10] ME: Generally.

[11] MA: TIR 04-22.

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State[1]	Apportionable business income	Allocable nonbusiness income	Depends on facts and circumstances
Mississippi	Yes	No	No
Missouri	No	Yes	No
Montana	Yes[12]	No	No
Nebraska	No	No	Yes
New Hampshire	Yes	No	No
New Jersey	Yes	No	No
New Mexico	No	No	Yes
New York City	No Response	No Response	No Response
North Carolina	Yes	No	No
North Dakota	Yes	No	No
Ohio	No	No	Yes
Oklahoma	No	No	Yes
Oregon	No	No	Yes
Pennsylvania	No	No	Yes
Rhode Island	Yes	No	No
South Carolina	No	No	Yes[13]
Tennessee	Yes	No	No
Texas	Yes	No	No
Utah	Yes	No	No
Vermont	No Response	No Response	No Response
Virginia[14]	Yes	No	No
West Virginia	No	Yes	No
Wisconsin	No	No	Yes

[12] MT: Generally, the gain would be business income, but it would depend on the facts and circumstances.

[13] SC: *See* S.C. Rev. Rul. No. 09-4. The target subsidiary's gain from the deemed sale of assets used in the business is generally apportionable business income. However, the target subs gains and losses from the sale of real property, less all related expenses, are allocated to the state where the property is located, except to the extent that gain represents the return of amounts deducted as depreciation. The amount of gain representing amounts deducted as depreciation is allocated to South Carolina to the extent of depreciation previously deducted in computing South Carolina taxable income. *See* S.C. Code §12-6-2220(4), 12-6-2252, and 12-6-2295.

[14] VA: *See* P.D. 05-157 and P.D. 08-188.

I.R.C. §338(h)(10) Elections: Apportionment Factors

State[1]	Are gross proceeds included in target's sales factor[2]	If not, is the gain included in target's sales factor[3]	How does your state require the gain and short-period income to be apportioned? (Choose only one.) (a) Use short-period factors	(b) Use prior year's factors	(c) Other method
Alabama	Yes	Not Applicable	Yes	No	No
Alaska	No	No	Yes	No	No
Arizona	Yes[4]	Not Applicable	Yes	No	No
Arkansas	Depends[5]	No Response	Yes	No	No
California	Yes[6]	Not Applicable	Yes	No	No
Colorado	Yes	Not Applicable	Yes	No	No
Connecticut	Yes	Not Applicable	Yes[7]	No	No
Delaware[8]	Yes	Not Applicable	No Response	No Response	No Response
District of Columbia	**No**	**Yes**	Yes	No	No
Florida	Yes	Not Applicable	Yes[9]	No	No
Georgia	No	No	Yes	No	No
Hawaii	Depends	Depends	Depends	Depends	Depends
Idaho	Yes	Not Applicable	Yes	No	No
Illinois	No[10]	No[11]	Yes	No	No
Indiana[12]	Yes	Not Applicable	Yes	No	No
Iowa	No[13]	No[14]	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Are the gross proceeds for the deemed sale of assets included in the target subsidiary's sales factor?

[3] If "No," is the net gain from the deemed sale included in the sales factor?

[4] AZ: Depends on the specific assets. Certain asset sales may be included at net or not at all.

[5] AR: If the sale is apportionable business income, Reg. 2.26-51-715 states that, if inclusion of the proceeds of an occasional sale causes a material distortion, then it is excluded.

[6] CA: The general rule is that the gross proceeds are included in the sales factor. The sales may be excluded from the sales factor if substantial and occasional, *see* Cal. Code Regs. §25137, sub. (c)(1)(A).

[7] CT: Bulletin No. 29.

[8] DE: Delaware taxes the net gain or loss. Depending on whether the gain/loss is tangible or intangible determines whether it gets apportioned (intangible) or allocated (tangible).

[9] FL: The gain is apportioned using the short period factors unless they are materially different from historical factors.

[10] IL: *See* 86 Ill. Adm. Code §100.3380.

[11] IL: *Id.*

[12] IN: Assuming that the income is apportionable business income.

[13] IA: Proceeds and gain are excluded from the sales factor per Iowa Rule 54.2(3)(f).

[14] IA: *Id.*

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State[1]	Are gross proceeds included in target's sales factor[2]	If not, is the gain included in target's sales factor[3]	How does your state require the gain and short-period income to be apportioned? (Choose only one.) (a) Use short-period factors	(b) Use prior year's factors	(c) Other method
Kansas	Yes	Not Applicable	Yes	No	No
Kentucky	Yes	Not Applicable	Yes	No	No
Louisiana	No	No	Yes	No	No
Maine	Yes	Not Applicable	Yes[15]	No	No
Maryland	Yes	**Yes**	Yes	No	No
Massachusetts[16]	No	No	**No Response**	**No Response**	**No Response**
Michigan	No[17]	No	Yes	No	No
Minnesota	No	No	Yes	No	No
Mississippi	No	Yes	Yes	No	No
Missouri	No	No	Not Applicable	Not Applicable	Not Applicable
Montana	No	Yes	Yes	No	No
Nebraska	Depends	Depends	Depends	Depends	Depends
New Hampshire	No	Yes	Yes	No	No
New Jersey[18]	No	**No**	**No**	No	**No Response**
New Mexico	No	Yes	Yes[19]	No	No
New York City	No Response	No Response	No Response	No Response	No Response
North Carolina	No	No	No	No	Yes[20]
North Dakota	No	No	Yes[21]	No	No
Ohio[22]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma	No	No	No	No	Yes
Oregon	No	No	Yes	No	No
Pennsylvania	Yes	Not Applicable	Yes	No	No
Rhode Island	No	Yes	Yes	No	No
South Carolina[23]	Depends[24]	Not Applicable	Yes	No	No

[15] ME: A short period return is not required in an I.R.C. §338(h)(10) election. The gain is includible in the sales factor of the seller.
[16] MA: *See* TIR 04-22.
[17] MI: Only the portion relating to inventory.
[18] **NJ: *See* McKesson Water Products Company v. Director, Div. of Taxation, 408 N.J.Super. 213(App.Div.2009), affirming McKesson Water Products Company v. Director, Div. of Taxation, 23 N.J.Tax 449 (Tax Ct. 2007).**
[19] NM: Assuming all intangible assets were sold.
[20] NC: The gain is treated as a casual sale. The net gain is excluded from the numerator and the denominator. We then use the apportionment factor of the period in which the gain is reported.
[21] ND: Unless it produces an unreasonable result, in which case an alternative would be used.
[22] OH: All questions are not applicable to the CAT. For S Corporations, all questions depend on the facts and circumstances.
[23] SC: *See* S.C. Rev. Rul. No. 09-4. The answer may differ if the statutory apportionment formula does not fairly represent the extent of the taxpayer's business within South Carolina.
[24] SC: *See* S.C. Code §§12-6-2295, 12-6-2252, and 12-6-2320.

State[1]	Are gross proceeds included in target's sales factor[2]	If not, is the gain included in target's sales factor[3]	How does your state require the gain and short-period income to be apportioned? (Choose only one.) (a) Use short-period factors	(b) Use prior year's factors	(c) Other method
Tennessee	Yes	Not Applicable	No	No	Yes[25]
Texas	Depends[26]	Depends[27]	No Response[28]	No Response	No Response
Utah	No	No	No	No	Yes[29]
Vermont	No Response	No Response	No Response	No Response	No Response
Virginia	Yes	Not Applicable	Yes	No	No
West Virginia	No	No	No	No	No
Wisconsin	No	No[30]	Yes	No	No

[25] TN: Short period factors should be used if they are reasonably consistent with the existing facts and circumstances and do not result in distortion. Otherwise, prior year factors may be required.

[26] TX: Margin is apportioned using a single gross receipts factor. Amounts received by the target corporation from the deemed sale of assets are apportioned in accordance with the rules applicable to sales of such assets. *See* Franchise Tax Rule 3.591(e)(7). With respect to using gross proceeds or a net gain, amounts are reported based on the amount reported for federal tax purposes.

[27] TX: *Id.*

[28] TX: Unless the target subsidiary is terminated as a legal entity in its state of incorporation, it will continue to file annual franchise tax reports. It will report the gain/income from the transaction in accordance with the accounting period provisions set out in Tex. Tax Code §171.1532(b). Under these circumstances, there will be no short period report.

[29] UT: If the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined report to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group. Thus, the combined apportionment fraction would be utilized. If the target corporation is not a member of a unitary group immediately preceding the acquisition date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income. Thus, the apportionment fraction of the target corporation for the short period would be utilized. *See* UCA 59-7-114(3).

[30] WI: However, the gross receipts from the deemed sale of inventory are included in the sales factor.

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I.R.C. §338(h)(10) Elections: Filing Obligations

State[1]	Do state's filing requirements follow the federal rules?	If no, when is the target's short-period return due?
Alabama	No	15th day of the 3rd month following the close of books (end of short period).
Alaska	Yes	
Arizona	Yes	
Arkansas	Yes	
California	Yes[2]	
Colorado	No	The 15th day of the 4th month from the close of the taxable period. Requests for extension are routinely granted, but tax must be paid by the original due date.
Connecticut	Yes	
Delaware[3]	Not Applicable	Not Applicable
District of Columbia	No Response[4]	No Response
Florida	Yes	**Not Applicable**
Georgia	No	The 15th day of the third month following the close of the short period.
Hawaii	No[5]	The 20th day of the fourth month following the close of the short taxable year.
Idaho	Yes	Not Applicable
Illinois	Yes	
Indiana	Yes[6]	
Iowa	Yes	
Kansas	Yes	
Kentucky	Yes	**Not Applicable**
Louisiana	Yes	

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] CA: *See* RTC §§18601(c), 24634(a)(4).

[3] DE: Delaware does not allow consolidated returns to be filed.

[4] DC: Calendar year filer - March 15th or fiscal year filer - the 15th day of the third month after the tax year closes. Combined reporting required as of 1/1/2011. **No District consolidated filing.**

[5] HI: Target's short period return is due on or before the 20th day of the fourth month following the close of the short taxable year. A six-month extension of time to file is available if Form N-301 is timely filed. No additional extension to file is available; but target may request abatement of late filing penalty and interest due to reasonable cause.

[6] IN: As of January 1, 2012, the answer is ''Yes.'' Previously, the return was due by the 15th day of the 4th month after the end of the short period.

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State[1]	Do state's filing requirements follow the federal rules?	If no, when is the target's short-period return due?
Maine	Yes	
Maryland	**Yes**	
Massachusetts	Depends	
Michigan	No	The end of the 4th month following the end of the short period unless an extension is requested.
Minnesota	Yes	
Mississippi	No	2½ months after the end of the period. Return may be filed with an extension the same as federal.
Missouri	No	Target subsidiary return due date would be the 15th day of the fourth month after the end of the target subsidiary taxable year.
Montana	No	Return due date is the 15th day of the 5th month following the close of the tax period. Six-month extension is provided for in Montana law; however, tax is due by original due date.
Nebraska	Yes	
New Hampshire	Yes	
New Jersey	No	
New Mexico	Yes	
New York City	**No Response**	
North Carolina	No	A short period return required as a result of a corporation becoming a member of a consolidated group for federal purposes may be filed on the due date of the federal short period return. However, interest is due beginning 75 days following the last day of the short period.
North Dakota	Yes	
Ohio[7]	Not Applicable	
Oklahoma	Yes	
Oregon	Yes	
Pennsylvania	Yes	
Rhode Island	No	Return and payment due upon sale.
South Carolina[8]	Yes[9]	
Tennessee	Yes[10]	
Texas	No	Unless the target subsidiary is terminated as a legal entity in its state of incorporation, it will continue to file annual franchise tax reports. It will report the gain/income from the transaction in accordance with the accounting period provisions set out in Tex. Tax Code §171.1532(b). Under these circumstances, there will be no short period report.

[7] OH: All questions are not applicable to the CAT. For S Corporations, all questions depend on the facts and circumstances.
[8] SC: *See* S.C. Rev. Rul. No. 09-4.
[9] SC: Yes, as a practical matter. However, South Carolina has not adopted the federal consolidated return rules. A penalty imposed due to this filing situation or interest imposed that is considered in the nature of a penalty, will be waived.
[10] TN: Administratively, the Department will consider the return timely if it is filed by the federal due date. However, initially the return will be considered delinquent and the taxpayer will have to contact the Department to obtain administrative treatment consistent with federal rules.

State[1]	Do state's filing requirements follow the federal rules?	If no, when is the target's short-period return due?
Utah	No	15th day of the 4th month following end of tax year with an automatic 6-month extension for filing the return. Utah would likely waive any late penalties in those cases when the Utah due date falls ahead of the federal due date for filing the target corporation's return.
Vermont	No Response	
Virginia	Yes[11]	
West Virginia	Yes	
Wisconsin	Yes[12]	

[11] VA: *See* P.D. 97-171 and P.D. 98-179.
[12] WI: Tax is due 2½ months after the end of the short period.

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Bankruptcy

Survey Finds General Conformity to Federal Exclusion of Indebtedness Discharged in Bankruptcy

Under the federal income tax laws, the receipt of borrowed funds is not a taxable event because the borrower assumes an obligation to repay the lender the principal amount of the loan. However, borrowers who subsequently become discharged from their obligation under the loan may be deemed to receive income to the extent of the difference between the amount of the loan proceeds and the amount repaid to the lender.

The realization of discharge-of-indebtedness income is premised upon the economic gain to the debtor from the discharge.

Bankruptcy Exclusion

For federal tax purposes, I.R.C. §108 allows debtors in bankruptcy to exclude from income the discharge of indebtedness.

For the bankruptcy exception to apply, the discharge must be granted by the bankruptcy court or pursuant to a court-approved reorganization plan. Thus, the court order confirming the plan or the reorganization plan itself should specifically reference the discharge.

A bankrupt debtor is shielded from recognizing debt-discharge income for federal income tax purposes whether the discharge renders the debtor solvent or not. Accordingly, bankruptcy may provide more favorable tax consequences to a debtor than the insolvency exception, especially if the debtor is solvent (or nominally insolvent) from a balance sheet standpoint but is unable to meet its current obligations as they become due.

Application of Debt Discharged To Tax Attributes

If an exclusion is provided to the taxpayer by I.R.C. §108, taxpayers must reduce specific tax attributes, including adjusted basis of property, to the extent that discharge-of-indebtedness income is excluded from gross income.

Generally, the reduction of tax attributes is the ''price'' imposed for the income exclusion and is designed to recoup a portion of the exclusion out of tax benefits that would otherwise be realized subsequent to the discharge.

Under I.R.C. §108, tax attributes must be reduced in the following order:

- net operating loss and net operating loss carryovers,
- general business credit carryovers,
- the minimum tax credit,
- net capital loss and net capital loss carryovers,
- the basis of the debtor's property (both depreciable and nondepreciable),
- any passive activity loss or credit carryover from the taxable year of the discharge, and
- foreign tax credit carryovers.

In lieu of reducing those tax attributes, however, the taxpayer may elect to reduce the basis of depreciable property before the reduction of other attributes.

Need to Identify State Conformity

When dealing with the state tax issues relating to bankruptcy, tax practitioners must consider whether a state conforms to:

- the federal exclusion of debt discharge income under I.R.C. §108,
- the federal reduction of tax attributes, and
- the federal provisions allowing the taxpayer to elect to reduce the basis of depreciable property.[1]

Furthermore, tax practitioners must determine whether a taxpayer's federal treatment regarding tax attributes or election to reduce property basis is binding for state purposes. In other words, if the taxpayer has elected to reduce the basis of depreciable property for federal purposes, is the taxpayer prohibited from electing to reduce tax attributes for state tax purposes?

Bloomberg BNA Survey Identifies State Conformity

To determine the various approaches states take in conforming to the federal rules concerning the federal exclusion under I.R.C. §108 of income discharged in bankruptcy, Bloomberg BNA included these types of questions in its survey.

The responses by the states are detailed in the following chart.

[1] For a detailed discussion of the state tax issues confronting practitioners faced with a bankruptcy case, see 1540-2nd T.M., *State Tax Aspects of Bankruptcy*.

Bankruptcy Issues

State[1]	Conformity with federal exclusion of debt discharge income[2]	Conformity with federal reduction of tax attributes[3]	Conformity with federal election to reduce basis[4]	Is federal tax attribute treatment binding for state purposes[5]
Alabama	Yes	**Yes**[6]	Yes	Yes
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes[7]	Yes[8]	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California[9]	Yes	Yes	Yes	Yes[10]
Colorado	Yes	Depends[11]	Depends[12]	Depends[13]
Connecticut	No[14]	Yes	Yes	Yes
Delaware	Yes	Yes	Yes	Yes
District of Columbia[15]	No	No	No	No
Florida[16]	Yes	Yes	Yes	Yes
Georgia[17]	No Response	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Does your state conform to the federal exclusion of debt discharge income under I.R.C. §108?

[3] Does your state conform to the federal reduction of tax attributes where debt discharge income is excluded under I.R.C. §108?

[4] Does your state conform to the federal provisions allowing the taxpayer to elect to reduce the basis of depreciable property?

[5] Is the taxpayer's federal treatment regarding tax attributes or election to reduce property basis binding for state purposes (*e.g.*, if the taxpayer has elected to reduce the basis of depreciable property for federal purposes, is the taxpayer prohibited from electing to reduce tax attributes for state tax purposes)?

[6] AL: Tax attribute reductions shall apply only to Alabama net operating losses. Basis reduction for depreciable property shall not exceed basis reductions for federal purposes. All other tax attribute reductions shall not be recognized.

[7] AZ: Arizona did not conform to the deferral provisions in I.R.C. §108(i) which applied to the 2009 and 2010 tax years.

[8] AZ: Arizona adds back the federal NOL and computes an Arizona basis NOL. Arizona conforms to the other reductions if they are included in federal taxable income.

[9] CA: California's specified date for federal conformity is January 1, 2009, so federal changes to I.R.C. §§ 108 and 1017 since that date are not incorporated into California law.

[10] CA: A separate state election is generally allowed in the case of tax attribute and other basis reductions, except that no separate state election is allowed in cases involving the discharge of qualified real property indebtedness. (*See* Rev. & Tax. Code §24307).

[11] CO: Colorado is examining the treatment of state tax attributes for companies emerging from bankruptcy.

[12] CO: *Id.*

[13] CO: *Id.*

[14] CT: Connecticut does not follow the federal deferral of income under I.R.C. § 108(i). *See* Conn. Gen. Stat. §12-217(b)(2)(A).

[15] DC: D.C. decouples.

[16] FL: For indebtedness acquired after Dec. 31, 2008, and before January 1, 2011, taxpayers are required to add back the gross amount of cancellation of indebtedness income that is deferred under I.R.C. § 108(i) (relating to business indebtedness discharged by the reacquisition of a debt instrument). The deferral of the deduction for original issue discount in debt for debt exchanges required by I.R.C. § 108(i)(2), is also required for Florida corporate income tax purposes. Taxpayers may subtract the income required to be added back under Section 220.13(1)(e)3, F.S., when the deferred cancellation of indebtedness income is recognized for federal income tax purposes. The subtraction may not exceed the amount of income from deferred cancellation of indebtedness that is added back under Section 220.13(1)(e)3, F.S.

[17] GA: Georgia generally conforms, exceptions are outlined in Ga. Reg. §§560-7-3-.06 and 560-7-3-.13.

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State[1]	Conformity with federal exclusion of debt discharge income[2]	Conformity with federal reduction of tax attributes[3]	Conformity with federal election to reduce basis[4]	Is federal tax attribute treatment binding for state purposes[5]
Idaho	Yes	No Response[18]	No Response[19]	No Response[20]
Illinois	Yes	Yes[21]	Yes	Yes
Indiana	Yes	Yes	Yes	Yes
Iowa	Yes[22]	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana[23]	No Response	No Response	No Response	No Response
Maine	Yes[24]	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes
Massachusetts	**Depends**	Depends[25]	Depends[26]	**Depends**
Michigan	Yes	Yes	Yes	Yes
Minnesota	No[27]	No	Yes[28]	Yes[29]
Mississippi	No	No	No	No
Missouri	Yes	Yes	Yes	Yes
Montana[30]	No	No	No	No
Nebraska	Yes	Yes	Yes	Yes
New Hampshire[31]	**Depends**	**Depends**	**Depends**	**Depends**
New Jersey[32]	Yes	No	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes

[18] ID: If the debt is discharged in bankruptcy, the taxpayer must follow the provisions of Section 346 of the Bankruptcy Code of the United States to reduce the Idaho net operating loss and basis. *See* IDAPA 35.01.01.210.

[19] ID: *Id.*

[20] ID: *Id.*

[21] IL: For taxable years ending on and after Dec. 31, 2008, Illinois net operating losses may also be reduced. 35 ILCS 5/207(c).

[22] IA: Iowa did not couple with the changes to section 108 of the Internal Revenue Code provided in the American Recovery and Reinvestment Act of 2009 for tax years beginning prior to January 1, 2010. However, Iowa is now coupled with these provisions for tax years beginning on or after January 1, 2010.

[23] LA: In computing Louisiana taxable income, gross income of a corporation means the same items and the same dollar amount required by federal law to be reported as gross income on the corporation's federal income tax return for the same taxable year. Therefore, if federal gross income does not include debt discharge, the Louisiana gross income will not.

[24] ME: Maine does not conform to I.R.C. §108(i) (relating to deferral of certain discharges of indebtedness occurring in 2009 or 2010).

[25] MA: *See* D.D. Corp. No. 06-1.

[26] MA: *Id.*

[27] MN: Minn. Stat. Section 209.01, Subd. 19c(25) provides that the deferred income is required to be added back; the taxpayer is allowed to decrease Minnesota net income (Minn. Stat. Section 209.01, Subd. 19d(19)) for discharge of indebtedness in subsequent years to the extent that the income was included in net income in a prior year.

[28] MN: Minn. Stat. Section 209.01, Subd. 19f provides that Minnesota basis of property is the same as the federal basis.

[29] MN: Minnesota net income is federal taxable income incorporating any elections made by the taxpayer. (Minn. Stat. Section 209.01, Subd. 19).

[30] MT: Montana follows federal treatment for the recognition of income; however, we have our own statutes/regulations regarding net operating losses, capital losses, etc.

[31] **NH: The answers depend upon whether the entity is a corporation. Different rules apply to partnerships and individuals.**

[32] **NJ: P.L. 2014, c.13 amended N.J.S.A. 54:10A-4(k)(6)(F) to require corporations to reduce their New Jersey net operating loss by the amount excluded from federal taxable income under IRC 108(a)(1)(A), (B) or (C).**

State[1]	Conformity with federal exclusion of debt discharge income[2]	Conformity with federal reduction of tax attributes[3]	Conformity with federal election to reduce basis[4]	Is federal tax attribute treatment binding for state purposes[5]
New York City[33]	Yes	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes[34]	Yes[35]	Yes[36]	Yes
Ohio[37]	No Response	No Response	No Response	No Response
Oklahoma	Yes	Yes	Yes	Yes
Oregon	Yes[38]	Yes[39]	Yes[40]	No
Pennsylvania[41]	No Response	No Response	No Response	No Response
Rhode Island	Yes	Yes	Yes	Yes
South Carolina[42]	Yes	Yes	Yes	Yes
Tennessee[43]	**Depends**	**Depends**[44]	**Depends**[45]	**Depends**[46]
Texas	Depends[47]	No Response[48]	No Response[49]	No Response[50]
Utah	Yes	No[51]	Yes	Yes[52]
Vermont	Yes	Yes	Yes	Yes
Virginia	Yes[53]	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	No

[33] NYC: New York City has a tax on unincorporated businesses including partnerships. The City's position is that the cancellation of indebtedness income (COI) is includable in the partnership's income for purposes of that tax.

[34] ND: North Dakota's starting point in determining North Dakota taxable income is federal taxable income. To the extent the income is included in federal taxable income, the answer is yes.

[35] ND: *Id.*

[36] ND: *Id.*

[37] OH: OH conforms with I.R.C. §108 for personal income tax. There is no longer an ''income tax'' for corps in OH. OH's general business tax is measured by gross receipts.

[38] OR: For tax years 2009 and 2010, Oregon does not conform to I.R.C. §108(i), passed as part of Public Law 111-5 in 2009. Any recognition to arrive at federal taxable income must be reversed with a modification on the Oregon return.

[39] OR: *Id.*

[40] OR: *Id.*

[41] PA: The department is currently developing its position in these areas.

[42] SC: Informal/unofficial answers.

[43] **TN: Tennessee neither conforms to or disallows the exclusion of debt discharge income under I.R.C. §108. Taxpayers compute Tennessee net earnings by starting with their federal taxable income. To the extent that their federal tax attributes affect their federal taxable income, those effects will carry over into their computation of net earnings. Unless, however, those effects are explicitly offset by additions to or subtractions from net earnings pursuant to §67-4-2006. Pursuant to §67-4-2006(c)(8), Taxpayers with net losses must reduce losses by the amount of income discharged under I.R.C. §108(a)(1)(A)-(C).**

[44] **TN: Tennessee neither adopts nor disallows the federal rules regarding the reduction of tax attributes or basis of depreciable property under I.R.C. §108.**

[45] **TN: *Id.***

[46] **TN: *Id.***

[47] TX: Total revenue is computed based on the Internal Revenue Code as of Jan. 1, 2007, and is not affected by any changes made by federal law after that date. Any revenue not reported for federal tax based on the insolvency exemption under I.R.C. §108 would likewise not be included in total revenue in the computation of margin.

[48] TX: Under Texas Tax Code §171.1011, total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. There are no statutory exclusions for the tax attributes referenced.

[49] TX: Under Texas Tax Code §171.1011, total revenue is determined based on revenue amounts reported for federal income tax purposes.

[50] TX: *Id.*

[51] UT: Utah law does not permit Utah tax attributes to be reduced other than reduction in the basis of assets and capital loss carryovers (if applicable). Adjustments to federal NOLs and credits does not apply to Utah.

[52] UT: *Id.*

[53] VA: Virginia does not conform to I.R.C. §108(i) regarding the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument. *See* Va. Code §58.1-301.

Holding Companies

Income Tax Treatment of Royalties Paid To Out-of-State Entities Varies Among States

States have increasingly resisted a corporate tax planning strategy involving the deduction of royalty payments for intangible property rights held by an out-of-state subsidiary. The subsidiaries, which are often referred to as ''passive investment companies'' or ''PICs,'' are usually established in states such as Delaware or Nevada, which do not tax royalty income.

After transferring the intangible property to the out-of-state subsidiary, the in-state corporation deducts costs (such as royalties or management fees) relating to the right to use the subsidiary's patent or trademark for federal tax purposes under I.R.C. §162. The end result for states, which generally use federal taxable income as the starting point for computing tax, is that there is less income to tax.[1]

Anti-PIC Legislation

The states have used a variety of techniques to counter this tax planning strategy. States, such as Massachusetts, Maryland, and Virginia, enacted legislation allowing them to disallow and require the in-state corporation to add back the deduction for intangible expenses and costs arising from the payments made to an out-of-state subsidiary.

Another approach used by some states is to require the in-state corporation and the out-of-state subsidiary to report their income as a unitary group. The states' authority to require unitary business operations to file combined returns is firmly established under cases such as *Container Corp. of America v. California Franch. Tax Bd.*, 463 U.S. 159 (1983), and *Barclays Bank PLC v. California Franch. Tax Bd.*, 512 U.S. 298 (1994).

Geoffrey

Other states, most notably South Carolina, have successfully argued that the out-of-state subsidiary's receipts are taxable because the entity achieved nexus by licensing property to an in-state corporation. In *Geoffrey Inc. v. South Carolina Tax Dept.*, 437 S.E.2d 13 (S.C. 1993), *cert. denied*, 510 U.S. 992 (1993), the South Carolina Supreme Court held that an out-of-state subsidiary's licensing of intangible property to an in-state corporation created sufficient nexus with the state to warrant the imposition of income tax.

In reaching its conclusion, South Carolina's high court found that nexus was achieved even though the out-of-state subsidiary was not physically present in the state. The court reasoned that the subsidiary's symbols were displayed in South Carolina and were used on the tags of the merchandise sold in the state as well as on advertising material distributed in the state. Because the U.S. Supreme Court denied the taxpayer's petition for *certiorari*, it remains a hotly debated issue as to whether South Carolina's nexus determination meets Due Process and Commerce Clause requirements under the U.S. Constitution.

Lack of Economic Substance

Another approach employed by states such as Maryland is to tax the out-of-state subsidiary's receipts based on the finding that it achieved nexus as a result of the in-state corporation's activities. For example, in *Maryland Comp. of the Treas. v. SYL, Inc.* and *Maryland Comp. of the Treas. v. Crown Cork & Seal Co. (Delaware) Inc.*, 825 A.2d 399 (Md. 2003), *cert. denied*, 540 U.S. 1090 (2003), Maryland found that two Delaware subsidiaries that held trademarks for two firms that operated in Maryland were subject to tax in Maryland because they lacked economic substance as separate business entities. The court noted that many of the subsidiaries' activities were performed by independent nexus companies, which were retained for the purpose of making the entities appear as though they had economic substance.

Bloomberg BNA Survey Identifies States' Policy on Royalty Deductions

We asked the states how they would treat transactions involving an in-state corporation's transfer of intangible property and payment of royalties to an out-of-state subsidiary. Specifically, the states were asked whether they would:

- add back the deduction arising from the payments made to the subsidiary,
- require the in-state corporation and out-of-state subsidiary to file as a unitary group,
- tax the out-of-state subsidiary's royalty receipts because nexus was created by licensing intangible property to an in-state corporation, or
- tax the out-of-state subsidiary's royalty receipts because it achieved nexus based on the in-state corporation's activities.

[1] For a detailed discussion of this issue, *see* 1190 T.M., *State Taxation of Corporate Income From Intangibles*.

Treatment of Intangible Holding Companies

State[1]	Add-back deduction for payments to subsidiary[2]	If yes, apply to U.S. subs[3]	If yes, apply to U.S. and non-U.S. subs[4]	Report income as unitary group[5]	Out-of-state subsidiary has nexus due to licensing intangible property[6]	Out-of-state subsidiary has nexus due to parent's activities[7]
Alabama	Yes[8]	**No**	**Yes**	No Response	No Response	No Response
Alaska	No	**Not Applicable**	**Not Applicable**	Yes	Yes	No
Arizona	No Response[9]	**No Response**[10]	**No Response**[11]	Yes	No Response[12]	No Response[13]
Arkansas	No	**No Response**	**No Response**	No	Yes	No[14]
California	No	**No Response**	**No Response**	Yes[15]	**No**[16]	**No**
Colorado[17]	Depends	**Depends**	**Depends**	Yes	Yes	Depends
Connecticut	Yes	**No**	**Yes**	No	No Response[18]	No Response
Delaware[19]	**No**	**No Response**	**No Response**	**No**	**No**	**No**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

Assumptions: Assume that an in-state corporation transfers ownership of an intangible asset (such as a patent or a trademark) to an out-of-state subsidiary whose only purpose is to hold the intangible asset. The in-state corporation deducts costs (such as royalties or management fees) relating to the right to use the subsidiary's patent or trademark.

[2] Based on the assumptions set out above, the in-state corporation would be required to add-back the deduction for costs arising from the payments made to the subsidiary.

[3] If an add back is required, the add back requirement would only apply to U.S. subsidiaries.

[4] If an add back is required, the add back requirement would apply to both U.S. and non-U.S. subsidiaries.

[5] Based on the assumptions set out above, the in-state corporation and the out-of-state subsidiary would be required to report income to your state as a unitary group.

[6] Based on the assumptions set out above, the out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state by licensing intangible property to an in-state corporation.

[7] Based on the assumptions set out above, the out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state based on its parent's activities.

[8] AL: If the 2 companies in the example above were unrelated, different treatment would apply.

[9] AZ: Question is generally moot because these entities would be included in a combined unitary return.

[10] **AZ: *Id.***

[11] **AZ: *Id.***

[12] AZ: *Id.*

[13] AZ: *Id.*

[14] AR: Nexus would be based on the parent's activities but the factors are based on the subsidiary's factors. Arkansas Regulation 1996-3.

[15] CA: Nexus may be present depending on facts and circumstances. *See* RTC Section 23101(b).

[16] CA: *Id.*

[17] CO: Colorado asserts that the use of intangible assets in the state creates nexus for the owner of the intangibles. In addition, if the owner is a combinable entity, that entity must be combined with other members of the combined group. However, the state may assert the alternative theories outlined here based on the particular facts and circumstances.

[18] CT: *See* IP 2010(29.1).

[19] **DE: Receipts shall be allocated proportionately to the states in which the product or process protected by the patent is manufactured or used or in which the publication protected by the copyright is produced or printed.**

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State[1]	Add-back deduction for payments to subsidiary[2]	If yes, apply to U.S. subs[3]	If yes, apply to U.S. and non-U.S. subs[4]	Report income as unitary group[5]	Out-of-state subsidiary has nexus due to licensing intangible property[6]	Out-of-state subsidiary has nexus due to parent's activities[7]
District of Columbia	**No Response**[20]	**No Response**	**No Response**	**No Response**[21]	**No Response**	**No Response**
Florida	No	**Not Applicable**	**Not Applicable**	No	Yes	Yes
Georgia	Yes	**No**	**Yes**	No	No Response	No Response
Hawaii	No	**No Response**	**No Response**	Yes	Yes	No
Idaho	No	**Not Applicable**	**Not Applicable**	Yes[22]	Depends[23]	No
Illinois	No[24]	**Not Applicable**	**Not Applicable**	Yes[25]	No Response[26]	No Response[27]
Indiana	Yes	**No**	**Yes**	No	No	No
Iowa	No	**Not Applicable**	**Not Applicable**	No	Yes[28]	No
Kansas	No	**Not Applicable**	**Not Applicable**	Yes	No	No
Kentucky	No	**Not Applicable**	**Not Applicable**	No	Yes	No
Louisiana	No Response[29]	**No Response**[30]	**No Response**[31]	No Response[32]	Yes	No Response[33]
Maine	No[34]	**No Response**	**No Response**	Yes[35]	Yes[36]	Yes[37]
Maryland	Yes	**No**	**Yes**	**Not Applicable**	**No**	**No**
Massachusetts	Yes	**No**	**Depends**	No	Depends[38]	Depends[39]

[20] DC: Unless arm's length and subject to 4.5% composite tax rate on royalty. Code Section 47-1803.03.
[21] DC: Unless filing consolidated return.
[22] ID: Depends on facts, determined on a case-by-case basis.
[23] ID: *Id.*
[24] IL: Responses assume a unitary relationship. If the subsidiary qualifies as an 80/20 company, or is required to apportion business income under a different subsection of IITA Section 304, add back may be required.
[25] IL: *Id.*
[26] IL: Responses assume a unitary relationship. If the subsidiary qualifies as an 80/20 company, or is required to apportion business income under a different subsection of IITA Section 304, add back may be required. Illinois has mandatory unitary reporting. [Whether the out-of-state subsidiary has nexus due to licensing intangible property or has nexus due to the parent's activities] is irrelevant in the context of unitary reporting, because intercompany transactions within a unitary group are ignored in combination.
[27] IL: *Id.*
[28] IA: A decision was issued on December 31, 2010, by the Iowa Supreme Court affirming nexus involving KFC Corporation, a company with no physical presence in Iowa.
[29] LA: Under La. Rev. Stat §47:287.480, the Secretary is authorized to make such adjustments. These adjustments may be made depending on the facts and circumstances.
[30] **LA: *Id.***
[31] **LA: *Id.***
[32] LA: *Id.*
[33] LA: *Id.*
[34] ME: Could be yes if there was a legitimate separate basis filing.
[35] ME: Generally; depends on the facts and circumstances.
[36] ME: Maybe.
[37] ME: If there is an agency relationship.
[38] MA: *See* TIR 03-19.
[39] MA: *Id.*

State[1]	Add-back deduction for payments to subsidiary[2]	If yes, apply to U.S. subs[3]	If yes, apply to U.S. and non-U.S. subs[4]	Report income as unitary group[5]	Out-of-state subsidiary has nexus due to licensing intangible property[6]	Out-of-state subsidiary has nexus due to parent's activities[7]
Michigan	**Yes**[40]	**No**	**Yes**[41]	Yes[42]	No	No
Minnesota	No	**No Response**	**No Response**	Yes	Yes	No
Mississippi	Yes	**No Response**	**No Response**	No	No	No
Missouri	No[43]	**Not Applicable**	**Not Applicable**	No	No	No
Montana	No	**Not Applicable**	**Not Applicable**	Yes	Depends	No
Nebraska	No	**Not Applicable**	**Not Applicable**	Yes	Yes	No
New Hampshire	No Response	**No Response**	**No Response**	Yes	Yes	No Response
New Jersey[44]	Yes	**No**	**Yes**	No	Yes	Yes
New Mexico	No	**Not Applicable**	**Not Applicable**	No	Yes	Yes
New York City	Yes[45]	**Yes**[46]	**Yes**[47]	Yes[48]	No	No
North Carolina	Yes[49]	**Yes**[50]	**No**[51]	No	Yes	No
North Dakota	No[52]	**Depends**[53]	**Depends**[54]	**Depends**[55]	**Depends**[56]	**Depends**[57]
Ohio[58]	No Response	**No Response**	**No Response**	No Response	No Response	No Response
Oklahoma	Depends	**No Response**	**No Response**	Depends	Depends	Depends
Oregon	Yes[59]	**No**	**Yes**	Yes[60]	Yes	Yes[61]
Pennsylvania	Depends	**No**	**Yes**	No	No	No

[40] MI: Add-back required for related persons not included in unitary business group. MCL 206.623(2)(e).
[41] **MI: For related persons not included in unitary business group.**
[42] MI: So long as entities meet definition of unitary business group.
[43] MO: *Acme Royalty Co. v. Director of Revenue*, 92 S.W.3d 72 (Mo. 2002) (en banc).
[44] NJ: *Lanco, Inc. v. Director, Division of Taxation*, 21 N.J. Tax 200 (2003), 379 N.J. Super. 562, 879 A.2d 1234 (App. Div. 2005), 188 N.J. 380, 9890 A.2d 176 (2006), *cert. denied*, 127 S.Ct. 2974 (2007).
[45] NYC: *See* Administrative Code section 11-602(n).
[46] NYC: *See* Administrative Code section 11-605.4 and 11-605.5.*See* Administrative Code section 11-602(n).
[47] NYC: *See* Administrative Code section 11-602(n).
[48] NYC: *Id.*
[49] NC: N.C. Gen. Stat. §105-130.7A provides an election for reporting royalties to prevent the operating company and trademark holding company from both paying tax on the royalties.
[50] **NC: *Id.***
[51] **NC: *Id.***
[52] ND: However, a cost of performance analysis may result in zero sales apportionment factor.
[53] **ND: Answers depend on the facts and circumstances. Also, to the extent the two companies are included in a combined report, the payments would be eliminated as an interccompany transaction.**
[54] **ND: *Id.***
[55] **ND: *Id.***
[56] **ND: *Id.***
[57] **ND: *Id.***
[58] OH: In order to evaluate whether this activity would generate taxable gross receipts, the Department would need additional facts, therefore these questions are not applicable to the CAT. Regardless, Ohio's CAT applies a factor presence test.
[59] OR: Answer based on assumption that affiliates don't file a consolidated return.
[60] OR: If the corporations were included in a consolidated federal return.
[61] OR: Oregon follows the *Joyce* rule: subsidiary would not be taxable based on the parent having nexus, but is taxable due to their own activities having substantial nexus.

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State[1]	Add-back deduction for payments to subsidiary[2]	If yes, apply to U.S. subs[3]	If yes, apply to U.S. and non-U.S. subs[4]	Report income as unitary group[5]	Out-of-state subsidiary has nexus due to licensing intangible property[6]	Out-of-state subsidiary has nexus due to parent's activities[7]
Rhode Island[62]	Yes	**No**	**Yes**	**Yes**	Yes	**Yes**
South Carolina[63]	No	**No Response**	**No Response**	No	Yes	No
Tennessee	Yes[64]	**No**	**Yes**[65]	No[66]	No[67]	No[68]
Texas	No Response[69]	**Not Applicable**	**Not Applicable**	No Response[70]	No	No
Utah	No	**Not Applicable**	**Not Applicable**	Yes	No	No
Vermont	No Response	**No Response**	**No Response**	Yes	No Response	No Response
Virginia	Yes[71]	**No**	**Yes**	No	No	No
West Virginia	Yes	**No Response**	**No Response**	Yes	Yes	No
Wisconsin[72]	Yes[73]	**No**[74]	**Yes**[75]	Yes[76]	Yes	Yes

[62] **RI: Rhode Island instituted combined reporting for 2015.**

[63] SC: Informal/unofficial answers.

[64] TN: The deductions of intangible expenses must be properly disclosed on the return as required by Tennessee law and the transactions involved must have a practical economic effect other than the creation of tax benefits and that tax avoidance is not the motivating factor or only business purpose of such transactions. Intangible expenses paid, accrued, or incurred in a connection with a transaction with one or more affiliates must be added back pursuant to Tenn. Code Ann. §67-4-2006(b)(1)(K). Application for deducting the related intangible expense must be made pursuant to Tenn. Code Ann. §67-4-2006(b)(2)(N)(i).

[65] **TN: Under Tenn. Code Ann. §67-4-2006(b)(2)(N)(i)(*a*), the Commissioner shall approve any application for the deduction of any intangible expense, or portion thereof that is paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive tax treaty with the U.S.**

[66] TN: The deductions of intangible expenses must be properly disclosed on the return as required by Tennessee law and the transactions involved must have a practical economic effect other than the creation of tax benefits and that tax avoidance is not the motivating factor or only business purpose of such transactions. Intangible expenses paid, accrued, or incurred in a connection with a transaction with one or more affiliates must be added back pursuant to Tenn. Code Ann. §67-4-2006(b)(1)(K). Application for deducting the related intangible expense must be made pursuant to Tenn. Code Ann. §67-4-2006(b)(2)(N)(i).

[67] TN: Id.

[68] TN: Id.

[69] TX: Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report. However, there is elimination of revenue received from a member of a combined group and elimination of amounts paid to a member of a combined group. *See* Tex. Tax Code §171.1014(c).

[70] TX: *Id.*

[71] VA: See Va. Code §58.1-402(B)(8).

[72] WI: SEPARATE REPORTING. A foreign corporation undertaking licensing of intangible rights for use in Wisconsin is considered to have nexus and shall be subject to Wisconsin franchise or income taxes. COMBINED REPORTING. For a combined group, nexus is determined for the unitary business as a whole. If a member of a combined group has nexus in Wisconsin, and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin. See the following for a very brief discussion of the three tests of combined reporting as well as when a member of commonly controlled group includes a passive holding company that holds intangible assets that are used by other companies of the group: [A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules. If a commonly controlled group includes a passive holding company that holds intangible assets that are used by other companies of the group in a unitary business, that holding company is deemed to be engaged in the unitary business, even if its activities are primarily passive.]

[73] WI: The related entity expenses that may be required to be added back to federal income for Wisconsin purposes are interest expenses, rent expenses, management fees, and intangible expenses. The requirement for the addition depends in part on whether the corporations are required to file as a combined group.

[74] **WI: *Id.***

[75] **WI: *Id.***

[76] WI: *Id.*

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Throwback Rules

States Indicate Policies Regarding Use, Application of Throwback/Throwout Rules

A common strategy employed by multistate corporations is to source sales receipts to another state that imposes no income tax or an income tax at a rate lower than the state in which they are commercially domiciled. Some states have sought to prevent in-state corporations from sourcing receipts to states with which the firms lack nexus by employing a ''throwback rule,'' which requires in-state corporations to include such out-of-state sales in the numerator of their receipts factor.[1]

In general, multistate corporations are entitled to apportion their income using a three-factor formula consisting of payroll, property, and receipts. The receipts factor of the formula is represented by a fraction, the numerator of which is the total receipts of the taxpayer in the taxing state, measured on a destination basis, and the denominator of which is the total receipts of the taxpayer everywhere.

In computing the numerator of the sales factor of the apportionment formula, a taxpayer usually assigns tangible personal property to the destination state. However, under the throwback rule, such sales are assigned to the state from which the goods were shipped if the taxpayer is not taxable in the destination state.

Effect of Throwback Rule

Accordingly, the throwback rule expands the numerator of the receipts factor in the state from which goods were shipped by including therein receipts from goods sold and shipped to destination states that are precluded from imposing their taxes. Without the throwback rule, goods shipped into a state in which the taxpayer is not subject to tax would not be included in the numerator of any state's receipts factor. Such ''orphan'' sales would not be subjected to tax in any state and, consequently, the taxpayer would pay tax on less than 100 percent of its income.

However, because not all of the states use a throwback rule, multistate corporate taxpayers may be able to structure their activities in a manner which would result in less than 100 percent of their income being subjected to tax.

Bloomberg BNA Survey Addresses Gray Areas

In states that have a throwback rule, taxpayers are sometimes unsure if their particular circumstances might trigger the rule's imposition. One gray area involves whether a corporation will be considered to be taxable in the destination state. Is having an affiliated group member that is taxable in the state enough? Also, to prove that it is taxable in the destination state, is the corporation required to show that it filed a return and paid a tax to the state?

It is also unclear as to whether state throwback rules apply to sales made in foreign countries.

Finally, some states have adopted a ''throwout'' rule, which requires a corporation to exclude from the denominator of the sales factor sales attributable to states with which the corporation lacks nexus.

We asked the states a series of questions about their application of the throwback and throwout rules and their responses appear in the following charts.

This year, we also asked the states that do have throwback rules to identify whether they determine if a corporation is subject to tax under their throwback rules based on their own nexus laws, or based on the destination state's nexus law.

[1] For a discussion of the throwback rule, see 1130 T.M., *Consolidated Returns and Combined Reporting*.

Throwback/Throwout Rules

State[1]	Does state have a throwback rule?[2]	(a) If yes, determine to tax based on state's nexus law?[3]	(b) If yes, determine to tax based on destination's law?[4]	Must corp. file return and pay tax?[5]	Is corp. taxable if affiliated corp. is taxable?[6]	Does throwback apply to foreign country sales?[7]	Does state have a throwout rule?[8]
Alabama	Yes	**Yes**	**No**	Yes	No	Yes[9]	Yes[10]
Alaska	Yes	**Yes**	**No**	No	No	Yes	No
Arizona	No	**Not Applicable**[11]	**Not Applicable**[12]	Not Applicable[13]	Not Applicable[14]	Not Applicable[15]	No
Arkansas	Yes	**No**	**No**	Yes	No	Yes	No
California	Yes	**Not Applicable**[16]	**Not Applicable**[17]	No	Yes[18]	Yes	No
Colorado[19]	Yes	**Yes**	**No**	No	No	Yes	No
Connecticut	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No
Delaware	No	**No Response**	**No Response**	No	Yes[20]	No	No[21]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
MS's responses are from 2013.
SC's responses are from 2010.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Does your state have a throwback rule (*i.e.*, does your state require corporations to include in the numerator of the sales factor sales attributable to a state in which the corporation is not subject to tax)?

[3] If your state has a throwback rule, does your state determine if the corporation is subject to tax based on your state's own nexus law?

[4] If your state has a throwback rule, does your state determine if the corporation is subject to tax based on the nexus law of the destination state?

[5] To be considered taxable in the destination state, must the corporation be able to prove that it filed a return and paid a tax to that state?

[6] For this purpose, does your state consider a corporation to be taxable in the other state if one of the members of the corporation's affiliated group is taxable in the other state?

[7] Does your state's throwback rule apply to sales made in foreign countries?

[8] Does your state have a throwout rule (*i.e.*, does your state require corporations to exclude from the denominator of the sales factor sales attributable to states in which the corporation lacks sufficient nexus to subject it to the state's income-based tax)?

[9] AL: 2012 answer should have been yes.

[10] AL: 2013 answer should have been yes, if the receipt was from the sale of other than tangible personal property.

[11] **AZ: Question not applicable since Arizona does not have a throwback rule.**

[12] **AZ: *Id.***

[13] AZ: *Id.*

[14] AZ: *Id.*

[15] AZ: *Id.*

[16] **CA: Throwback to California depends on whether the taxpayer is taxable in the destination state; whether the taxpayer is taxable in the destination state depends on the jurisdictional standards of the United States. 18 §CCR 25122(c).**

[17] **CA: *Id.***

[18] CA: This answer is for purposes of throwback only. The fact that a member corporation has nexus with the other state does not give the Corporation in question nexus with the other state. California switched back to the *Finnigan* rule in 2011.

[19] CO: Responses apply where taxpayer elects Colorado three-factor apportionment. No throwback applies under Colorado two-factor apportionment election. Beginning in 2009, single sales-factor apportionment requires throwback as outlined above.

[20] DE: Delaware requires that the numerator consist only of sales deemed attributable to Delaware to be included in the numerator.

[21] DE: *Id.*

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State[1]	Does state have a throwback rule?[2]	(a) If yes, determine to tax based on state's nexus law?[3]	(b) If yes, determine to tax based on destination's law?[4]	Must corp. file return and pay tax?[5]	Is corp. taxable if affiliated corp. is taxable?[6]	Does throwback apply to foreign country sales?[7]	Does state have a throwout rule?[8]
District of Columbia	**No**	**No**	**Yes**	Yes	No	Yes[22]	No[23]
Florida	No	**Not Applicable**	**Not Applicable**	Yes	No	Not Applicable	No[24]
Georgia[25]	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No
Hawaii	Yes	**Yes**	**No**[26]	Yes[27]	No	No	No
Idaho	Yes	**No Response**[28]	**No Response**[29]	Yes[30]	No	Yes	No
Illinois	Yes	**No**	**Yes**	Yes[31]	No	Yes	Yes[32]
Indiana	Yes	**No**[33]	**No**[34]	Yes	No	Yes	No
Iowa	No	**Not Applicable**	**Not Applicable**	No	No	No	No
Kansas	Yes	**Yes**	**No**	No	Yes	Yes	No
Kentucky	No[35]	**Not Applicable**	**Not Applicable**	Yes	No	No	No
Louisiana	No	**No Response**	**No Response**	Not Applicable	Not Applicable	Not Applicable	No
Maine	No	**No Response**	**No Response**	No[36]	No	Not Applicable	Yes[37]
Maryland	No	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Massachusetts	Yes	**Yes**	**No**	**Yes**[38]	No	No	No
Michigan	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No
Minnesota[39]	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No

[22] DC: Depends on commercial domicile of in-state corporation and federal treaty.
[23] DC: If not subject to tax in any state in U.S., then throwout rule may apply.
[24] FL: Corporations that only do business in Florida may not apportion their income simply because they made sales outside Florida.
[25] GA: *See* regulation 560-7-3-.06.
[26] **HI: *See* section 18-235-23-02, Hawaii Administrative Rules.**
[27] HI: *Id.*
[28] **ID: The Commission has not ruled on these facts.**
[29] **ID: *Id.***
[30] ID: If requested by the Tax Commission. IDAPA 35.01.01.390.
[31] **IL: Unless the taxpayer proves that the other state has jurisdiction to impose an income tax but that, under that state's law, no filing or payment was due.**
[32] IL: IITA Section 304(a)(3)(C-5)(iv) contains a throwout rule in the case of sales of services.
[33] **IN: Yes, unless other state has no corporate income tax.**
[34] **IN: *Id.***
[35] KY: If a corporation does not file a return in at least one state other than Kentucky, all sales are thrown back to Kentucky. **However, if a corporation files only in Kentucky, it doesn't use an apportionment factor. KRS 141.010(14)(a).**
[36] ME: *See* Me. Rule §801.04(A)(2).
[37] ME: Subject sales are excluded from both the numerator and denominator.
[38] **MA:** *See* **830 CMR 63.38.1(5) ("A taxpayer that does not establish that it has filed a return and paid the tax due in a particular state is presumed not to be subject to tax in that state.")**
[39] MN: **Important-** Starting in 2013, Minn. Stat. Section 290.17, subd. 4 was amended to require that all sales of a unitary business made within Minnesota be included in the sales factor of a corporation that is both a member of the unitary business and subject to the corporate franchise tax.

State[1]	Does state have a throwback rule?[2]	(a) If yes, determine to tax based on state's nexus law?[3]	(b) If yes, determine to tax based on destination's law?[4]	Must corp. file return and pay tax?[5]	Is corp. taxable if affiliated corp. is taxable?[6]	Does throwback apply to foreign country sales?[7]	Does state have a throwout rule?[8]
Mississippi	Yes	**No Response**	**No Response**	No	No	Yes	No
Missouri	Yes	**No**	**Yes**	No	No	Yes	No
Montana	Yes	**Yes**	**No**	Yes	No	Yes	No
Nebraska	No	**Not Applicable**	**Not Applicable**	No	Yes[40]	Not Applicable	No
New Hampshire	Yes	**Yes**	**No**	Yes	No	Yes	No
New Jersey	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No[41]
New Mexico	Yes	**No**	**Yes**	No	No	Yes	Yes
New York City	No	**Not Applicable**	**Not Applicable**	No	**Not Applicable**[42]	Not Applicable	No
North Carolina	No[43]	**Not Applicable**	**Not Applicable**	No	No	No	No
North Dakota	Yes	**Yes**	**No**	No	No	Yes	No
Ohio	Not Applicable[44]	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable[45]
Oklahoma	Yes	**No Response**[46]	**No Response**[47]	No	No	No	No
Oregon	Yes	**No**	**Yes**	No	No	Yes	No
Pennsylvania	No	**Not Applicable**	**Not Applicable**	Not Applicable[48]	Not Applicable[49]	Not Applicable[50]	No
Rhode Island	Yes	**No**	**Yes**	Yes	No	No	No
South Carolina[51]	No	**No Response**	**No Response**	No	No	Not Applicable	No
Tennessee	No			Not Applicable	Not Applicable	Not Applicable	No
Texas	No	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	No
Utah	Yes	**Yes**	**No**	Yes[52]	Yes[53]	Yes	No

[40] NE: We assume ''affiliated group'' is the same as Nebraska's ''unitary group.''
[41] NJ: P. L. 2008, c. 120, signed on December 19, 2008, applicable to privilege periods beginning on or after July 1, 2010, eliminates the throwout provision of the apportionment formula for corporate business tax.
[42] NYC: If combined.
[43] NC: There is no throwback rule. However, a domestic corporation must have taxable nexus in another state pursuant to 15 U.S.C. §381 before it can apportion income outside North Carolina. [NCGS 105-130.4(b)]
[44] OH: The answer is ''No'' for S corporations.
[45] OH: *Id.*
[46] **OK: If taxpayer is doing business in destination state, sales must be thrown back.**
[47] **OK:** *Id.*
[48] PA: No throwback rule.
[49] PA: *Id.*
[50] PA: *Id.*
[51] SC: Informal/unofficial answers.
[52] UT: An exception would exist if the particular state didn't impose a corporate income or franchise tax. Other evidence might suffice; however, an unfiled return would typically have to occur due to an oversight that was being corrected.
[53] **UT: Must be a member of the unitary group**.

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State[1]	Does state have a throwback rule?[2]	(a) If yes, determine to tax based on state's nexus law?[3]	(b) If yes, determine to tax based on destination's law?[4]	Must corp. file return and pay tax?[5]	Is corp. taxable if affiliated corp. is taxable?[6]	Does throwback apply to foreign country sales?[7]	Does state have a throwout rule?[8]
Vermont	Yes	**Yes**	**No Response**	No	No	Yes	No
Virginia	No[54]	**Not Applicable**	**Not Applicable**	No[55]	No	No	No
West Virginia	No	**No Response**	**No Response**	Yes	No	No Response	Yes
Wisconsin	Yes[56]	**Yes**	**No**	Yes[57]	Depends[58]	No	No

[54] VA: While Virginia does not have a throwback rule, the taxpayer must be subject to tax in at least one other state in order to allocate and apportion income.

[55] VA: However, the absence of a return when the state imposes a tax is likely to controvert nexus in the destination state. *See* P.D. 00-79.

[56] WI: Limited to tangible personal property.

[57] WI: The corporation must prove that it has nexus in the destination state for an income tax or franchise tax measured by net income. In addition, for nexus to be established, the entity must have business activity not protected by Federal Public Law 86-272 in that state.

[58] WI: COMBINED REPORTING: In a combined group, nexus is determined for the unitary business as a whole. Therefore, a combined group member's sales destined outside Wisconsin cannot be ''thrown back'' to Wisconsin if any member of the combined group has nexus relating to the unitary business in the destination state. SEPARATE REPORTING: If the corporation is required to file as a separate corporation, nexus is determined on a separate entity basis.

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Sourcing Receipts

Income Tax Sourcing Methods and Rules Vary Between States, Categories of Receipts, Industries

For purposes of apportioning income taxes, receipts from sales of tangible personal property are commonly sourced to states using different methodology than receipts from other sales, including receipts from leases, licenses or rentals of tangible personal property; services; intangibles; and cloud computing or software as a service (SaaS) transactions.

Under §16 the Uniform Division of Income for Tax Purposes Act (UDITPA), used by nearly all the states, sales of tangible personal property are sourced to a state if the property is delivered or shipped to a purchaser, other than the U.S. government, within the state (destination-based sourcing). Sales of tangible personal property are sourced to a state using an origin-based method if the property is shipped from a location in the state when the purchaser is the U.S. government or when the taxpayer is not taxable in the purchaser's state. Special sourcing rules may apply when the property is purchased by the U.S. Government.

For receipts other than those from sales of tangible personal property, states generally follow either the cost of performance or market-based sourcing method, or a hybrid of the two approaches.

Cost of Performance

Under the cost of performance rule, receipts (other than receipts from sales of tangible personal property) are sourced to a state if the income-producing activity is performed entirely in the state.

While most states follow this approach, jurisdictions differ in the way that this sourcing method is applied when the income-producing activity is performed in more than one state. The majority of these states use an ''all-or-nothing'' approach, where all of the receipts are sourced to a single jurisdiction based on where the costs of performance occur. Other states use a proportionate method, or *pro rata* approach, in which receipts from the income-producing activity are sourced proportionately to each state where the cost of activity occurs.[1]

Market-Based Sourcing

A growing minority of states use a market-based sourcing approach, where the receipts are sourced to the state where the taxpayer's market for the sale is located. However, implementation of this approach varies greatly among market-based sourcing states and takes into consideration a number of different factors when determining the location of the market. Implementation of this approach not only varies among states, it may also vary among categories of receipts or taxpayers within a single state.

Even some states retaining their cost of performance methodologies have applied market-based sourcing rules to certain types or receipts or taxpayers. As as a result, these states are considered to be using a hybrid approach.

Split in Sourcing Methods

The split between states that employ a market-based approach and a cost of performance approach is likely to draw grievances from both taxpayers and revenue departments. Taxpayers will be unhappy when receipts from the same transaction are sourced to multiple states with competing sourcing methods and rules - leading to an aggregate sales factor greater than 100 percent.

Likewise, state tax departments are likely to protest that they are not getting their fair share if taxpayer's aggregate sales factor is less than 100 percent. This may occur when receipts are not sourced to any state because of variation in sourcing methods and rules between the states.

Bloomberg BNA Survey Identifies States' Sourcing Policies

In the survey, we asked the states to identify the methodology used to source receipts from tangible personal property, real property, services, intangibles and cloud computing or software as a service (SaaS) transactions.

The states were also asked to identify the souring methods they apply to receipts received by taxpayers in certain industries and to indicate whether these rules are industry-specific. Industries discussed in this year's survey include banks and financial services companies, construction contractors, telecommunications and ancillary services providers, and trucking companies.

With respect to cloud computing or SaaS transactions, we first asked the states how receipts from in-state customers that access an out-of-state corporation's software via a third-party's cloud infrastructure. We then asked the states about the sourcing method and rules that they apply to these receipts.

We also asked whether receipts from a variety of transactions would be sourced to the state. These detailed questions span the majority of the categories of receipts and industries addressed by the survey. Previ-

[1] For a detailed discussion of this issue, *see* 1150 T.M., *Income Taxes: Principles of Formulary Apportionment*.

ously, inquiries about receipts from specific activities were limited to those states that followed the market-based sourcing method. For 2015, however, we expanded the scope of these questions to apply to all states, regardless of the sourcing method used.

The states were also asked to identify the rules and guidance taxpayers should refer to in the event that an alternative apportionment methodology is invoked and whether they conformed to specific provisions of the MTC's Multistate Tax Compact and model regulations.

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Sourcing Receipts: Sales of Tangible Personal Property (Part 1 of 2)

State[1]	Destination-based sourcing[2]	Origin-based sourcing[3]	Other method[4]	If destination-based sourcing applies, when is tangible personal property sourced to your state? In-state delivery and transfer to another state[5]	In-state delivery[6]	Shipped from state of origin to another state and diverted en route to purchaser in-state [7]
Alabama	Yes	No Response[8]	Yes[9]	**Yes**	**Yes**	**Yes**
Alaska	Yes	No	No	**Not Applicable**	**Not Applicable**	**Not Applicable**
Arizona	**Yes**	**No**	**No**	**Yes**	**Yes**	**Yes**
Arkansas	Yes	**Yes**[10]	No	**Depends**	**Yes**	**Yes**
California	Yes[11]	No[12]	No	**Depends**[13]	**Yes**	**Yes**
Colorado	Yes	No	No	**No**	**Yes**	**Yes**
Connecticut	Yes	No	No	**Yes**	**Yes**	**No Response**
Delaware	Yes	No	No	**Yes**	**Yes**	**Yes**
District of Columbia	Yes	No	Yes	**Yes**	**Yes**	**Yes**
Florida	Yes	No	No	**Yes**	**Yes**	**Yes**
Georgia	Yes	No	No	**Yes**	**Yes**	**Yes**
Hawaii	Yes[14]	Yes[15]	No	**Yes**[16]	**Yes**[17]	**Yes**[18]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is delivered or shipped to a purchaser within your state (destination-based sourcing).

[3] Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory, or other place of storage in your state (origin-based sourcing).

[4] Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor using a method other than destination-based sourcing or origin-based sourcing.

[5] Property is delivered or shipped to a purchaser in your state and subsequently transferred by the purchaser to another state.

[6] Property is delivered or shipped to the ultimate recipient in your state at the purchaser's direction.

[7] Property is shipped from the state of origin to a consignee in another state and, while en route to the consignee, is diverted to a purchaser in your state.

[8] AL: If thrown back.

[9] AL: If Alabama's drop shipment rule applies, then if the sale were initiated by an Alabama sales office, then even though the shipment may have been shipped from out of state, if the sale is not taxable in either the destination or origin state, then it would be sourced.

[10] AR: Yes for Government Sales and if not taxable in destination state.

[11] CA: Regulation §25135(a)(1)(A).

[12] CA: No, unless the taxpayer is not taxable in the state of the purchaser (*see* Regulation §25135(a)(1)(B)).

[13] **CA: 18 CCR 25135(a)(3) provides that property shipped or delivered to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. However, *see McDonnell Douglas Corporation v. Franchise Tax Board* (1994) 26 Cal.App.4th 1789, *Appeal of Mazda Motors of America* (1994) 94-SBE-009.**

[14] HI: *See* section 18-235-36-01, Hawaii Administrative Rules.

[15] HI: *Id.*

[16] **HI: *Id.***

[17] **HI: *Id.***

[18] **HI: *Id.***

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State[1]	Destination-based sourcing[2]	Origin-based sourcing[3]	Other method[4]	If destination-based sourcing applies, when is tangible personal property sourced to your state? In-state delivery and transfer to another state[5]	In-state delivery[6]	Shipped from state of origin to another state and diverted en route to purchaser in-state [7]
Idaho[19]	Yes[20]	No[21]	Not Applicable	**Yes**	**Yes**	**Yes**
Illinois	Yes	Yes[22]	No	**Yes**	**No**	**Yes**
Indiana	Yes	No	No	**Yes**	**Yes**	**Yes**
Iowa	Yes	No	No	**Yes**[23]	**Yes**	**Yes**
Kansas	Yes	No	No	**Yes**	**Yes**	**Yes**
Kentucky	Yes	No	No	**No**	**Yes**	**Yes**
Louisiana	Yes	No	No	**Yes**	**No**	**No**
Maine	Yes	No[24]	No	**Yes**[25]	**Yes**	**Yes**[26]
Maryland	Yes	No	No	**Yes**	**Yes**	**Yes**
Massachusetts	Yes[27]	No	Yes	**Depends**	**Yes**	**Depends**
Michigan	Yes	No	Not Applicable	**Yes**	**Yes**	**Yes**
Minnesota	Yes	No	No	**Yes**	**Yes**	**Yes**
Missouri	Yes	No	Yes[28]	**Yes**	**Yes**	**Yes**
Montana	Yes	Depends[29]	No	**Yes**	**Yes**	**Yes**
Nebraska	Yes	No	Not Applicable	**Yes**	**Yes**	**Yes**
New Hampshire	Yes	Depends[30]	No	**Depends**	**Depends**	**Depends**
New Jersey	Yes	No	No	**Yes**	**Yes**	**Yes**
New Mexico	No	No	Yes[31]	**No Response**[32]	**No Response**[33]	**No Response**[34]
New York City	Yes	No	No	**Yes**	**Yes**	**No Response**
North Carolina	Yes	No	No	**Yes**	**Yes**	**Yes**
North Dakota	Yes	No	No	**Yes**	**Yes**	**Yes**

[19] ID: *See* Idaho Code section 63-3027(q).
[20] ID: Unless corporation is protected by P. L. 86-272.
[21] ID: Will include such sales in Idaho numerator if Idaho's throwback rule applies where the corporation is not taxable in the state of the purchaser.
[22] **IL: If the taxpayer is not subject to tax in the destination state.**
[23] **IA: Rule 701–54.5(3) states that property shall be deemed to be delivered or shipped to a purchaser in Iowa if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Therefore, it depends on whether the shipment terminated in Iowa.**
[24] **ME: Yes if the sales are to the federal government.**
[25] **ME: Depending on facts and circumstances.**
[26] **ME:** *Id.*
[27] MA: *See* GL c. 63, s. 38(f).
[28] MO: 143.451.2 - Single Sales Factor and 143.451.3 - Optional Single Sales Factor.
[29] MT: Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory or other place of storage in your state if the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.
[30] NH: *See* Rev 304.04.
[31] NM: *See* New Mexico Section 7-4-17 NMSA 1978 and corresponding Regulation 3.5.17.8.
[32] **NM: The state cannot provide a definitive position on these issues at this time.**
[33] **NM: *Id.***
[34] **NM: *Id.***

State[1]	Destination-based sourcing[2]	Origin-based sourcing[3]	Other method[4]	If destination-based sourcing applies, when is tangible personal property sourced to your state? In-state delivery and transfer to another state[5]	In-state delivery[6]	Shipped from state of origin to another state and diverted en route to purchaser in-state [7]
Ohio[35]	Yes	No	No	**Not Applicable**	**Not Applicable**	**Not Applicable**
Oklahoma	No Response[36]	No Response[37]	No Response[38]	**No Response**	**No Response**	**No Response**
Oregon	Yes[39]	No	Yes[40]	**Yes**	**Yes**	**Yes**
Pennsylvania	Yes	No	No	**No**	**Yes**	**Yes**
Rhode Island	Yes	No	No	**No**	**Yes**	**Yes**
Tennessee	Yes	No	No[41]	**Yes**	**Yes**	**Yes**
Texas	No	No	Yes[42]	**Not Applicable**	**Not Applicable**	**Not Applicable**
Utah	Yes	No[43]	No	**Yes**	**Yes**	**Yes**
Vermont	Yes	No	No	**No Response**	**No Response**	**No Response**
Virginia	Yes[44]	No	No	**Yes**[45]	**Yes**[46]	**No**[47]
West Virginia	Yes	No	No	**No Response**	**No Response**	**No Response**
Wisconsin	Yes	Yes[48]	No	**Yes**	**Yes**	**Yes**

[35] OH: Although the wording utilized in the questions [regarding receipts from sales of tangible personal property] are not specifically utilized in the CAT statutes, situsing of TPP for purposes of CAT is found in R.C. 5751.033(E) and is generally based on the location the TPP was received by the purchaser.

[36] OK: Policy not yet developed.

[37] OK: *Id.*

[38] OK: *Id.*

[39] OR: OAR 150-314.665(2)-(A) adopts provisions from the MTC model apportionment regulations and requires sales of TPP to be sourced using a delivery approach - not a final destination approach.

[40] OR: *Id.*

[41] **TN: Not applicable**

[42] TX: Depends on the fact and circumstances. Receipts from sales of tangible personal property are apportioned to Texas in accordance with the rules applicable to sales of tangible personal property. *See* Franchise Tax Rule 3.591(e)(29).

[43] UT: No, except throwback.

[44] VA: *See* Va. Code §58.1-415; 23 VAC 10-120-220.

[45] **VA: *See* VA Code §52.1-415; 23 VAC 10-120-220. Sales of tangible personal property are in Virginia if such property is received in Virginia by the purchaser. In the case of a direct delivery to a person designated by the purchaser, a sale of such property is in Virginia if such property is ultimately received in Virginia by such designated person. Receipts and transfers by persons other than the purchaser, or a designated ultimate recipient, are part of the transportation process and not considered in assigning sales to Virginia or any other state. A receipt by a person is a direct delivery to such person unless some other person is known to be the ultimate recipient at or before the time of first shipment. Actual treatment depends on facts and circumstances. See the Department's Laws, Rules and Decisions site for more information.**

[46] **VA: *Id.***

[47] **VA: *Id.***

[48] WI: If taxpayer does not have nexus in the state of destination, *see* §71.25(9)(b), Wis. Stats.

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Sourcing Receipts: Sales of Tangible Personal Property (Part 2 of 2)

State[1]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is taxable[2]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is not taxable[3]	Special rules for U.S. government sales[4]	If a special rule applies, how are sales to the U.S. government sourced to your state? (a) Destination	(b) Origin	(c) Other
Alabama	**No**	**Yes**	Yes	No	Yes	Not Applicable
Alaska	**No**	**Yes**	Yes	No	Yes	No
Arizona	**No**	**No**	**Yes**	**No**	**No**	**Yes**[5]
Arkansas	**No**	**No**	Yes	No	Yes	No
California	**No**	**Yes**	Yes[6]	No	Yes	No
Colorado	**No**	**Yes**	No	Not Applicable	Not Applicable	Not Applicable
Connecticut	**No**	**No**	No Response[7]	No Response[8]	No Response[9]	No Response[10]
Delaware	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
District of Columbia	**No**	**Yes**	Yes	**No**	**Yes**	**No**[11]
Florida	**No**	**No**	**Yes**[12]	Not Applicable	Not Applicable	Not Applicable
Georgia	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is taxable?

[3] Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is not taxable?

[4] Does your state provide special rules for sourcing sales of tangible personal property to the U.S. government?

[5] **AZ: R15-2D-805. Sales of Tangible Personal Property to the United States Government. Sales of tangible personal property to the United States Government are not included in the numerator of the sales factor. (They are included in the denominator.)**

[6] CA: *See* 18 CCR §25135(b).

[7] CT: *See* Conn. Gen. Stat. §12-218(k)(3).

[8] CT: *Id.*

[9] CT: *Id.*

[10] CT: *Id.*

[11] DC: *See* 47-1810.02(g).

[12] FL: Rule 12C1.015(1)(e), F.A.C.

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State[1]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is taxable[2]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is not taxable[3]	Special rules for U.S. government sales[4]	If a special rule applies, how are sales to the U.S. government sourced to your state? (a) Destination	(b) Origin	(c) Other
Hawaii	**No**[13]	**Yes**[14]	Yes[15]	No[16]	Yes[17]	No[18]
Idaho[19]	**No**	**Yes**	Yes	No	Yes	Not Applicable
Illinois	**No**	**Yes**	Yes	**No**	**Yes**	**No**
Indiana	**No**[20]	**No**	Yes	No	Yes	No
Iowa	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Kansas	**No**	**No**	Yes	No	Yes	No
Kentucky	**No**	**No**	Yes	No	Yes	No
Louisiana	**Yes**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Maine	**No**	**No**	Yes	No	Yes	No
Maryland	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Massachusetts	**Yes**	**Depends**	Yes	No	No	Yes[21]
Michigan	**No**	**No**[22]	No	Not Applicable	Not Applicable	Not Applicable
Minnesota	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Missouri	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Montana	**No**	**Depends**	Yes	No	Yes	No
Nebraska	**No**	**No**	Yes	No	Yes	Not Applicable
New Hampshire	**Depends**	**Depends**	Yes	No	Yes	No
New Jersey	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
New Mexico	**No Response**[23]	**No Response**[24]	Yes	No	Yes	No

[13] **HI: *Id.***
[14] **HI: *Id.***
[15] **HI: *See* section 18-235-36-02, Hawaii Administrative Rules.**
[16] **HI: *Id.***
[17] **HI: *Id.***
[18] **HI: *Id.***
[19] ID: *See* Idaho Code section 63-3027(q).
[20] **IN: This answer assumes the origin state is not Indiana.**
[21] MA: Sales of TPP to the US or any agency etc. for resale to a foreign government or any agency or instrumentality thereof are deemed not to be MA sales.
[22] **MI: The facts do not disclose whether the corporation is taxable in any other state. If the corporation's business activities were confined solely to Michigan, the tax base would be allocated to Michigan. MCL 206.661. If the corporation was taxable both within and outside Michigan and the taxpayer must apportion, then no, the sale would not be included in the numerator of the sales factor.**
[23] **NM: The state cannot provide a definitive position on these issues at this time.**
[24] **NM: *Id.***

State[1]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is taxable[2]	Sourced to state when property is sold by in-state salesperson to out-of-state purchaser in which the corporation is not taxable and is shipped from state in which corporation is not taxable[3]	Special rules for U.S. government sales[4]	If a special rule applies, how are sales to the U.S. government sourced to your state? (a) Destination	(b) Origin	(c) Other
New York City	**No**	**No**	No Response	No Response	No Response	No Response
North Carolina	**No**	**No**	Yes	Yes	No	No
North Dakota	**No**	**Yes**	Yes	No	Yes	No
Ohio[25]	**Not Applicable**	**Not Applicable**	No	Not Applicable	Not Applicable	Not Applicable
Oklahoma	**No Response**	**No Response**	No	Not Applicable	Not Applicable	Not Applicable
Oregon	**No**	**Yes**	Yes	No	Yes	No
Pennsylvania	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Rhode Island	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Tennessee	**No**	**No**	Yes	No	Yes	Not Applicable
Texas	**No**	**No**	No	Not Applicable	Not Applicable	Not Applicable
Utah	**No**	**Yes**	Yes	No	Yes	Not Applicable
Vermont	**No Response**	**No Response**	No	Not Applicable	Not Applicable	Not Applicable
Virginia	**No**[26]	**No**[27]	No[28]	Not Applicable	Not Applicable	Not Applicable
West Virginia	**No Response**	**No Response**	Yes	No	Yes	No
Wisconsin	**No**	**Yes**	Yes	Yes	Yes	No

[25] OH: Although the wording utilized in the questions [regarding receipts from sales of tangible personal property] are not specifically utilized in the CAT statutes, situsing of TPP for purposes of CAT is found in R.C. 5751.033(E) and is generally based on the location the TPP was received by the purchaser.

[26] **VA: *See* Va. Code § 58.1-415; 23 VAC 10-120-220.**

[27] **VA: *Id.***

[28] VA: *See* P.D. 99-99.

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Sourcing Receipts: Leases, Licenses or Rentals of Tangible Personal Property

State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Place of Use[5]	Location[6]	Other[7]
Alabama	No	No	Depends[8]	Yes	Yes	No
Alaska	Yes	No	No	No	No	No
Arizona	No	Yes	No	Yes	Yes	No
Arkansas	No	No	No[9]	Yes	Yes	No
California	No	No	No	No	Yes[10]	No
Colorado	No	No	No	Yes	Yes	No
Connecticut[11]	No Response	No Response	No Response	No Response	No Response	No Response
Delaware[12]	No	No	No	No	No	No
District of Columbia	No	**No**	**No**[13]	Yes[14]	Yes[15]	**No** [16]
Florida[17]	No	No	No	Yes	No	No
Georgia	No	No	**No Response**[18]	Yes[19]	Yes[20]	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] All of the receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if more income-producing activity is performed in your state than any other state, based on cost of performance (cost of performance sourcing, plurality method).

[3] A proportionate share of the corporation's receipts from the lease, license, or rental of tangible personal property is added to the numerator of the corporation's sales factor on a *pro rata* basis, in which the receipts are divided among the states in which the income-producing activity is performed, depending on the performance level in each state as measured by the costs of performance (cost of performance sourcing, proportionate method).

[4] Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the benefit of the income-producing activity was received in your state (market-based sourcing).

[5] Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state.

[6] Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state.

[7] Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor based on something other than cost of performance, market, place of use, or location.

[8] AL: Please note Alabama's market based sourcing rule is not dependent on the ''benefit'' rule. Services are sourced based on delivery of the service. Receipts from the sale or use of intangibles are sourced based on where the intangible is used.

[9] AR: We are unaware of a circumstance where income producing activity has any bearing on sourcing leases, licenses, or rental of tangible personal property.

[10] CA: *See* Regulation §25136-2(e) & (f).

[11] CT: The numerator includes gross receipts from ''rentals and royalties from properties situated in this state.'' Conn. Gen. Stat. §12-218(c)(3).

[12] DE: Delaware allocates all leasing and renting of tangible personal property within or without of Delaware on Schedule 2 of the DE corporate return.

[13] DC: *See* 47-1810.02(g).

[14] DC: *Id.*

[15] DC: *Id.*

[16] DC: *Id.*

[17] FL: Rule 12C1.0155, F.A.C.

[18] GA: Assumes the sale resulted from activities which constitute the taxpayer's regular trade or business.

[19] GA: *Id.*

[20] GA: *Id.*

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State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Place of Use[5]	Location[6]	Other[7]
Hawaii	Yes[21]	No	No	Yes[22]	Yes[23]	No
Idaho	Yes[24]	No	No	No Response[25]	No Response[26]	No
Illinois	No	No	No	Yes	Yes	No
Indiana	No	No	Depends	Yes	Yes[27]	No[28]
Iowa[29]	No	No	Yes	Yes	Yes	No
Kansas	No	No	No	Yes	Yes	No
Kentucky	No	**No**	No	Yes	Yes	No
Louisiana[30]	No	No	No	No	No	No
Maine	No	No	Yes	Yes	Yes	No
Maryland	No	No	No	No	Yes	No
Massachusetts	No	No	No	No	Yes[31]	No
Michigan	No	No	No	Yes	Yes[32]	No[33]
Minnesota	No	No	Yes[34]	Yes[35]	Yes[36]	No
Missouri	Yes	No	No	No	No	Yes[37]
Montana[38]	No Response	No Response	No Response	Yes	Yes	No Response
Nebraska[39]	**No**	**No**	**No**	Yes	Yes	**No**
New Hampshire	**No**	No	No	No	Yes	No

[21] HI: Refer to section 18-235-37-01, Hawaii Administrative Rules.
[22] HI: *Id.*
[23] HI: *Id.*
[24] ID: *See* Idaho Code section 63-3027(r) and IDAPA 35.01.01.550 (Rule 550).
[25] ID: Rule 550.05.b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period.
[26] ID: *Id.*
[27] IN: If (and to the extent) the property is used or located in Indiana, the receipts would be added to the numerator for the corporation's sales factor.
[28] IN: *Id.*
[29] IA: Iowa uses a market-based approach for the apportionment factor even when tangible personal property is not sold. For leased property, this could include market, place of use, or location, depending on the factual scenario.
[30] LA: Income from the lease, license or rental of tangible personal property is defined as ''allocable income'' in Louisiana and is directly allocated (not apportioned by formula) to the state in which the property was located when the income was earned. La. R.S. 47:287.91 - 287.93. This income is not included in the numerator or denominator of the sales factor.
[31] MA: See 830 CMR 63.38.1(9)(c)1.e.
[32] MI: Receipts from the lease, license or rental of TPP are determined primarily based on use in the state, but the extent of use in the state is proportionately based on the number of days of physical location of the TPP in this state to the number of days of physical location of the property everywhere during the period of the rental or lease period within the tax year. *See* MCL 206.665(1)(c).
[33] MI: *Id.*
[34] MN: Minn. Stat. Section 290.191, Subd. 5 provides that receipts from tangible personal property is attributed to the state in which the customer receives the property (market-based sourcing).
[35] MN: *Id.*
[36] MN: *Id.*
[37] MO: 143.451.2 - Single Sales Factor and 143.451.3 - Optional Single Sales Factor.
[38] MT: *See* Administrative Rule of Montana Section 42.2.257.
[39] NE: *See* Corporate Income Tax Reg-24-040.

State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Place of Use[5]	Location[6]	Other[7]
New Jersey	No	**Yes**	No	**Yes**[40]	Yes[41]	No
New Mexico	No	No	No	No	Yes[42]	No
New York City	No	No	Yes	Yes	Yes	No
North Carolina	No	No	No	Yes	Yes	No
North Dakota	No	No	No	Yes	Yes	No
Ohio[43]	No	No	No	Yes	Yes	No
Oklahoma[44]	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	No	No	No	No
Pennsylvania	No	No	No	Yes	Yes	No
Rhode Island	No	No	Yes	Yes	Yes	No
Tennessee	Yes	**No**	**No**	Yes	Yes	Not Applicable
Texas	No	No	No	No Response[45]	No Response[46]	No
Utah	No	No	No	**Yes**	Yes	No
Vermont	No	No	No Response	Depends[47]	Yes	No
Virginia	Yes[48]	No	No	No	No	No
West Virginia	Yes	No	No	No	No	No
Wisconsin	No	No[49]	Yes	Yes[50]	Yes[51]	No

[40] **NJ: *See* N.J.A.C. 18:7-8.11(a)1.**
[41] **NJ: *Id.***
[42] NM: New Mexico has special rules outlined in Regulation 3.5.18.8.
[43] OH: Although the wording utilized in the questions [regarding receipts from leases, licenses, or rentals of tangible personal property] are not specifically utilized in the CAT statutes, situsing of rents and royalties from TPP for purposes of CAT is found in R.C. 5751.033(B) - sitused to the extent the property is located in this state.
[44] OK: Policy not yet developed.
[45] TX: Revenues from the lease or rental of tangible personal property are apportioned to the location of the property. If the property is located both inside and outside Texas, lease or rental payments are apportioned based on the number of days that the tangible personal property was used in Texas. If the amount of revenue due under the lease or rental is based on mileage, then the payments are apportioned based on the number of miles in Texas. *See* Tax Rule 3.591(e)(13).
[46] TX: *Id.*
[47] VT: It is possible, depending on the facts.
[48] VA: *See* Va. Code §58.1-416; 23 VAC 10-120-230.
[49] WI: If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the number of days the property is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the property is leased, rented, licensed, or subleased in all states having jurisdiction to tax the taxpayer during the taxable year.
[50] WI: *Id.*
[51] WI: *Id.*

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Sourcing Receipts: Real Property

State[1]	For purposes of sourcing an out-of-state corporation's receipts from real property, does the state source receipts from real property based on the location of the property?	If not, what method is used for sourcing an out-of-state corporation's receipts from real property?
Alabama	Yes	Not Applicable
Alaska	Yes	Not Applicable
Arizona	Yes	Not Applicable
Arkansas	Yes	Not Applicable
California	Yes	Not Applicable
Colorado	Yes	Not Applicable
Connecticut	Yes	Not Applicable
Delaware	Yes	Not Applicable
District of Columbia	Yes	Not Applicable
Florida	Yes	Not Applicable
Georgia	Yes[2]	Not Applicable
Hawaii	Yes	Not Applicable
Idaho	Yes[3]	Not Applicable
Illinois	Yes	Not Applicable
Indiana	Yes	Not Applicable
Iowa	Yes	Not Applicable
Kansas	Yes	Not Applicable
Kentucky	Yes	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.
[2] GA: Assumes the sale resulted from activities which constitute the taxpayer's regular trade or business.
[3] ID: *See* Idaho Code section 63-3027(r) and IDAPA 35.01.01.550 (Rule 550).

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State[1]	For purposes of sourcing an out-of-state corporation's receipts from real property, does the state source receipts from real property based on the location of the property?	If not, what method is used for sourcing an out-of-state corporation's receipts from real property?
Louisiana	No Response[4]	No Response
Maine	Yes	Not Applicable
Maryland	Yes	Not Applicable
Massachusetts	Yes[5]	Not Applicable
Michigan	Yes	Not Applicable
Minnesota	Yes	Not Applicable
Missouri	Yes	Not Applicable
Montana	Yes	Not Applicable
Nebraska	Yes	Not Applicable
New Hampshire	Yes	Not Applicable
New Jersey	Yes	Not Applicable
New Mexico	Yes	Not Applicable
New York City	Yes	Not Applicable
North Carolina	Yes	Not Applicable
North Dakota	Yes	Not Applicable
Ohio[6]	Yes	Not Applicable
Oklahoma	Yes	Not Applicable
Oregon	Yes[7]	Not Applicable
Pennsylvania	Yes	Not Applicable
Rhode Island	Yes	Not Applicable

[4] LA: Income from the lease or rental of real property is defined as ''allocable income'' in Louisiana and is directly allocated (not apportioned by formula) to the state in which the property is located. La. R. S. 47:287.91 — 287.93. This income is not included in the numerator or denominator of the sales factor.

[5] MA: Unless the lease, rental or license of the property is treated for corporate excise purposes as a sale, exchange or other disposition of a capital asset used in the taxpayer's trade or business.

[6] OH: In general, the gross receipts for the sale of real property is sitused to Ohio if the real property is located in Ohio. R.C. 5751.033(D).

[7] OR: *See* subsection (5)(b)(A) of OAR 150-314.665(4).

State[1]	For purposes of sourcing an out-of-state corporation's receipts from real property, does the state source receipts from real property based on the location of the property?	If not, what method is used for sourcing an out-of-state corporation's receipts from real property?
Tennessee	Yes	Not Applicable
Texas	Yes	Not Applicable
Utah	Yes	Not Applicable
Vermont	Yes	Not Applicable
Virginia	Yes[8]	Not Applicable
West Virginia	Yes	Not Applicable
Wisconsin	Yes	Not Applicable

[8] VA: *See* Va. Code §58.1-416; 23 VAC 10-120-230.

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Sourcing Receipts: Services (Part 1 of 3)

State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Sourcing method other than cost of performance or market-based sourcing[5]	Services performed wholly in-state[6]	Services performed both in and out-of-state[7]	Services performed in-state by agent or independent contractor[8]
Alabama[9]	No	No	Yes	**No**[10]	**Yes**	**Yes**	**Yes**
Alaska	Yes	No	No	**No**	**Yes**	**No Response**[11]	**No**
Arizona	Yes	No	**No**[12]	**No**	**Yes**	**Yes**	**Yes**
Arkansas	No	No	No	**No**	**Yes**	**Depends**	**Yes**
California[13]	Yes[14]	No[15]	Yes[16]	**No**	**No**	**No**	**No**
Colorado	No	Yes	No	**No**	**Yes**	**Yes**[17]	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS's responses are from 2013.
SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] All of the service receipts are added to the numerator of the service company's sales factor if more income-producing activity based on cost of performance is performed in your state than any other state (plurality method).

[3] A proportionate share of the service company's income is apportioned to the state on a *pro rata* basis, in which the company's sales are divided among the states in which it does business, depending on the performance level in each state as measured by costs of performance (proportionate method).

[4] A market-based sourcing approach is used in which sales receipts are sourced based upon where the benefit was received to determine the location of the market (market-based sourcing).

[5] Receipts from the provision of services are added to the numerator of the company's sales factor using a method other than costs of performance or market-based sourcing.

[6] Is the benefit of the service received in your state when services are performed wholly in-state.

[7] Is the benefit of the service received in your state when services are performed both in-state and out-of-state.

[8] Is the benefit of the service received in your state when services are performed wholly in-state by an agent or independent contractor on the company's behalf.

[9] AL: Market-based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the ''benefit'' rule. *See* Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

[10] **AL: Market Based Sourcing/exception Section 18.**

[11] **AK: Alaska has no position at this time.**

[12] AZ: Market based sourcing is allowed for certain multistate service providers, please see ARS 43-1147 for more information.

[13] **CA: Pursuant to RTC §25136(a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if: the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than any other state, based on costs of performance. Pursuant to RTC §25136(b), for taxable years beginning on or after January 1, 2011, Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state. Sales from intangible property are in this state to the extent the property is used in this state.**

[14] **CA: For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if: (1) The income-producing activity is performed in this state; or (2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance. For taxable years beginning on or after January 1, 2011: (1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state. (2) Sales from intangible property are in this state to the extent the property is used in this state. (3) Sales from the sale, lease rental, or licensing of real property are in this state if the real property is located in this state. (4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.**

[15] **CA: *Id.***

[16] **CA: *Id.***

[17] **CO: Pro rata**

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State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Sourcing method other than cost of performance or market-based sourcing[5]	Services performed wholly in-state[6]	Services performed both in and out-of-state[7]	Services performed in-state by agent or independent contractor[8]
Connecticut[18]	No Response	No Response	No Response[19]	**No Response[20]**	**No Response**	**No Response**	**No Response**
Delaware	No	Yes	No	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**
District of Columbia	**No**	No	**Yes[21]**	**No**	**Yes**	**Yes**	**Yes**
Florida[22]	No	No	Yes	**No**	**Yes**	**Depends[23]**	**Yes**
Georgia	No	No	Yes	**No**	**Depends[24]**	**Depends[25]**	**Depends[26]**
Hawaii	Yes[27]	Yes[28]	No	**No[29]**	**Yes[30]**	**Yes[31]**	**No[32]**
Idaho	Yes[33]	No	No	**No**	**Yes**	**No Response[34]**	**Yes[35]**
Illinois[36]	No	No	Yes	**No**	**No Response[37]**	**No Response[38]**	**No Response[39]**
Indiana	Yes	No	No	**No**	**Yes**	**Yes**	**No**
Iowa	No	No	Yes[40]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Kansas	Yes	No	No	**No**	**Yes**	**No Response**	**No Response**
Kentucky	Yes[41]	**No**	No	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Louisiana	Yes[42]	No[43]	No[44]	**No**	**Yes**	**Yes**	**Yes**

[18] **CT: Conn. Gen. Stat. §12-218b provides market based apportionment for financial service companies. Conn. Gen. Stat. §12-218(c)(3) provides that "receipts from services performed in the state" are sourced to Connecticut.**

[19] CT: Conn. Gen. Stat. §12-218b provides market-based apportionment for financial service companies. **Conn. Gen. Stat. §12-218(c)(3) provides that "receipts from services performed in the state" are sourced to Connecticut.**

[20] **CT: *Id.***

[21] DC: Market-based activity used to determine income-producing activity for purposes of using the cost of performance.

[22] FL: For personal services, *see* Rule 12C-1.0155(2)(e), F.A.C.

[23] **FL: Depends on the facts and circumstances and the income producing activity.**

[24] **GA: Depends on where the benefit of the services is received.**

[25] **GA: *Id.***

[26] **GA: *Id.***

[27] HI: *See* section 18-235-37-01(d)(3), Hawaii Administrative Rules.

[28] HI: *Id.*

[29] HI: *Id.*

[30] HI: ***See* Section 18-235-37-01, Hawaii Administrative Rules (HAR)**

[31] HI: *Id.*

[32] HI: *Id.*

[33] ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. IDAPA 35.01.01.550.

[34] **ID: *Id.***

[35] **ID: *Id.***

[36] IL: IITA Section 304(a)(3)(C-5)(iv).

[37] **IL: Not enough information. Sales of service are sourced to the state the service is received.**

[38] **IL: *Id.***

[39] **IL: *Id.***

[40] IA: Iowa sources services based on where the benefit of the service is received. This is set forth in Iowa Administrative Rule 701-54.6.

[41] KY: If only a small amount of service is performed in another state, all service receipts are added to the numerator.

[42] LA: Louisiana is not a UDITPA state. Sourcing of services depends on the nature of the service. The answer given is for general services not covered by the provisions of La. R.S. §§47:287.92 to -.95.

[43] LA: *Id.*

[44] LA: *Id.*

State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Sourcing method other than cost of performance or market-based sourcing[5]	Services performed wholly in-state[6]	Services performed both in and out-of-state[7]	Services performed in-state by agent or independent contractor[8]
Maine	No	No	Yes	**No**	**Yes**	**No Response[45]**	**Yes**
Maryland	No[46]	No	Yes	**No**	**Yes**	**Yes**	**Yes**
Massachusetts[47]	No	No	**Yes**	**No**	**Yes**	**Depends**	**Yes**
Michigan	No	No	Yes	**No**	**No Response[48]**	**No Response[49]**	**No Response[50]**
Minnesota	No	No	Yes	**No**	**No Response[51]**	**No Response[52]**	**No Response[53]**
Mississippi	No	No	Yes	**No Response**	**No Response**	**No Response**	**No Response**
Missouri	Yes	No	No	**No**	**Yes**	**Yes[54]**	**Yes**
Montana	Yes	No	No	**No**	**Yes**	**Depends**	**Yes**
Nebraska	**No**	No	No[55]	**No**	**Depends[56]**	**Depends[57]**	**Depends[58]**
New Hampshire	Yes	No	No	**No**	**Yes**	**Depends**	**Yes**
New Jersey	**No**	**Yes[59]**	No	**No**	**Yes**	**Yes**	**Yes**
New Mexico	Yes	No	No	**No Response[60]**	**No Response[61]**	**No Response[62]**	**No Response[63]**
New York City[64]	No	**No**	No	**Yes**	**Yes**	**Yes**	**Yes**
North Carolina	No[65]	No[66]	No[67]	**Yes[68]**	**Yes**	**Yes**	**Yes**

[45] **ME: Depends on the circumstances.**
[46] MD: Sale of service is sourced to MD if the individual is *domiciled* in MD.
[47] **MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. 830 CMR 63.38.1(9)(d)(4)(a).**
[48] **MI: Michigan statute requires that sales may be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. *See* MCL 206.665.**
[49] **MI: *Id.***
[50] **MI: *Id.***
[51] **MN: Minn. Stat. Section 290.191 subd. 5(j) provides that receipts from performance of service must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office can't be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.**
[52] **MN: *Id.***
[53] **MN: *Id.***
[54] **MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.**
[55] **NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. *See* Neb. Rev. Stat. §§77–2734.14(3)**
[56] **NE: Id.**
[57] **NE: Id.**
[58] **NE: Id.**
[59] **NJ: *See* N.J.A.C. 18:7-8.10.**
[60] **NM: The state cannot provide a definitive position on these issues at this time.**
[61] **NM: *Id.***
[62] **NM: *Id.***
[63] **NM: *Id.***
[64] NYC: New York City does not follow the UDITPA method of sourcing sales.
[65] NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income-producing activity) is performed. NCGS 105-130.4(I)(3)(c).
[66] NC: *Id.*
[67] NC: *Id.*
[68] **NC: *Id.***

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State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Sourcing method other than cost of performance or market-based sourcing[5]	Services performed wholly in-state[6]	Services performed both in and out-of-state[7]	Services performed in-state by agent or independent contractor[8]
North Dakota	Yes[69]	Yes[70]	No	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Ohio[71]	No	Yes	Yes	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Oklahoma	No Response[72]	No Response[73]	No Response[74]	**No Response**	**No Response**	**No Response**	**No Response**
Oregon	Yes	No	No	**No**	**Yes**	**No**	**Yes**
Pennsylvania[75]	No	No	Yes	**Yes**	**Yes**	**Yes**	**Yes**
Rhode Island	No	No	Yes	**No**	**Yes**	**Yes**	**Yes**
Tennessee	**Yes**[76]	No[77]	No[78]	**No**	**Yes**	**Yes**	**Yes**
Texas	No	**No**	No	**Yes**	**Yes**	**No Response**[79]	**Yes**
Utah[80]	No	No	Yes	**No**	**Yes**	**Depends**	**Yes**
Vermont	Not Applicable	Not Applicable	Not Applicable	**No Response**	**No Response**	**No Response**	**No Response**

[69] **ND: Assuming the records exist to document the direct cost of the specific income producing activity.**

[70] ND: The proportionate method may be used if the direct costs for each transaction are not maintained or cannot be shown. The administrative rule (N.D.A.C. Section 81-03-09-31(4)) potentially provides for either, depending on the nature of the income-producing activity.

[71] OH: For purposes of the CAT, gross receipts from the sale of services shall be sitused to the state in the proportion that the purchaser's benefit in this state with respect to what was purchased bears to the purchaser's benefit everywhere with respect to what was purchased. R.C. 5751.033(I). For purposes of PTE income tax withholding, this is very similar. The physical location of the purchaser receiving the benefit is paramount. *See* R.C. 5747.21 and 5733.05.

[72] OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. [*See* 68 O.S. §2358(A)(5)]. A customer within Oklahoma means:
(I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or
(II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A ''billing address'' means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

[73] OK: *Id.*

[74] OK: *Id.*

[75] PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.

[76] TN: Tennessee takes the UDITPA approach with regard to apportionment of receipts from sales other than sales of tangible personal property. *See* Tenn. Code Ann. §67-4-2012(i).

[77] TN: *Id.*

[78] TN: *Id.*

[79] TX: Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. Franchise Tax Rule 3.591(e)(26).

[80] UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: ''Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

State[1]	Cost of performance plurality method[2]	Cost of performance proportionate method[3]	Market-based sourcing[4]	Sourcing method other than cost of performance or market-based sourcing[5]	Services performed wholly in-state[6]	Services performed both in and out-of-state[7]	Services performed in-state by agent or independent contractor[8]
Virginia	Yes[81]	No[82]	No	**No**	**Yes**[83]	**Yes**[84]	**No**[85]
West Virginia	Yes	No	No	**No Response**	**No Response**	**No Response**	**No Response**
Wisconsin	No	No	Yes[86]	**No**	**Yes**	**Yes**	**Yes**

[81] VA: *See* Va. Code §58.1-416; 23 VAC 10-120-230.

[82] VA: The proportionate method is used by financial corporations only. *See* Va. Code §58.1-418(A); 23 VAC 10-120-250(A).

[83] **VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. The rendering of personal services by employees or the utilization of tangible or intangible property by the taxpayer in performing a service. Sales, other than sales of tangible personal property, are in the Commonwealth if: 1. The income-producing activity is performed in the Commonwealth; or 2. The income-producing activity is performed both in and outside the commonwealth and a greater portion of the income-producing activity is performed in the commonwealth than in any other state, based on costs of performance. *See* VA. Code 58.1-416 and 23 VAC 10-120-230.**

[84] **VA: *Id.***

[85] **VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. *See* 23 VAC 10-120-230.**

[86] WI: Section 71.25(9)(dh)2.b. Wis. Stats. (2011-2012), provides that the benefit of a service is received in Wisconsin if the service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

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Sourcing Receipts: Services (Part 2 of 3)

State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
Alabama[11]	**Yes**	**Yes**	**Yes**	**Depends**	**Yes**	**Depends**	Yes	Yes	No
Alaska	**No**	**No**	**No**	**No**	**Yes**	**Yes**	**Yes**	**No Response[12]**	**No Response[13]**
Arizona	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**No**
Arkansas	**Yes**	**Yes**	**Depends**	**Depends**	**Yes**	**Yes**	**Depends**	**Depends**	**Depends**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS's responses are from 2013.
SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contract with the contractor/agent indicates that the service will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.

[3] Services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contract with the contractor/agent indicates where the service will be performed, but the company's contract with the customer indicates that the services will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.

[4] Services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contracts with the contractor/agent and the customer do not indicate where the service will be performed or the portion of the company's payment to the contractor/agent associated with the service, but the customer is domiciled in your state.

[5] Services are performed by an agent or independent contractor on the company's behalf, and the location where the service will be performed by the agent/contractor, the portion of the company's payment to the contractor/agent associated with the service and the customer's domicile cannot be determined.

[6] Direct personal services are performed wholly in your state.

[7] Direct personal services are performed both in your state and outside your state.

[8] Is the benefit of the service received in your state when direct personal services are received by an individual in the state.

[9] Is the benefit of the service received in your state when services, other than direct personal services, are received by an individual with an in-state billing address.

[10] Is the benefit of the service received in your state when services, other than direct personal services, are received by an individual with an out-of-state billing address.

[11] AL: Market-based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the ''benefit'' rule. *See* Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

[12] **AK: Alaska has no position at this time.**

[13] **AK: *Id.***

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State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/ independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
California[14]	**No**	**No**	**Depends**	**No**	**No**	**No**	Yes[15]	Yes[16]	Yes[17]
Colorado	**Depends**	**Depends**	**Depends**	**Depends**	**Yes**	**Yes**	**No Response**	**No Response**	**No Response**
Connecticut[18]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	No Response[19]	No Response	No Response
Delaware	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
District of Columbia	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Florida[20]	**Depends**[21]	**Depends**[22]	**Depends**[23]	**Depends**[24]	**Yes**	**Depends**[25]	**Depends**[26]	**Depends**[27]	**Depends**[28]
Georgia	**Depends**[29]	**Depends**[30]	**Depends**[31]	**Depends**[32]	**Depends**[33]	**Depends**[34]	Yes	Depends[35]	Depends[36]

[14] **CA: Pursuant to RTC §25136(a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if: the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than any other state, based on costs of performance. Pursuant to RTC §25136(b), for taxable years beginning on or after January 1, 2011, Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state. Sales from intangible property are in this state to the extent the property is used in this state.**

[15] CA: Any of the above may apply. California uses market-based sourcing. Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (Regulation §25136(b)(1)). Regulation §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

[16] CA: *Id.*

[17] CA: *Id.*

[18] **CT: Conn. Gen. Stat. §12-218b provides market based apportionment for financial service companies. Conn. Gen. Stat. §12-218(c)(3) provides that "receipts from services performed in the state" are sourced to Connecticut.**

[19] CT: *Id.*

[20] FL: For personal services, *see* Rule 12C-1.0155(2)(e), F.A.C.

[21] **FL: Generally, depends on the facts and circumstances and the income producing activity.**

[22] **FL: *Id.***

[23] **FL: *Id.***

[24] **FL: *Id.***

[25] **FL: *Id.***

[26] **FL: *Id.***

[27] **FL: *Id.***

[28] **FL: *Id.***

[29] **GA: Depends on where the benefit of the service is received.**

[30] **GA: *Id.***

[31] **GA: *Id.***

[32] **GA: *Id.***

[33] **GA: *Id.***

[34] **GA: *Id.***

[35] GA: *Id.*

[36] GA: *Id.*

State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/ independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
Hawaii	**No**[37]	**No**[38]	**No**[39]	**No**[40]	**No**[41]	**No**[42]	Not Applicable[43]	Not Applicable[44]	Not Applicable[45]
Idaho[46]	**No Response**	**No Response**	**No Response**	**No Response**	**Yes**	**No Response**	Not Applicable	Not Applicable	Not Applicable
Illinois[47]	**No Response**[48]	**No Response**[49]	**No Response**[50]	**No Response**[51]	**No Response**[52]	**No Response**[53]	Yes	Yes[54]	Yes[55]
Indiana	**No**	**No**	**No**	**No**	**Yes**	**Yes**	Not Applicable	Not Applicable	Not Applicable
Iowa	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Yes	Yes	Yes[56]
Kansas	**No Response**	**No Response**	**No Response**	**No Response**	**Yes**	**No Response**	**No Response**	**No Response**	**No Response**
Kentucky	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
Louisiana	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	Not Applicable	Not Applicable	Not Applicable
Maine	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	Yes	Yes	No
Maryland	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	Yes	No	No
Massachusetts[57]	**Depends**	**Depends**	**Depends**	**Depends**	**Yes**	**Depends**	**Yes**	**Yes**	**Depends**

[37] HI: ***See* Section 18-235-37-01, Hawaii Administrative Rules (HAR).**
[38] HI: *Id.*
[39] HI: *Id.*
[40] HI: *Id.*
[41] HI: *Id.*
[42] HI: *Id.*
[43] HI: Not applicable since sourcing of income is based on place of where services are performed. *See* section 18-235-4-08(c), HAR Note: Does not include income or other attributes of a foreign affiliate. See section 18-235-38.5-02, HAR.
[44] HI: *Id.*
[45] HI: *Id.*
[46] **ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. IDAPA 35.01.01.550.**
[47] IL: IITA Section 304(a)(3)(C-5)(iv).
[48] **IL: Not enough information. Sales of services are sourced to the state the service is received.**
[49] **IL: *Id.***
[50] **IL: *Id.***
[51] **IL: *Id.***
[52] **IL: *Id.***
[53] **IL: *Id.***
[54] IL: If the services are received in this State.
[55] IL: *Id.*
[56] IA: As long as the services were received in Iowa. **A portion of the income from these services will be included in the numerator of the apportionment factor. The billing address would be irrelevant if it can be determined that some benefit of the services was in Iowa. If it cannot be definitively determined where the benefit of the service was received, then billing addresses may be used.**
[57] **MA: Generally, the sale of a service is in Massachusetts and to the extent that the service is delivered at a location in Massachusetts. 830 CMR 63.38.1(9)(d)(4)(a).**

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State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/ independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
Michigan	**No Response**[58]	**No Response**[59]	**No Response**[60]	**No Response**[61]	**No Response**[62]	**No Response**[63]	Yes	Yes[64]	No[65]
Minnesota	**No Response**	**No Response**[66]	**No Response**[67]	**No Response**[68]	**No Response**[69]	**No Response**[70]	Yes	Yes	No Response[71]
Mississippi	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Missouri[72]	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Montana	**Depends**	**Depends**	**Depends**	**Depends**	**Yes**	**Depends**	Not Applicable	Not Applicable	Not Applicable
Nebraska	**Depends**[73]	**Depends**[74]	**Depends**[75]	**Depends**[76]	**Depends**[77]	**Depends**[78]	**Yes**	**Depends**[79]	**Depends**[80]
New Hampshire	**Depends**	**Depends**	**Depends**	**Depends**	**Yes**	**Depends**	No Response	No Response	No Response
New Jersey	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**[81]	**Yes**[82]	**Yes**[83]

[58] **MI: Michigan statute requires that sales may be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. *See* MCL 206.665.**

[59] **MI: *Id.***

[60] **MI: Sales of services are sourced based on where the benefit to the recipient is received. Sales of brokerage services to, or on behalf of regulated investment companies and some types of media receipts may be sourced based on the domicile of the customer. *See* MCL 206.665.(2)(c) and (20).**

[61] **MI: Michigan statute requires that sales may be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. *See* MCL 206.665.**

[62] **MI: *Id.***

[63] **MI: *Id.***

[64] **MI: Certain loan receipts may be sourced to Michigan if the borrower's billing address is in Michigan. See MCL206.665(3), (4), (5), (9) and (22). For other services, if it cannot be determined where the benefit to the customer is received, services are sourced to the state reflected in the billing address. See MCL 206.669.**

[65] **MI: *Id.***

[66] **MN: Minn. Stat. Section 290.191 subd. 5(j) provides that receipts from performance of service must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office can't be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.**

[67] **MN: *Id.***

[68] **MN: *Id.***

[69] **MN: *Id.***

[70] **MN: *Id.***

[71] MN: *Id.*

[72] **MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.**

[73] **NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. See Neb. Rev. Stat. §77-2734.14(3).**

[74] **NE: *Id.***

[75] **NE: *Id.***

[76] **NE: *Id.***

[77] **NE: *Id.***

[78] **NE: *Id.***

[79] **NE: *Id.***

[80] **NE: *Id.***

[81] **NJ: Determinations will be made on a case by case basis.**

[82] **NJ: *Id.***

[83] **NJ: *Id.***

State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/ independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
New Mexico	**No Response**[84]	**No Response**[85]	**No Response**[86]	**No Response**[87]	**No Response**[88]	**No Response**[89]	Not Applicable	Yes	Not Applicable
New York City[90]	**Yes**	**Yes**	**Yes**	**No Response**	**Yes**	**Yes**	No Response	No	No
North Carolina	**Yes**	**Yes**	**Yes**	**No**	**Yes**	**Yes**	**Yes**	**No**	**No**
North Dakota	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
Ohio[91]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Depends	Depends	Depends
Oklahoma	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	No Response[92]	No Response[93]	No Response[94]
Oregon	**Yes**	**Yes**	**Yes**	**No**	**Yes**	**No**	Not Applicable	Not Applicable	Not Applicable
Pennsylvania[95]	**Yes**	**Yes**	**Yes**[96]	**Yes**[97]	**Yes**	**Yes**	Yes	Yes	Yes
Rhode Island	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	Yes	Yes	Yes
Tennessee	**No**	**No**	**No**	**No**	**Yes**	**Yes**	Not Applicable	Not Applicable	Not Applicable

[84] **NM: The state cannot provide a definitive position on these issues at this time.**
[85] **NM: *Id.***
[86] **NM: *Id.***
[87] **NM: *Id.***
[88] **NM: *Id.***
[89] **NM: *Id.***
[90] NYC: New York City does not follow the UDITPA method of sourcing sales.
[91] OH: For purposes of the CAT, gross receipts from the sale of services shall be sitused to the state in the proportion that the purchaser's benefit in this state with respect to what was purchased bears to the purchaser's benefit everywhere with respect to what was purchased. R.C. 5751.033(I). For purposes of PTE income tax withholding, this is very similar. The physical location of the purchaser receiving the benefit is paramount. *See* R.C. 5747.21 and 5733.05.
[92] OK: Policy not yet developed.
[93] OK: *Id.*
[94] OK: *Id.*
[95] PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.
[96] **PA: Yes, If delivered to PA.**
[97] **PA: *Id.***

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State[1]	Services performed in more than one state by agent or independent contractor and the contract(s) with the contractor/agent: (a) Indicates services are in-state and determines payment[2]	(b) Indicates where service is performed but contract with customer indicated services are in-state and determines payment[3]	(c) And the customer do not indicate where service will be performed or payment, but customer is domiciled in-state[4]	Services performed by agent/ independent contractor and location of services, payment, and customer's domicile is unknown[5]	Direct personal services performed wholly in-state[6]	Direct personal services performed in and out-of-state[7]	Direct personal services received by in-state individual[8]	Services received by individual with in-state billing address[9]	Services received by individual with out-of-state billing address[10]
Texas	**No Response**[98]	**No Response**[99]	**No Response**[100]	**No Response**[101]	**Yes**	**No Response**[102]	Not Applicable	Not Applicable	Not Applicable
Utah[103]	**Depends**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Depends**	**Yes**	No[104]
Vermont	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	Not Applicable	Not Applicable	Not Applicable
Virginia	**No**[105]	**No**[106]	**No**[107]	**No**[108]	**Yes**[109]	**Yes**[110]	Not Applicable[111]	Not Applicable[112]	Not Applicable[113]
West Virginia	**No Response**	**No Response**	**No Response**	**No Response**	**No response**	**No Response**	Not Applicable	Not Applicable	Not Applicable
Wisconsin	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	Yes	Yes	Yes[114]

[98] **TX: Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. Franchise Tax Rule 3.591(e)(26).**

[99] **TX: *Id.***

[100] **TX: *Id.***

[101] **TX: *Id.***

[102] **TX: *Id.***

[103] UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: ''Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

[104] UT: Generally, No.

[105] **VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. *See* 23 VAC 10-120-230.**

[106] **VA: *Id.***

[107] **VA: *Id.***

[108] **VA: *Id.***

[109] **VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. The rendering of personal services by employees or the utilization of tangible or intangible property by the taxpayer in performing a service. Sales, other than sales of tangible personal property, are in the Commonwealth if: 1. The income-producing activity is performed in the Commonwealth; or 2. The income-producing activity is performed both in and outside the commonwealth and a greater portion of the income-producing activity is performed in the commonwealth than in any other state, based on costs of performance. *See* VA. Code 58.1-416 and 23 VAC 10-120-230.**

[110] **VA: *Id.***

[111] **VA: Because Virginia uses the costs-of-performance method of sourcing sales from services, it is not relevant where the services are received.**

[112] **VA: *Id.***

[113] **VA: *Id.***

[114] WI: The benefit of a service is received in this state if the service is provided to an individual who is physically present in this state at the time the service is received.

Sourcing Receipts: Services (Part 3 of 3)

State[1]	Services with substantial connection to geographic location received by business[2]	Services with substantial connection to geographic location both in and out-of-state received by business[3]	Services with no substantial connection to geographic location received by business[4]	Services received by business and service company's contract indicate benefit received in state[5]	Services received by business and service company's contract indicates benefit received in and out-of-state[6]	Services received by business and order placed from in-state location[7]	Services received by business with in-state billing address[8]
Alabama[9]	Yes	**Yes**	Yes	Depends	**Depends**	Depends	Depends
Alaska[10]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Arizona	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Arkansas	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
California[11]	Yes[12]	**No**	Yes[13]	Yes[14]	**Depends**	Yes[15]	Yes[16]
Colorado	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS's responses are from 2013.
SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Is the benefit of the service received in your state when services with a substantial connection to an in-state geographic location are received by a business entity.

[3] Is the benefit of the service received in your state when services with a substantial connection to both an in-state and out-of-state geographic location are received by a business entity.

[4] Is the benefit of the service received in your state when services with no substantial connection to a geographic location are received by a business entity and the business entity is commercially domiciled in the state.

[5] Is the benefit of the service received in your state when services are received by a business entity and the service company's contract with the customer or the service company's books and records kept in the normal course of business indicate that the benefit of the service is received in your state.

[6] Is the benefit of the service received in your state when services are received by a business entity and the service company's contract with the customer or the service company's books and records kept in the normal course of business indicate that the benefit of the service is received in your state and outside your state.

[7] Is the benefit of the service received in your state when services are received by a business entity and the business entity placed the order for the service from a location in your state.

[8] Is the benefit of the service received in your state when services are received by a business entity and the business has an in-state billing address.

[9] AL: Market-based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the ''benefit'' rule. *See* Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

[10] **AK: Alaska has no position at this time.**

[11] **CA: Pursuant to RTC §25136(a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if: the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than any other state, based on costs of performance. Pursuant to RTC §25136(b), for taxable years beginning on or after January 1, 2011, Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state. Sales from intangible property are in this state to the extent the property is used in this state.**

[12] CA: Any of the above may apply. California uses market-based sourcing. Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (Regulation §25136(b)(1)). Regulation §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

[13] CA: *Id.*

[14] CA: *Id.*

[15] CA: *Id.*

[16] CA: *Id.*

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State[1]	Services with substantial connection to geographic location received by business[2]	Services with substantial connection to geographic location both in and out-of-state received by business[3]	Services with no substantial connection to geographic location received by business[4]	Services received by business and service company's contract indicate benefit received in state[5]	Services received by business and service company's contract indicates benefit received in and out-of-state[6]	Services received by business and order placed from in-state location[7]	Services received by business with in-state billing address[8]
Connecticut[17]	No Response	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Delaware	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
District of Columbia	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Florida[18]	**Depends**[19]	**Depends**[20]	**Depends**[21]	**Depends**[22]	**Depends**[23]	**Depends**[24]	**Depends**[25]
Georgia	Yes	**Yes**	Depends[26]	Yes	**Yes**	No	Depends[27]
Hawaii	Not Applicable[28]	**Not Applicable**[29]	Not Applicable[30]	Not Applicable[31]	**Not Applicable**[32]	Not Applicable[33]	Not Applicable[34]
Idaho[35]	Not Applicable	**No Response**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Illinois[36]	Yes[37]	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Indiana	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Yes**	Not Applicable	Not Applicable
Iowa	Yes	**Yes**	Yes	Yes	**Yes**[38]	Yes[39]	Yes[40]
Kansas	**No Response**	**Not Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Kentucky	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Louisiana	Not Applicable	**Yes**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable

[17] **CT: Conn. Gen. Stat. §12-218b provides market based apportionment for financial service companies. Conn. Gen. Stat. §12-218(c)(3) provides that "receipts from services performed in the state" are sourced to Connecticut.**

[18] FL: For personal services, *see* Rule 12C-1.0155(2)(e), F.A.C.

[19] **FL: Generally, depends on the facts and circumstances and the income producing activity.**

[20] **FL: *Id.***

[21] **FL: *Id.***

[22] **FL: *Id.***

[23] **FL: *Id.***

[24] **FL: *Id.***

[25] **FL: *Id.***

[26] GA: Depends on where the benefit of the service is received.

[27] GA: *Id.*

[28] HI: *Id.*

[29] HI: *Id.*

[30] HI: *Id.*

[31] HI: *Id.*

[32] HI: *Id.*

[33] HI: *Id.*

[34] HI: *Id.*

[35] **ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. IDAPA 35.01.01.550.**

[36] IL: IITA Section 304(a)(3)(C-5)(iv).

[37] IL: If the services are received in this State.

[38] **IA: As long as the services were received in Iowa. A portion of the income from these services will be included in the numerator of the apportionment factor. The billing address would be irrelevant if it can be determined that some benefit of the services was in Iowa. If it cannot be definitively determined where the benefit of the service was received, then billing addresses may be used.**

[39] IA: *Id.*

[40] IA: *Id.*

State[1]	Services with substantial connection to geographic location received by business[2]	Services with substantial connection to geographic location both in and out-of-state received by business[3]	Services with no substantial connection to geographic location received by business[4]	Services received by business and service company's contract indicate benefit received in state[5]	Services received by business and service company's contract indicates benefit received in and out-of-state[6]	Services received by business and order placed from in-state location[7]	Services received by business with in-state billing address[8]
Maine	Yes	**No Response**[41]	Yes	Yes	**No Response**[42]	Yes	Yes
Maryland	**Yes**[43]	**Yes**	Yes[44]	No	**Yes**	Yes[45]	No
Massachusetts[46]	**Depends**	**Depends**	**Depends**	**Yes**	**Depends**	**Depends**	**Depends**
Michigan	Yes[47]	**Yes**[48]	Yes[49]	Yes	**No Response**[50]	No	Yes[51]
Minnesota	Yes	**No Response**[52]	Yes	Yes	**No Response** [53]	No Response[54]	No Response[55]
Mississippi	No Response	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Missouri[56]	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Montana	Not Applicable	**Depends**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Nebraska	**Depends**[57]	**Depends**[58]	**Depends**[59]	**No**	**No**	**Depends**[60]	**Depends**[61]
New Hampshire	No Response	**No Response**	No Response	No Response	**No Response**	No Response	No Response
New Jersey[62]	**Yes**	**Yes**	Yes	Yes	Yes	Yes	Yes

[41] **ME: Depends on the circumstances.**

[42] **ME: *Id.***

[43] MD: Domicile for a business entity is the state in which is located the office or place of business that provides the principal impetus for the sale. If no principal impetus, then domicile is the state where headquarters or principal place of business management is located. (COMAR 03.04.03.08D(b)).

[44] MD: *Id.*

[45] MD: If the location that placed the order is the principal impetus of the sale.

[46] **MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. 830 CMR 63.38.1(9)(d)(4)(a)**

[47] **MI: Sales of services are sourced based on where the benefit to the recipient is received. If the service relates to real property located in Michigan, sales are included in the numerator to the extent that the real property is located in Michigan.**

[48] **MI: *Id.***

[49] **MI: Sales of services are sourced based on where the benefit to the recipient is received. Sales of brokerage services to, or on behalf of regulated investment companies and some types of media receipts may be sourced based on the domicile of the customer. *See* MCL 206.665.(2)(c) and (20). If the service is provided to a purchaser that is engaged in trade or business in Michigan and the service relates to the trade or business in Michigan, sales are included in the numerator to the extent that the service relates to the trade or business of the purchaser in Michigan.**

[50] **MI: Sales are included in proportion to the extent that the recipient receives benefit of services in Michigan. MCL 206.665(2).**

[51] **MI: Certain loan receipts may be sourced to Michigan if the borrower's billing address is in Michigan. See MCL206.665(3), (4), (5), (9) and (22). For other services, if it cannot be determined where the benefit to the customer is received, services are sourced to the state reflected in the billing address. See MCL 206.669.**

[52] **MN: Minn. Stat. Section 290.191 subd. 5(j) provides that receipts from performance of service must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office can't be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.**

[53] **MN: *Id.***

[54] MN: *Id.*

[55] MN: *Id.*

[56] **MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.**

[57] **NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. *See* Neb. Rev. Stat. §§77–2734.14(3)**

[58] **NE: *Id.***

[59] **NE: *Id.***

[60] **NE: *Id.***

[61] **NE: *Id.***

[62] **NJ: Determinations will be made on a case by case basis.**

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State[1]	Services with substantial connection to geographic location received by business[2]	Services with substantial connection to geographic location both in and out-of-state received by business[3]	Services with no substantial connection to geographic location received by business[4]	Services received by business and service company's contract indicate benefit received in state[5]	Services received by business and service company's contract indicates benefit received in and out-of-state[6]	Services received by business and order placed from in-state location[7]	Services received by business with in-state billing address[8]
New Mexico	Not Applicable	**No Response**[63]	Not Applicable	Not Applicable	**No Response**[64]	Not Applicable	Not Applicable
New York City[65]	Yes	**No Response**	**No Response**	**Yes**	**Yes**	No	No
North Carolina	**Yes**	**Yes**	**No**	**No**	**No**	**No**	**No**
North Dakota	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Ohio[66]	Depends	**Not Applicable**	Depends	Depends	**Not Applicable**	Depends	Depends
Oklahoma	No Response[67]	**No Response**	No Response[68]	No Response[69]	**No Response**	No Response[70]	No Response[71]
Oregon	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Pennsylvania[72]	Yes	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Rhode Island	Yes	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Tennessee	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	**No**	**No**
Texas	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Utah[73]	Yes	**Depends**	**Yes**	Yes	**Depends**	Yes	Yes
Vermont	Not Applicable	**No Response**	Not Applicable	Not Applicable	**No Response**	Not Applicable	Not Applicable

[63] **NM: The state cannot provide a definitive position on these issues at this time.**

[64] **NM: *Id.***

[65] NYC: New York City does not follow the UDITPA method of sourcing sales.

[66] OH: For purposes of the CAT, gross receipts from the sale of services shall be sitused to the state in the proportion that the purchaser's benefit in this state with respect to what was purchased bears to the purchaser's benefit everywhere with respect to what was purchased. R.C. 5751.033(I). For purposes of PTE income tax withholding, this is very similar. The physical location of the purchaser receiving the benefit is paramount. *See* R.C. 5747.21 and 5733.05.

[67] OK: Policy not yet developed.

[68] OK: *Id.*

[69] OK: *Id.*

[70] OK: *Id.*

[71] OK: *Id.*

[72] PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.

[73] UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: ''Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

State[1]	Services with substantial connection to geographic location received by business[2]	Services with substantial connection to geographic location both in and out-of-state received by business[3]	Services with no substantial connection to geographic location received by business[4]	Services received by business and service company's contract indicate benefit received in state[5]	Services received by business and service company's contract indicates benefit received in and out-of-state[6]	Services received by business and order placed from in-state location[7]	Services received by business with in-state billing address[8]
Virginia	Not Applicable[74]	**Not Applicable**[75]	Not Applicable[76]	Not Applicable[77]	**Not Applicable**[78]	Not Applicable[79]	Not Applicable[80]
West Virginia	Not Applicable	**No Response**	Not Applicable	Not Applicable	**No Response**	Not Applicable	Not Applicable
Wisconsin	No[81]	**Yes**	No[82]	Yes	**Yes**	No	No

[74] **VA: Because Virginia uses the costs-of-performance method of sourcing sales from services, it is not relevant where the services are received.**
[75] **VA: *Id.***
[76] **VA: *Id.***
[77] **VA: *Id.***
[78] **VA: *Id.***
[79] **VA: *Id.***
[80] **VA: *Id.***
[81] WI: The benefit of a service is received in this state if the service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.
[82] WI: *Id.*

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Sourcing Receipts: Intangibles (Part 1 of 2)

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Same sourcing rules apply to receipts from intangibles and services[5]	Intangible used in state at time of sale[6]
Alabama	No	Yes	No	Yes[7]	Yes
Alaska	Yes	No	No	Yes	Not Applicable
Arizona	Yes	No Response[8]	**No**	Yes	**Yes**
Arkansas	No	No	Yes[9]	No[10]	**Yes**
California	No	Yes	No	Yes	Yes
Colorado	No	No	Yes[11]	No[12]	**Yes**
Connecticut[13]	No	No	Yes[14]	No[15]	Not Applicable
Delaware	No	Yes	No	Yes	Yes
District of Columbia	**No**	**Yes**	**No**	Yes[16]	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.

MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] An out-of-state corporation must source receipts from sales of intangible personal property to your state based on costs of performance.

[3] An out-of-state corporation must source receipts from sales of intangible personal property to your state based on the market (*i.e.*, the location of the customer).

[4] An out-of-state corporation must source receipts from sales of intangible personal property to your state based on a method other than costs of performance or the market.

[5] For purposes of sourcing an out-of-state corporation's receipts from intangibles, does your state use the same rule that it uses for sourcing receipts from services?

[6] Are receipts from intangible personal property allocated to your state when the intangible is used in your state at the time of sale.

[7] AL: Generally, yes. *See* Code of Alabama, 1975, Section 40-27-1, Article IV (17). The sale of an intangible is sourced based on where the intangible is used.

[8] AZ: Market-based sourcing is allowed for certain multistate service providers, please see ARS 43-1147 for more information.

[9] AR: Arkansas uses Arkansas Regulation 1996-3 for receipts from related party licensing of intangibles. Other intangible income is sourced based on ACA 26-51-717(b).

[10] AR: Arkansas uses Arkansas Regulation 1996-3 for receipts from related party licensing of intangibles.

[11] CO: Sales of intangibles sourced to Colorado if taxpayer's commercial domicile is in Colorado. 39-22-303.5.4(C)(5). Receipts from patent and copyrights are sourced to Colorado if the intangibles are utilized in Colorado and if taxpayer is not taxable in another state where the intangibles are utilized and the taxpayer's commercial domicile is in Colorado. 39-22-303.5.4(C)(4).

[12] CO: Commercial domicile subject to special apportionment circumstances.

[13] **CT: Gain on the sale of an intangible asset is sourced to state where the intangible asset was "managed or controlled." Royalties from the use of patents or copyrights within the state and interest managed or controlled within the state are sourced to Connecticut. See Conn. Gen. State. §12-218(c) and Conn. Agencies Regs. §2-218-1.**

[14] CT: Gain on the sale of an intangible asset is sourced to state where the intangible asset was "managed or controlled." **Royalties from the use of patents or copyrights within the state and interest managed or controlled within the state are sourced to Connecticut.** *See* Conn. Gen. Stat. §12-218(c) and Conn. Agencies Regs. §12-218-1.

[15] CT: *Id.*

[16] DC: If income-producing activity is located in DC.

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Same sourcing rules apply to receipts from intangibles and services[5]	Intangible used in state at time of sale[6]
Florida	No	Yes	Yes[17]	No[18]	**Depends**[19]
Georgia	No	Yes	No	No Response[20]	No Response[21]
Hawaii	Yes	No	Yes[22]	**No**[23]	**Yes**[24]
Idaho	Yes	No	Not Applicable	Yes[25]	Not Applicable
Illinois	Yes[26]	Yes[27]	**No**	**No**	No Response[28]
Indiana	No	Yes	No	No[29]	Yes
Iowa[30]	No	Yes	No	Yes	Yes
Kansas	Yes	No	No	Yes[31]	**No Response**
Kentucky[32]	Yes	No	No	No[33]	Not Applicable
Louisiana[34]	No Response	No Response	No Response	No	No Response
Maine	No	Yes[35]	No	No[36]	Yes
Maryland	No	No	Yes	No[37]	Not Applicable
Massachusetts	No	Yes	No	**Yes**[38]	No Response[39]

[17] FL: State in which intangible is used.
[18] FL: 12C-1.0155, F.A.C.
[19] **FL: Depends on materiality of the income and the facts and circumstances. *See* Rule 12C-1.0155, F.A.C.**
[20] GA: *See* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.
[21] GA: *Id.*
[22] **HI: Business income is included if it can be readily identified and if income producing activity occurs in the state. If business income cannot be readily attributed to income producing activity of the taxpayer it's excluded.**
[23] **HI: *See* §18-235-37-01(3) Hawaii Administrative Rules (HAR) on Services and §18-235-38-03(d) and (e) HAR, on Intangible personal property.**
[24] **HI: *See* §18-235-38-03(d) and §18-235-38-03(e), HAR.**
[25] ID: IDAPA 35.01.01.550 - Sales Other Than Sales of Tangible Personal Property in Idaho.
[26] IL: Yes for all taxpayers who are not dealers with respect to the property.
[27] IL: Yes for all dealers.
[28] **IL: Insufficient information is provided.**
[29] IN: An out-of-state corporation's receipts from intangibles are sourced to jurisdiction where they are exploited; however, investment income is sourced to state of domicile.
[30] IA: Iowa Administrative Rule 701-54.2(3) provides examples on how income from intangibles should be sourced.
[31] KS: Cost of performance (plurality method).
[32] KY: Intangibles, such as franchisees are sourced to Kentucky because the intangible has a business situs in Kentucky. Receipts from satellite TV, etc. is sourced based on cost of performance.
[33] KY: If the intangible has acquired Kentucky nexus, intangible receipts from Kentucky are sourced to Kentucky.
[34] LA: Net income from royalties and similar revenue from intangibles is directly allocated to where the intangibles were used.
[35] ME: Maine defines market as the location of use, not the location of the customer.
[36] ME: Apportioned according to portion of use.
[37] MD: Gross receipts from intangibles are included in the numerator of the sales factor based on the average of the property and payroll factors. *See* Code of Maryland Regulations 03.04.03.08C(3)(d).
[38] MA: Market based where used. 830 CMR 63.38.1. **The receipts from the license of intangible property are in Massachusetts if and to the extent the intangible is used in Massachusetts. 830 CMR 63.38.1(9).**
[39] MA: *See* TIR 13-5.

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Same sourcing rules apply to receipts from intangibles and services[5]	Intangible used in state at time of sale[6]
Michigan	No	No	Yes	No[40]	**Yes**[41]
Minnesota	No	Yes	No	Yes	Yes
Missouri	Yes	No	No	Yes	**Yes**
Montana	No Response	No Response	No Response	No Response	No Response
Nebraska	**No**	**Yes**	**Not Applicable**	**No**	**Yes**
New Hampshire	Yes[42]	No	No	**Depends**	Not Applicable
New Jersey	No	No	Yes	No	**Yes**
New Mexico	Yes	No	No	Yes	Not Applicable
New York City	No Response	No Response	No Response	No	Yes
North Carolina	No	Yes	No	No[43]	Yes
North Dakota	Yes	No	No	Yes	Not Applicable
Ohio	No	No	Yes[44]	No[45]	Not Applicable
Oklahoma	No Response[46]	No Response[47]	No Response[48]	No Response[49]	No Response[50]
Oregon	Yes	No	No	Yes	**Yes**
Pennsylvania	No	No	Yes[51]	No[52]	Not Applicable
Rhode Island	No	Yes	No	Yes	Yes

[40] MI: ''Royalties and other income received for the use of or for the privilege of using intangible property . . . are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state.'' MCL 206.665(1)(e).

[41] **MI: *Id.***

[42] NH: *See* Rev. 304.04(c)(6) and 304.04(d).

[43] NC: Receipts from intangibles are sourced to the location of the payor. NCGS 105-130.4(I)(3)(b).

[44] OH: Gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property shall be sitused to Ohio to the extent that the receipts are based on the amount of use of the property in Ohio. R.C. 5751.033(F).

[45] OH: *Id.*

[46] OK: Policy not yet developed.

[47] OK: *Id.*

[48] OK: *Id.*

[49] OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. [*See* 68 O.S. §2358(A)(5)]. A customer within Oklahoma means:
(I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or
(II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A ''billing address'' means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

[50] OK: Policy not yet developed.

[51] PA: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

[52] PA: *Id.*

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Same sourcing rules apply to receipts from intangibles and services[5]	Intangible used in state at time of sale[6]
Tennessee[53]	Not Applicable	Not Applicable	Yes	No	**Not Applicable**
Texas	No	No	Yes[54]	No	**No Response**[55]
Utah[56]	No	**Yes**	Yes[57]	No[58]	Yes
Vermont	Not Applicable	Yes	Not Applicable	Not Applicable	Yes
Virginia	Yes[59]	No	No	Yes[60]	Not Applicable[61]
West Virginia	Yes	No	No	Yes	Not Applicable
Wisconsin	No	Yes	No	No[62]	Yes

[53] **TN: Tenn. Code Ann. §§67-4-2012(j) requires an entity doing business in Tennessee that licenses the use of intangible intellectual property to another Tennessee entity and that is paid royalties based on the licensee entity's sale of products or other activity in Tennessee must source the royalty income to Tennessee.**

[54] TX: Depends on the type of intangible. Sales of intangibles are apportioned based on the location of payor. Revenues from a trademark, franchise, or license are Texas receipts to the extent used in Texas. Revenue from a patent royalty is a Texas receipt to the extent utilized in production, manufacturing or other processing in Texas. Revenue from a copyright royalty is a Texas receipt to the extent utilized in printing or other publication in Texas. Franchise Tax Rule 3.591(e)(21). Sales and revenue from licensing of a computer program are apportioned to the location of payor. Franchise Tax Rule 3.591(e)(3).

[55] **TX: *Id.***

[56] UT: UCA 59-7-319(4) provides as follows:
''(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state.
(b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).
(c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year.''

[57] UT: If the intangible property is used in this state. If the property is used both in and outside of this state, the sale is sourced to this state in the ratio that it is used in this state to its use everywhere.

[58] UT: *Id.*

[59] VA: *See* Va. Code §58.1-416; 23 VAC 10-120-230.

[60] VA: *Id.*

[61] **VA: Because Virginia uses the costs-of-performance method of sourcing sales from intangibles, it is not relevant where the services are used.**

[62] WI: For gross receipts from the use of computer software, see s. 71.25(9)(df), Wis. Stats. (2011-2012); for gross royalties and gross receipts from the use or license of intangibles other than the use of computer software, see s. 71.25(9)(dj), Wis. Stats. (2011-2012); for sales of intangibles excluding securities, see s. 71.25(9)(dk), Wis. Stats. (2011-2012).

Sourcing Receipts: Intangibles (Part 2 of 2)

State[1]	Intangible used both in and out-of-state at time of sale[2]	Licenses, leases, or rents use of intangible[3]	Customer's payment contingent on productivity or use of intangible in-state[4]	Customer's payment contingent on productivity or use of intangible both in and out-of-state[5]	Intangible used in marketing a good or service[6]	Intangible is contract right authorizing holder to conduct business in specific geographic area[7]
Alabama	**Yes**[8]	Yes	Yes	**Yes**[9]	Yes	Yes
Alaska	**No Response**[10]	**No Response**[11]	**No Response**[12]	**No Response**[13]	**No Response**[14]	**No Response**[15]
Arizona	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Arkansas	**Yes**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
California	**Yes**	Yes	Depends[16]	**Depends**	Yes	Yes
Colorado	**Yes**	**Yes**	**Yes**	**Yes**	Not Applicable	**Yes**
Connecticut[17]	**No Response**	Not Applicable	Not Applicable	**No Response**	Not Applicable	Not Applicable
Delaware	**Yes**	Yes	Yes	**Yes**	Yes	Yes
District of Columbia	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from intangible personal property allocated to your state when the intangible is used both in your state and outside your state at the time of sale.

[3] Are receipts from intangible personal property allocated to your state when the corporation licenses, leases, rents, or otherwise grants the use of an intangible used in your state.

[4] Are receipts from intangible personal property allocated to your state when the intangible is used both in your state and outside your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.

[5] Are receipts from intangible personal property allocated to your state when the intangible is used in your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.

[6] If the response is ''Yes'' to using the market method, are receipts from intangible personal property allocated to your state when the intangible is used in marketing a good or service, and the good or service being marketed is purchased by an in-state consumer.

[7] If the response is ''Yes'' to using the market method, are receipts from intangible personal property allocated to your state when the intangible is a contract right, government license or similar intangible authorizing the holder to conduct a business activity in a specific geographic area that is used in, or otherwise associated with, your state.

[8] **AL: Yes, at least some portion**.

[9] **AL: *Id.***

[10] **AK: Alaska has no position at this time.**

[11] **AK: *Id.***

[12] **AK: *Id.***

[13] **AK: *Id.***

[14] **AK: *Id.***

[15] **AK: *Id.***

[16] CA: Under Regulation §25136-2(d), sales from intangible property are assigned to California to the extent the property is used in this state to the extent that the contract between the taxpayer and the purchaser, or the taxpayer's books and records kept in the normal course of business, indicate that the intangible property is used in California at the time of sale. However, this is a rebuttable presumption.

[17] **CT: Gain on the sale of an intangible asset is sourced to state where the intangible asset was ″managed or controlled.″ Royalties from the use of patents or copyrights within the state and interest managed or controlled within the state are sourced to Connecticut. See Conn. Gen. State. §12-218(c) and Conn. Agencies Regs. §12-218-1.**

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State[1]	Intangible used both in and out-of-state at time of sale[2]	Licenses, leases, or rents use of intangible[3]	Customer's payment contingent on productivity or use of intangible in-state[4]	Customer's payment contingent on productivity or use of intangible both in and out-of-state[5]	Intangible used in marketing a good or service[6]	Intangible is contract right authorizing holder to conduct business in specific geographic area[7]
Florida	**Depends**[18]	**Depends**[19]	**Depends**[20]	**Depends**[21]	**Depends**[22]	**Depends**[23]
Georgia	**No Response**[24]	No Response[25]	No Response[26]	**No Response**[27]	No Response[28]	No Response[29]
Hawaii	**Yes**[30]	Yes[31]	Yes[32]	**Yes**[33]	Yes[34]	Yes[35]
Idaho	**No Response**[36]	Not Applicable	Not Applicable[37]	**No Response**[38]	Not Applicable[39]	Not Applicable[40]
Illinois	**No Response**[41]	No Response[42]	No Response[43]	**No Response**[44]	No Response[45]	No Response[46]
Indiana	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Iowa[47]	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Kansas	**Yes**	**No Response**	**No Response**	**Yes**	**No Response**	**No Response**
Kentucky[48]	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Louisiana[49]	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Maine	**No Response**[50]	Yes	Yes	**No Response**[51]	Yes	Yes
Maryland	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable

[18] **FL: Depends on materiality of the income and the facts and circumstances. *See* Rule 12C-1.0155, F.A.C.**
[19] **FL: *Id.***
[20] **FL: *Id.***
[21] **FL: *Id.***
[22] **FL: *Id.***
[23] **FL: *Id.***
[24] GA: *See* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.
[25] GA: *Id.*
[26] GA: *Id.*
[27] **GA: *Id.***
[28] GA: *Id.*
[29] GA: *Id.*
[30] **HI: *See* §18-235-38-03(d) and §18-235-38-03(e), HAR.**
[31] **HI: *Id.***
[32] **HI: *Id.***
[33] **HI: *Id.***
[34] **HI: *Id.***
[35] **HI: *Id.***
[36] **ID: IDAPA 35.01.01.550 - Sales Other Than Sales of Tangible Personal Property in Idaho.**
[37] **ID: *Id.***
[38] **ID: *Id.***
[39] **ID: *Id.***
[40] **ID: *Id.***
[41] **IL: Insufficient information is provided.**
[42] **IL: *Id.***
[43] **IL: *Id.***
[44] **IL: *Id.***
[45] **IL: *Id.***
[46] **IL: *Id.***
[47] IA: Iowa Administrative Rule 701-54.2(3) provides examples on how income from intangibles should be sourced.
[48] KY: Intangibles, such as franchisees are sourced to Kentucky because the intangible has a business situs in Kentucky. Receipts from satellite TV, etc. is sourced based on cost of performance.
[49] LA: Net income from royalties and similar revenue from intangibles is directly allocated to where the intangibles were used.
[50] **ME: Apportioned according to portion of use (§5211(16-A)(B)).**
[51] **ME: *Id.***

State[1]	Intangible used both in and out-of-state at time of sale[2]	Licenses, leases, or rents use of intangible[3]	Customer's payment contingent on productivity or use of intangible in-state[4]	Customer's payment contingent on productivity or use of intangible both in and out-of-state[5]	Intangible used in marketing a good or service[6]	Intangible is contract right authorizing holder to conduct business in specific geographic area[7]
Massachusetts	**Yes**[52]	**Yes**[53]	**Yes**[54]	**Depends**[55]	Depends[56]	Depends[57]
Michigan	**Yes**[58]	**Yes**[59]	**Yes**[60]	**Yes**[61]	**Yes**[62]	**Yes**[63]
Minnesota	**No Response**[64]	Yes	Yes	**No Response**[65]	Yes	Yes
Missouri	**Yes**[66]	**Yes**[67]	**Yes**[68]	**Yes**[69]	**Yes**[70]	**Yes**[71]
Montana	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Nebraska	**Yes**	**Yes**	**No**[72]	**No**[73]	**No**[74]	**Yes**
New Hampshire	**No Response**	Not Applicable	Not Applicable	**No Response**	Not Applicable	Not Applicable
New Jersey	**Yes**[75]	**Yes**[76]	**Yes**[77]	**Yes**[78]	**Yes**[79]	**Yes**[80]
New Mexico	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
New York City	**Yes**	Yes	Yes	**Yes**	Yes	Yes
North Carolina	**Yes**	Yes	Yes	**Yes**	Yes	Yes
North Dakota	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable
Ohio	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	Not Applicable

[52] **MA: *See* TIR 13-5.**
[53] MA: *Id.*
[54] MA: *Id.*
[55] **MA: *Id.***
[56] MA: *Id.*
[57] MA: *Id.*
[58] **MI: "Royalties and other income received for the use of or for the privilege of using intangible property . . . are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state." MCL 206.665(1)(e).**
[59] **MI: *Id.***
[60] **MI: *Id.***
[61] **MI: *Id.***
[62] **MI: *Id.***
[63] **MI: *Id.***
[64] **MN: Intangible property used in more than one state must be apportioned pro rata according to the use in this state. Minn. Stat. section 290.191. subd. 5(i).**
[65] ***Id.***
[66] **MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.**
[67] **MO: *Id.***
[68] **MO: *Id.***
[69] **MO: *Id.***
[70] **MO: *Id.***
[71] **MO: *Id.***
[72] **NE: If the intangible is used in Nebraska, it is sourced to Nebraska, regardless of other contingencies.**
[73] **NE: *Id.***
[74] **NE: *Id.***
[75] **NJ: *See* N.J.A.C. 18:7-8.11 for further information. Taxable situs of an intangible is the commercial domicile of the creditor unless the intangible has been integrated with a business carried on in another state. N.J.A.C. 18:7-8.12(e).**
[76] **NJ: *Id.***
[77] **NJ: *Id.***
[78] **NJ: *Id.***
[79] **NJ: *Id.***
[80] **NJ: *Id.***

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State[1]	Intangible used both in and out-of-state at time of sale[2]	Licenses, leases, or rents use of intangible[3]	Customer's payment contingent on productivity or use of intangible in-state[4]	Customer's payment contingent on productivity or use of intangible both in and out-of-state[5]	Intangible used in marketing a good or service[6]	Intangible is contract right authorizing holder to conduct business in specific geographic area[7]
Oklahoma	**No Response**[81]	No Response[82]	No Response[83]	**No Response**[84]	No Response[85]	No Response[86]
Oregon	**Depends**[87]	**Depends**[88]	**Depends**[89]	**Depends**[90]	**Depends**[91]	**Depends**[92]
Pennsylvania	**No Response**[93]	Not Applicable	Not Applicable	**No Response**[94]	Not Applicable	Not Applicable
Rhode Island	**Yes**	Yes	Yes	**Yes**	Yes	Yes
Tennessee[95]	**Not Applicable**	**Yes**	**Yes**	**Yes**[96]	**Yes**[97]	**Yes**
Texas	**No Response**[98]	**No Response**[99]	**No Response**[100]	**No Response**[101]	**No Response**[102]	**No Response**[103]
Utah[104]	**Yes**	Yes	Yes	**Yes**	**Yes**[105]	Yes
Vermont	**Yes**	Yes	Yes	**Yes**	Yes	Yes

[81] **OK: Policy not yet developed.**
[82] OK: *Id.*
[83] OK: *Id.*
[84] **OK:** *Id.*
[85] OK: *Id.*
[86] OK: *Id.*
[87] **OR: Refer to ORS 314.665 and Administrative Rules.**
[88] **OR: *Id.***
[89] **OR: *Id.***
[90] **OR: *Id.***
[91] **OR: *Id.***
[92] **OR: *Id.***
[93] **PA: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.**
[94] **PA: *Id.***
[95] **TN: Tenn. Code Ann. §§67-4-2012(j) requires an entity doing business in Tennessee that licenses the use of intangible intellectual property to another Tennessee entity and that is paid royalties based on the licensee entity's sale of products or other activity in Tennessee must source the royalty income to Tennessee.**
[96] **TN: Only when the intangible is a patent or copyright.**
[97] **TN: Yes, to the extent the intangible is used in Tennessee.**
[98] **TX: Depends on the type of intangible. Sales of intangibles are apportioned based on the location of payor. Revenues from a trademark, franchise, or license are Texas receipts to the extent used in Texas. Revenue from a patent royalty is a Texas receipt to the extent utilized in production, manufacturing or other processing in Texas. Revenue from a copyright royalty is a Texas receipt to the extent utilized in printing or other publication in Texas. Franchise Tax Rule 3.591(e)(21). Sales and revenue from licensing of a computer program are apportioned to the location of payor. Franchise Tax Rule 3.591(e)(3).**
[99] **TX: *Id.***
[100] **TX: *Id.***
[101] **TX: *Id.***
[102] **TX: *Id.***
[103] **TX: *Id.***
[104] UT: UCA 59-7-319(4) provides as follows:
''(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state.
(b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).
(c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year.''
[105] **UT: proportionately.**

State[1]	Intangible used both in and out-of-state at time of sale[2]	Licenses, leases, or rents use of intangible[3]	Customer's payment contingent on productivity or use of intangible in-state[4]	Customer's payment contingent on productivity or use of intangible both in and out-of-state[5]	Intangible used in marketing a good or service[6]	Intangible is contract right authorizing holder to conduct business in specific geographic area[7]
Virginia	**Not Applicable**[106]	Not Applicable[107]	Not Applicable[108]	**Not Applicable**[109]	Not Applicable[110]	Not Applicable[111]
West Virginia	**No Response**	Not Applicable	Not Applicable	**No Response**	Not Applicable	Not Applicable
Wisconsin	**Yes**	Yes	Yes	**Yes**	Yes	Yes

[106] **VA: Because Virginia uses the costs-of-performance method of sourcing sales from intangibles, it is not relevant where the services are used.**
[107] **VA:** ***Id.***
[108] **VA:** ***Id.***
[109] **VA:** ***Id.***
[110] **VA:** ***Id.***
[111] **VA:** ***Id.***

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Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Characterized as Tangible Personal Property) (Part 1 of 4)

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property[2]	Receipts from cloud computing or SaaS are sourced to your state when: (a) income-producing activity performed more in state than in any other state based on costs of performance[3]	(b) income-producing activity performed more outside state than in your state based on costs of performance[4]	(c) software used in state[5]	(d) customer's billing address in state[6]	(e) customer's billing address is not in-state[7]	(f) other[8]
Alabama	**Depends**	**Not Applicable**[9]	**Not Applicable**[10]	**Yes**[11]	**Yes**[12]	**Depends**	**Depends**[13]
Alaska[14]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arizona[15]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arkansas	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**[16]
California[17]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Colorado	**No Response**	**No Response**	**No Response**	No	No Response	**No Response**	No Response[18]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property?

[3] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance.

[4] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance.

[5] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state.

[6] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state.

[7] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state.

[8] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state in another situation.

[9] **AL: Not applicable after 12/31/2010**

[10] **AL: *Id.***

[11] **AL: Yes, if sourced as an intangible**

[12] **AL: Yes, if sourced as a service.**

[13] **AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.**

[14] AK: Alaska has no position at this time.

[15] AZ: Not yet determined.

[16] AR: ACA 26-51-717(b).

[17] **CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.**

[18] CO: Receipts treated as sale of a service and apportioned based on pro rata cost of performance.

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property[2]	Receipts from cloud computing or SaaS are sourced to your state when: (a) income-producing activity performed more in state than in any other state based on costs of performance[3]	(b) income-producing activity performed more outside state than in your state based on costs of performance[4]	(c) software used in state[5]	(d) customer's billing address in state[6]	(e) customer's billing address is not in-state[7]	(f) other[8]
Connecticut[19]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Delaware	**No Response[20]**	**No Response**	**No Response**	No Response	No Response	**No Response**	**Yes[21]**
District of Columbia[22]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Florida[23]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Georgia[24]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Hawaii[25]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Idaho[26]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Illinois[27]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Indiana[28]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Iowa[29]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable
Kansas	**No Response**	**No Response**	**No Response**	No	No	**No Response**	No
Kentucky	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Louisiana[30]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Maine	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Maryland	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Massachusetts[31]	**Depends**	**No**	**Depends**	**Depends**	**Depends**	**Depends**	No

[19] CT: DRS has no published position

[20] **DE: Delaware will source sales depending on where the server is located and whether the software is considered "canned software" or "specialized software." Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.**

[21] **DE: *Id.***

[22] **DC: District treats software as tangible property.**

[23] **FL: Depends on facts and circumstances and the specific activity / service provided.**

[24] **GA: For guidance on computer software, *see* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.**

[25] HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

[26] ID: The Tax Commission has made no ruling on this fact situation.

[27] **IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer.**

[28] **IN: The department is still in the process of developing its position with regard to these transactions.**

[29] **IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.**

[30] LA: The Department has no position on this issue at this time.

[31] **MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing re-**

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property[2]	Receipts from cloud computing or SaaS are sourced to your state when: (a) income-producing activity performed more in state than in any other state based on costs of performance[3]	(b) income-producing activity performed more outside state than in your state based on costs of performance[4]	(c) software used in state[5]	(d) customer's billing address in state[6]	(e) customer's billing address is not in-state[7]	(f) other[8]
Michigan[32]	**No Response**	**No**	**No**	**No Response**	**No Response**	**No Response**	**Yes**[33]
Minnesota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Missouri	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Montana	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Nebraska	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Hampshire	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
New Jersey	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Mexico[34]	**No Response**	**No Response**	**No Response**	No	No	**No Response**	Yes[35]
New York City	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
North Carolina	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
North Dakota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Ohio	**Not Applicable**	**Not Applicable**	**Not Applicable**	Depends	Depends	**Not Applicable**	Depends
Oklahoma[36]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Oregon[37]	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**

sources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8

[32] MI: Prewritten computer software is considered tangible personal property in Michigan (*see* MCL **206.611 (1) and** 205.92(k)) **Sales of TPP are** sourced to the state of delivery, **and receipts from the lease or rental of TPP are sourced to the state where the property is used** (*see* MCL 206.665(1)(a) **and (c)**). Royalties and other income received for the use of intangible property, such as custom computer software, is sourced to the state in which it is used. *See* MCL 206.665(1)(e). If it cannot be determined where the purchaser is using the software, then the sale will be sourced to the customer's billing address. *See* MCL 206.669. In some cases, the sale, lease, license or rental of **prewritten computer** software may be considered a service rather than a sale, **lease, license, or rental of tangible personal property** and is sourced to the state where the recipient receives the benefit of the services. *See* MCL 206.665(2)(a) and *Catalina Marketing Sales Corp. v Michigan Dep't of Treasury*, 470 Mich. 13 (2004).

[33] **MI: Under a market sourcing analysis, receipts from SaaS would be sourced to the state where the cloud is accessed or used or if indeterminate then to the state of the customer's billing address.**

[34] **NM: The state cannot provide a definitive position on these issues at this time.**

[35] NM: Based on location of server.

[36] OK: Policy not yet developed.

[37] **OR: Oregon Administrative Rule (OAR) 150–314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.**

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property[2]	Receipts from cloud computing or SaaS are sourced to your state when: (a) income-producing activity performed more in state than in any other state based on costs of performance[3]	(b) income-producing activity performed more outside state than in your state based on costs of performance[4]	(c) software used in state[5]	(d) customer's billing address in state[6]	(e) customer's billing address is not in-state[7]	(f) other[8]
Pennsylvania[38]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Rhode Island	**No Response**	**No Response**	**No Response**	Yes	Yes	**No Response**	Not Applicable
Tennessee[39]	**No**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable
Texas	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Utah	**Yes**	**No**	**No**	**Yes**	Depends	**Depends**	Yes
Vermont	**No Response**	**No Response**	**No Response**	Yes	No Response[40]	**No Response**	No Response
Virginia[41]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
West Virginia	**No**	**No Response**	**No Response**	No	No	**No Response**	No
Wisconsin	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**

cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) database services have two different parts for purposes in the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

[38] PA: To be determined.

[39] **TN: The servers must not be located in-state. If the servers are located in-state, then the transaction is subject to tax.**

[40] VT: Billing address could be a factor in determining sourcing.

[41] VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. *Cf.* P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. *See* 23 VAC 10-120-230.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Characterized as Lease, License or Rental of Tangible Personal Property) (Part 2 of 4)

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the lease, license or rental of tangible personal property and sourced to your state when: (a) software leased, licensed or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software leased, licensed or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Alabama	**Depends**	**Not Applicable**[9]	**Not Applicable**[10]	**Depends**	**Depends**	**Depends**	**Depends**[11]
Alaska[12]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arizona[13]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arkansas	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**[14]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property?

[3] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance.

[4] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance.

[5] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state.

[6] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state.

[7] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state.

[8] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state in any other situation.

[9] **AL: Not applicable after 12/31/2010.**

[10] **AL: *Id.***

[11] **AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.**

[12] AK: Alaska has no position at this time.

[13] AZ: Not yet determined.

[14] AR: ACA 26-51-717(b)

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the lease, license or rental of tangible personal property and sourced to your state when: (a) software leased, licensed or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software leased, licensed or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
California[15]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Colorado	**No Response**	**No Response**	**No Response**	Yes	No	**No Response**	No
Connecticut[16]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Delaware	**No Response**[17]	**No Response**	**No Response**	No Response	No Response	**No Response**	**Yes**[18]
District of Columbia[19]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**[20]	**Not Applicable**	**Not Applicable**	**Not Applicable**
Florida[21]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Georgia[22]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Hawaii[23]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Idaho[24]	**No Response**	No Response	**No Response**	No Response	No Response	**No Response**	No Response
Illinois[25]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Indiana[26]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Iowa[27]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable
Kansas	**No Response**	**No Response**	**No Response**	No	No	**No Response**	No
Kentucky	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**

[15] **CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.**

[16] CT: DRS has no published position.

[17] **DE: Delaware will source sales depending on where the server is located and whether the software is considered "canned software" or "specialized software." Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.**

[18] **DE: *Id.***

[19] **DC: District treats software as tangible property.**

[20] **DC: The district is working towards market based, not cost performance.**

[21] **FL: Depends on facts and circumstances and the specific activity / service provided.**

[22] **GA: For guidance on computer software, *see* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.**

[23] HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

[24] ID: The Tax Commission has made no ruling on this fact situation.

[25] **IL: Sales of service are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer.**

[26] **IN: The department is still in the process of developing its position with regard to these transactions.**

[27] **IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.**

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the lease, license or rental of tangible personal property and sourced to your state when: (a) software leased, licensed or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software leased, licensed or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Louisiana[28]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Maine	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Maryland	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Massachusetts[29]	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
Michigan[30]	**No Response**	**No**	**No**	**No Response**	**No Response**	**No Response**	No Response
Minnesota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Missouri	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Montana	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Nebraska	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Hampshire	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
New Jersey	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Mexico[31]	**No Response**	**No Response**	**No Response**	No	No	**No Response**	Not Applicable
New York City	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
North Carolina	**No**	**Not Applicable**[32]	**Not Applicable**[33]	**Not Applicable**[34]	**Not Applicable**[35]	**Not Applicable**[36]	**Not Applicable**[37]

[28] LA: The Department has no position on this issue at this time.

[29] **MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. *See* LR 12-8.**

[30] MI: Prewritten computer software is considered tangible personal property in Michigan (*see* MCL **206.611 (1) and** 205.92(k)) **Sales of TPP are** sourced to the state of delivery, **and receipts from the lease or rental of TPP are sourced to the state where the property is used**(*see* MCL 206.665(1)(a) **and (c)**). Royalties and other income received for the use of intangible property, such as custom computer software, is sourced to the state in which it is used. *See* MCL 206.665(1)(e). If it cannot be determined where the purchaser is using the software, then the sale will be sourced to the customer's billing address. *See* MCL 206.669. In some cases, the sale, lease, license or rental of **prewritten computer** software may be considered a service rather than a sale, **lease, license, or rental of tangible personal property** and is sourced to the state where the recipient receives the benefit of the services. *See* MCL 206.665(2)(a) and *Catalina Marketing Sales Corp. v Michigan Dep't of Treasury*, 470 Mich. 13 (2004).

[31] **NM: The state cannot provide a definitive position on these issues at this time.**

[32] **NC: The situs of the software is the location of its utilization. North Carolina does not have "market-based sourcing."**

[33] **NC: *Id.***

[34] **NC: *Id.***

[35] **NC: *Id.***

[36] **NC: *Id.***

[37] **NC: *Id.***

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the lease, license or rental of tangible personal property and sourced to your state when: (a) software leased, licensed or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software leased, licensed or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
North Dakota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Ohio	**Not Applicable**	**Not Applicable**	**Not Applicable**	Depends	Depends	**Not Applicable**	Depends
Oklahoma[38]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Oregon[39]	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
Pennsylvania[40]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Rhode Island	**No Response**	**No Response**	**No Response**	Yes	Yes	**No Response**	Not Applicable
Tennessee[41]	**No**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable
Texas	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Utah	**Yes**	**No**	**No**	**Yes**	Depends	**Depends**	**Yes**
Vermont	**No Response**	**No Response**	**No Response**	Yes	No Response[42]	**No Response**	No Response
Virginia[43]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
West Virginia	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Wisconsin	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**

[38] OK: Policy not yet developed.

[39] **OR: Oregon Administrative Rule (OAR) 150–314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.**

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) database services have two different parts for purposes in the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

[40] PA: To be determined.

[41] **TN: The servers must not be located in-state. If the servers are located in-state, then the transaction is subject to tax.**

[42] VT: Billing address could be a factor in determining sourcing.

[43] VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. *Cf.* P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. *See* 23 VAC 10-120-230.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Characterized as Sale, Lease, License or Rental of Intangible Personal Property) (Part 3 of 4)

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from sale, lease, license or rental of intangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale, lease, license or rental of intangible personal property and sourced to your state when: (a) software sold, leased, licensed, or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software sold, leased, licensed, or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Alabama	**Depends**	**Not Applicable**[9]	**Not Applicable**[10]	**Depends**	**Depends**	**Depends**	**Depends**[11]
Alaska[12]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arizona[13]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Arkansas	**Depends**	**No**	**No**	**Depends**	**Depends**	**Depends**	**Depends**[14]
California[15]	**No Response**[16]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale, lease, license or rental of intangible personal property?

[3] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS as receipts from the sale, lease, license or rental of intangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance.

[4] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS as receipts from the sale, lease, license or rental of intangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance.

[5] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state.

[6] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state.

[7] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state.

[8] If the response is ''yes'' to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state in any other situation.

[9] **AL: Not applicable after 12/31/2010.**

[10] **AL: *Id.***

[11] **AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.**

[12] AK: Alaska has no position at this time.

[13] AZ: Not yet determined.

[14] AR: ACA 26-51-717(b).

[15] **CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.**

[16] **CA: In *Microsoft Corp v. Franchise Tax Board*(2012) 212 Cal.App.4th 78, the Court of Appeal ruled that the right to replicate and install software is an intangible property right. It did not decide whether the sale of the software itself is a sale of tangible or intangible property.**

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from sale, lease, license or rental of intangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale, lease, license or rental of intangible personal property and sourced to your state when: (a) software sold, leased, licensed, or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software sold, leased, licensed, or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Colorado	**No Response**	**No Response**	**No Response**	No	No Response	**No Response**	No Response
Connecticut[17]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Delaware	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**[18]
District of Columbia[19]	**Not Applicable**[20]	**Not Applicable**	**Not Applicable**[21]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Florida[22]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Georgia[23]	**No Response**	**No Response**	**No Response**	Yes	Depends	**No Response**	No Response
Hawaii[24]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Idaho[25]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Illinois[26]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Indiana[27]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Iowa[28]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable
Kansas	**No Response**	**No Response**	**No Response**	No	No	**No Response**	No
Kentucky	**Yes**	**Yes**	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Louisiana[29]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Maine	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**

[17] CT: DRS has no published position

[18] **DE: Delaware will source sales depending on where the server is located and whether the software is considered "canned software" or "specialized software." Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.**

[19] **DC: District treats software as tangible property.**

[20] **DC: All software in the District of Columbia is subject to the sales tax rate of 5.75%.**

[21] **DC: The District is working towards market based, not cost performance.**

[22] **FL: Depends on facts and circumstances and the specific activity / service provided.**

[23] **GA: For guidance on computer software, *see* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.**

[24] HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

[25] ID: The Tax Commission has made no ruling on this fact situation.

[26] **IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer**.

[27] **IN: The department is still in the process of developing its position with regard to these transactions.**

[28] **IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.**

[29] LA: The Department has no position on this issue at this time.

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from sale, lease, license or rental of intangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale, lease, license or rental of intangible personal property and sourced to your state when: (a) software sold, leased, licensed, or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software sold, leased, licensed, or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Maryland	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Massachusetts[30]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Michigan[31]	**No Response**	**No**	**No**	**No Response**	**No Response**	**No Response**	No Response
Minnesota	**Yes**	**No Response**[32]	**No Response**[33]	Yes	No	**No**	No
Missouri	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Montana	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Nebraska	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Hampshire	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
New Jersey	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
New Mexico[34]	**No Response**	**No Response**	**No Response**	No	No	**No Response**	Not Applicable
New York City	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
North Carolina	**Yes**	**No**	**No**	Yes[35]	Yes	**No**	No
North Dakota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Ohio	**Not Applicable**	**Not Applicable**	**Not Applicable**	Yes	Depends	**Not Applicable**	Depends
Oklahoma[36]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response

[30] **MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.**

[31] MI: Prewritten computer software is considered tangible personal property in Michigan (*see* MCL **206.611 (1) and** 205.92(k)) **Sales of TPP are** sourced to the state of delivery, **and receipts from the lease or rental of TPP are sourced to the state where the property is used** (*see* MCL 206.665(1)(a) **and (c)**). Royalties and other income received for the use of intangible property, such as custom computer software, is sourced to the state in which it is used. *See* MCL 206.665(1)(e). If it cannot be determined where the purchaser is using the software, then the sale will be sourced to the customer's billing address. *See* MCL 206.669. In some cases, the sale, lease, license or rental of **prewritten computer** software may be considered a service rather than a sale, **lease, license, or rental of tangible personal property** and is sourced to the state where the recipient receives the benefit of the services. *See* MCL 206.665(2)(a) and *Catalina Marketing Sales Corp. v Michigan Dep't of Treasury*, 470 Mich. 13 (2004).

[32] **MN: Sales of intangible property is attributed to the state in which the property is used by the purchaser. Minn. Stat. section 290.191, subd. 5(i).**

[33] **MN: *Id.***

[34] **NM: The state cannot provide a definitive position on these issues at this time.**

[35] NC: The situs of the software is the location of its utilization. North Carolina does not have ''market-based sourcing.''

[36] OK: Policy not yet developed.

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from sale, lease, license or rental of intangible personal property[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale, lease, license or rental of intangible personal property and sourced to your state when: (a) software sold, leased, licensed, or rented more in your state than any other state (cost of performance sourcing)[3]	(b) software sold, leased, licensed, or rented more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]
Oregon[37]	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
Pennsylvania[38]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response
Rhode Island	**No Response**	**No Response**	**No Response**	Yes	Yes	**No Response**	Not Applicable
Tennessee	**No**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable
Texas[39]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Utah	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Vermont	**No Response**	**No Response**	**No Response**	Yes	No Response[40]	**No Response**	No Response
Virginia[41]	**Yes**	**Yes**	**No**	No	No	**No**	No
West Virginia	**No Response**	**No Response**	**No Response**	No	No	**No Response**	No
Wisconsin	**Yes**	**No**	**No**	Yes[42]	No	**No**	No

[37] **OR: Oregon Administrative Rule (OAR) 150–314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.**

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) database services have two different parts for purposes in the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

[38] PA: To be determined.

[39] TX: Texas does not have a specific policy regarding cloud computing or SaaS transactions. Sourcing is based on the specific transaction and apportioned according to the apportionment rule. *See* Rule 3.591 - Margin: Apportionment.

[40] VT: Billing address could be a factor in determining sourcing.

[41] VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. *Cf.* P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. *See* 23 VAC 10-120-230.

[42] WI: Gross receipts from the use of computer software are in this state if the purchaser uses the computer software at a location in this state.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Characterized as Sale of Services) (Part 4 of 4)

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale of services and sourced to your state when: (a) service relating to software performed more in your state than any other state (cost of performance sourcing)[3]	(b) service relating to software performed more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]	Consider whether prewritten or custom[9]
Alabama	**Depends**	**Not Applicable**[10]	**Not Applicable**[11]	**Depends**	**Depends**	**Depends**	**Depends**[12]	Yes
Alaska[13]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Arizona[14]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Arkansas	**Depends**	**No**	**No**	**Depends**	**Depends**	**Depends**	**Depends**[15]	No
California[16]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	Yes
Colorado	**No Response**	**No Response**	**No Response**	No	No Response	**No Response**	No Response	No[17]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services?

[3] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance.

[4] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance.

[5] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the software is used in your state.

[6] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the customer's billing address is in your state.

[7] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the customer's billing address is not in your state.

[8] If the response is ''yes'' to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state in any other situation.

[9] Does your state consider whether the software accessed is prewritten or custom computer software when characterizing its receipts?

[10] **AL: Not applicable after 12/31/2010.**

[11] **AL: *Id.***

[12] **AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.**

[13] AK: Alaska has no position at this time.

[14] AZ: Not yet determined.

[15] AR: ACA 26-51-717(b).

[16] **CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.**

[17] CO: Because the writing of the software would be a service, but if the authoring corporation continues to own the software, the access to the software would be access to TPP.

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services[2]	(a) service relating to software performed more in your state than any other state (cost of performance sourcing)[3]	(b) service relating to software performed more outside your state than in your state (cost of performance sourcing)[4]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale of services and sourced to your state when: (c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]	Consider whether prewritten or custom[9]
Connecticut[18]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Delaware	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response[19]	**Yes**[20]
District of Columbia[21]	**Not Applicable**	**Not Applicable**	**Not Applicable**[22]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Florida[23]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	Yes
Georgia[24]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Hawaii[25]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Idaho[26]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Illinois[27]	**Yes**	**No**	**No**	**No**	**No Response**	**No Response**	**Yes**	No
Indiana[28]	**Yes**	**No**	**No**	No	No	**No**	Yes[29]	No
Iowa[30]	**Yes**	**No**	**No**	Yes	**Yes**	**No**	**Yes**	**No**
Kansas	**No Response**	**No Response**	**No Response**	No	No	**No Response**	No	Yes[31]
Kentucky	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Yes
Louisiana[32]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Maine	**Yes**	**No**	**No**	Yes	Yes	**No**	No	No

[18] CT: DRS has no published position

[19] **DE: Delaware will source sales depending on where the server is located and whether the software is considered "canned software" or "specialized software." Canned software is considered TPP for Delaware purposes. Specialized software is considered a service.**

[20] **DE: *Id.***

[21] **DC: District treats software as tangible property.**

[22] **DC: The District is working towards market based, not cost performance.**

[23] **FL: Depends on facts and circumstances and the specific activity / service provided.**

[24] **GA: For guidance on computer software, *see* O.C.G.A. 48-7-31 and Regulation 560-7-7-.03.**

[25] HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

[26] ID: The Tax Commission has made no ruling on this fact situation.

[27] **IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer**.

[28] **IN: The department is still in the process of developing its position with regard to these transactions.**

[29] IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to use any other apportionment method that does fairly reflect the taxpayer's Indiana source income.

[30] **IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.**

[31] KS: Delivery to customer of canned software, either electronically or via tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

[32] **LA: The Department has no position on this issue at this time.**

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services[2]	(a) service relating to software performed more in your state than any other state (cost of performance sourcing)[3]	(b) service relating to software performed more outside your state than in your state (cost of performance sourcing)[4]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale of services and sourced to your state when: (c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]	Consider whether prewritten or custom[9]
Maryland	**Yes**	**No**	**No**	Yes	No	**No**	**Yes**[33]	No
Massachusetts[34]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Depends
Michigan[35]	**No Response**	**No**	**No**	**No Response**	**No Response**	**No Response**	**No Response**	Yes
Minnesota	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	No
Missouri	**Yes**	**Yes**	**No**	**No**[36]	**No**[37]	**No**[38]	**Yes**[39]	Yes
Montana	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Nebraska	**Yes**	**No**	**No**	**Yes**	**Yes**	**Not Applicable**	**Yes**[40]	Not Applicable
New Hampshire	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
New Jersey	**Yes**[41]	**No**	**No**	No	Yes	**Yes**	No	No
New Mexico[42]	**No Response**	**No Response**	**No Response**	No	No	**No Response**	Not Applicable	No
New York City	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
North Carolina	**No**	**No**	**No**	No	No[43]	**No**	No	Yes
North Dakota	**Yes**	**Yes**	**No**	**Not Applicable**[44]	**No**	**No**	No	No

[33] **MD: If the receipts are derived from customers within MD as determined in § D of COMAR 03.04.03.08.**

[34] **MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.**

[35] MI: Prewritten computer software is considered tangible personal property in Michigan (*see* MCL **206.611 (1) and** 205.92(k)) **Sales of TPP are** sourced to the state of delivery, **and receipts from the lease or rental of TPP are sourced to the state where the property is used** (*see* MCL 206.665(1)(a) **and (c)**). Royalties and other income received for the use of intangible property, such as custom computer software, is sourced to the state in which it is used. *See* MCL 206.665(1)(e). If it cannot be determined where the purchaser is using the software, then the sale will be sourced to the customer's billing address. *See* MCL 206.669. In some cases, the sale, lease, license or rental of **prewritten computer** software may be considered a service rather than a sale, **lease, license, or rental of tangible personal property** and is sourced to the state where the recipient receives the benefit of the services. *See* MCL 206.665(2)(a) and *Catalina Marketing Sales Corp. v Michigan Dep't of Treasury*, 470 Mich. 13 (2004).

[36] **MO: These circumstances may be considered in the application of an alternative method allowed by section 32.200, Art. IV.18.**

[37] **MO: *Id.***

[38] **MO: *Id.***

[39] **MO: Under single factor apportionment, use of capital or labor in Missouri makes the sale "wholly in" or "partly in" Missouri.**

[40] **NE: *See* Neb. Rev. Stat. §§77–2734.14(3)(b) for Nebraska's Sourcing hierarchy.**

[41] **NJ: *See* N.J.A.C. 18:7-8.10(c) for clarification.**

[42] **NM: The state cannot provide a definitive position on these issues at this time.**

[43] NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income-producing activity) is performed. NCGS 105-130.4(l)(3)(c).

[44] **ND: This cannot be "software". Software is treated as TPP, so it would not be SaaS.**

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State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services[2]	(a) service relating to software performed more in your state than any other state (cost of performance sourcing)[3]	(b) service relating to software performed more outside your state than in your state (cost of performance sourcing)[4]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale of services and sourced to your state when: (c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]	Consider whether prewritten or custom[9]
Ohio	**Not Applicable**	**Not Applicable**	**Not Applicable**	Depends[45]	Depends[46]	**Not Applicable**	Depends[47]	Depends
Oklahoma[48]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Oregon	**Depends**[49]	**Depends**[50]	**Depends**[51]	No	No	**Depends**[52]	No	Yes[53]
Pennsylvania[54]	**No Response**	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Rhode Island	**No Response**	**No Response**	**No Response**	Yes	Yes	**No Response**	Not Applicable	No
Tennessee	**No**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	**Not Applicable**	Not Applicable	No
Texas	**Yes**[55]	**No Response**	**No Response**	No Response	No Response	**No Response**	No Response	No Response
Utah[56]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	No Response	Yes
Vermont	**No Response**	**No Response**	**No Response**	Not Applicable	No Response	**No Response**	No Response	Yes[57]

[45] OH: The Department is still evaluating this type of service and the answer may differ based on the facts presented by the taxpayer.

[46] OH: *Id.*

[47] OH: *Id.*

[48] OK: Policy not yet developed.

[49] **OR: Oregon Administrative Rule (OAR) 150–314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.**

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) database services have two different parts for purposes in the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

[50] **OR: *Id.***

[51] **OR: *Id.***

[52] **OR: *Id.***

[53] OR: COTS is considered tangible personal property per OAR 150-314.665(3).

[54] PA: To be determined.

[55] **TX: Cloud computing and SaaS transactions are "Internet hosting" as defined under Texas Tax Code section 151.108(a). A receipt from Internet hosting is a receipt from business done in Texas only if the customer to whom the service is provided is located in Texas. Texas Tax Code section 171.106(g).**

[56] UT: [These] answers reflect Utah's position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

[57] VT: Custom software is not taxable.

State[1]	Receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services[2]	Receipts from cloud computing or SaaS transactions will be characterized as receipts from the sale of services and sourced to your state when: (a) service relating to software performed more in your state than any other state (cost of performance sourcing)[3]	(b) service relating to software performed more outside your state than in your state (cost of performance sourcing)[4]	(c) software used in state (market-based sourcing)[5]	(d) customer's billing address in state[6]	(e) customer's billing address not in state[7]	(f) other[8]	Consider whether prewritten or custom[9]
Virginia[58]	**No**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	No[59]
West Virginia	**Yes**	**No Response**	**No Response**	No	No	**No Response**	No	No
Wisconsin	**Yes**	**No**	**No**	Yes[60]	No	**No**	No	No

[58] VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. *Cf.* P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. *See* 23 VAC 10-120-230.

[59] VA: See PD 94-1818 and PD 95-236.

[60] **WI: Gross receipts from services are in this state** if the purchaser receives the benefit of the service in this state. If the service relates to real property that is located in this state, tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state, the service is provided to an individual who is physically present in this state at that time that the service is received, or the service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state, then the purchaser is considered to have received the benefit of the service in this state.

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Sourcing Receipts: Banks and Financial Service Companies

State[1]	Costs of performance[2]	Market-based (location of customers or debtors)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Formula[6]	Financial institutions tax imposed on banks and financial services companies instead of corporate income tax[7]
Alabama[8]	No	Yes	No	Yes	Yes	**Yes**
Alaska[9]	No	Yes	No	Yes	Yes	**No**
Arizona	Yes	No	No	No	No	**No**
Arkansas	No	No	Yes[10]	Yes	Yes	**No**
California[11]	Yes	Yes	No	Yes	Yes	**Yes**
Colorado[12]	No	Yes	Yes[13]	Yes	Yes	**No**
Connecticut	No	Yes	No Response	No Response[14]	No Response	**No**
Delaware	No	Yes	No Response	**No**	**No**	**No Response**[15]
District of Columbia[16]	**No**	**No Response**[17]	**No**[18]	Yes	No	**No**
Florida	No	Yes	Not Applicable	Yes	No	**No**[19]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS's responses are from 2013.
SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.
[2] An out-of-state bank or financial services company must source receipts to your state based on costs of performance.
[3] An out-of-state bank or financial services company must source receipts to your state based on the market (i.e., the location of the customer or debtor).
[4] An out-of-state bank or financial services company must source receipts to your state based on a method other than costs of performance or the market.
[5] Does your state provide special rules for sourcing the receipts of a bank or financial services company?
[6] Does your state follow the Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions, or a substantially similar statute or regulation?
[7] Does your state impose a financial institutions tax on banks and financial services companies instead of the corporate income tax?
[8] AL: *See* Alabama Regulation 810-9-1-.05 for the allocation and apportionment provisions applicable to financial institutions.
[9] AK: Alaska has special rules for sourcing receipts of financial institutions. *See* 15 AAC §20.610(g).
[10] AR: MTC Model Statute.
[11] CA: *See* Regulation Section 25137-4.2 for details of the method. Sales due to services may be assigned based upon market if the sale results in one of the delineated revenue types set forth in Regulation section 25137-4.2(c). However, if the sales due to services are not assigned under any other provision in Regulation section 25137-4.2(c), they are assigned based upon costs of performance per Regulation section 25137-4.2(c)(3)(K). Additionally, sales of intangibles which are not assigned under any other provision in Regulation section 25137-4.2(c) may be assignable based upon costs of performance per Regulation section 25137-4.2(c)(3)(M).
[12] CO: MTC Financial Institution regulation as amended.
[13] CO: *See* 1 CCR 201-3, Special Regulation 7A Financial Institutions.
[14] CT: *See* Conn. Gen. Stat. §12-218b.
[15] **DE: Banks and Financial should inquire with the Bank Commissioner for further requirements.**
[16] **DC: *See* DCMR 125 to 129.**
[17] **DC: Still waiting for regulations.**
[18] **DC: District is proposing regulations for sourcing based on market for tax year beginning after 12/31/2014.**
[19] **FL: A franchise tax based on income is proposed.**

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State[1]	Costs of performance[2]	Market-based (location of customers or debtors)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Formula[6]	Financial institutions tax imposed on banks and financial services companies instead of corporate income tax[7]
Georgia	No	Yes	No Response	No	No	**No Response**[20]
Hawaii[21]	No Response	No Response	No Response	No Response	No Response	**No Response**
Idaho	No Response	Yes	**Not Applicable**	No Response[22]	Yes	**No**[23]
Illinois	**No**	Yes	**No**	No Response[24]	No Response	**No**
Indiana[25]	No	Yes	No	Yes	Yes	**Yes**
Iowa	No	Yes[26]	Not Applicable	Yes	No	**Yes**[27]
Kansas[28]	Yes	Yes	No Response	Yes	Yes	**Yes**
Kentucky	No[29]	No[30]	Yes	Yes[31]	No	**Yes**
Louisiana	No	Yes	No	No	No	**No**
Maine	No[32]	Yes[33]	No[34]	Yes[35]	No	**Yes**
Maryland	No	Yes	No	Yes[36]	No	**No**[37]
Massachusetts	No Response	Yes[38]	No Response	Yes[39]	No Response	**Yes**

[20] **GA: In addition to income taxes, a financial institutions tax is imposed. However, the financial institutions tax is allowed as a dollar for dollar tax credit against the State income tax liability of the depository financial institution for the calendar or fiscal year during which the taxes are paid.**

[21] HI: In lieu of Hawaii's income tax and general excise tax, the income of banks and financial services companies are subject to the Franchise tax under Chapter 241, Hawaii Revised Statutes. **Sourcing is based on Hawaii income tax law (sections 235-21 to 235-39, Hawaii Revised Statute).**

[22] ID: Per IDAPA 35.01.01.582, Idaho incorporates by reference the MTC ''Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.'' Receipts are sourced to the state where property is located or used if lease income or interest income from loans secured by real property, state where borrower located for interest from loans not secured by real property, billing address of card holder for receipts from credit card receivables, commercial domicile of the merchant for receipts from merchant discounts, etc.

[23] **ID: Per IDAPA 35.01.01.582, Idaho incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of new Income of Financial Institutions." Receipts are sourced to the state where property is located or used if lease income or interest income from loans secured by real property, state where borrower located for interest from loans not secured by real property, billing address of card holder for receipts from credit card receivables, commercial domicile of the merchant for receipts from merchant discounts, etc.**

[24] IL: IITA Section 304(c).

[25] IN: IC 6-3-2-2.2 and IC 6-5.5-4 provide for apportioning receipts, depending on the entity.

[26] IA: Iowa Administrative Rule 701-59.28 provides more detail on how income should be sourced for financial institutions, and 701-54.6(3) provides detail on how financial organizations source income to Iowa. Both use a market approach.

[27] **IA: Iowa imposed a franchise tax on financial institutions, which is based on federal taxable income. This is set forth in Iowa Code sections 422.60 through 422.66. Financial service companies are subject to the Iowa corporation income tax. Financial institutions are defined in section 422.61(1).**

[28] KS: Receipts from services is cost of performance; all others are market-based.

[29] KY: Banks are not subject to corporation income tax.

[30] KY: *Id.*

[31] KY: 103 KAR 16:150 provides regulatory law for apportionment and allocation of financial organizations and loan companies.

[32] ME: Not applicable to banks because generally banks are subject to the Maine franchise tax (based on net income per books and assets) rather than the Maine corporate income tax.

[33] ME: *Id.*

[34] ME: *Id.*

[35] ME: *Id.*

[36] MD: Banks are allowed to source intangibles based on their actual source rather than the average of property and payroll factors.

[37] **MD: *See* §§ 10-102, 10-104(3), and 8-202(a) of the Tax-General Article, Annotated Code of Maryland.**

[38] MA: Location of debtor or property.

[39] MA: *See* GL c. 63, s. 2A.

State[1]	Costs of performance[2]	Market-based (location of customers or debtors)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Formula[6]	Financial institutions tax imposed on banks and financial services companies instead of corporate income tax[7]
Michigan	No	Yes[40]	No Response	Yes[41]	No[42]	**Yes**[43]
Minnesota	No	Yes	No	Yes[44]	Yes	**No**
Mississippi	No	Yes	No Response	No Response	No Response	**No Response**
Missouri	No	Yes	**Not Applicable**	No	Yes	**No**
Montana	Depends	Depends	No Response	No	No	**No**
Nebraska	**No**[45]	No[46]	**Yes**[47]	No	No	**Yes**
New Hampshire[48]	No	Yes	No Response	Yes	No Response	**No**
New Jersey	No	Yes[49]	**Yes**[50]	**Yes**[51]	No	**No**
New Mexico	No	Yes	Not Applicable	Yes	No	**No Response**
New York City[52]	No	Yes	No	Yes	No	**Yes**
North Carolina	No	Yes[53]	No	No	No	**No**
North Dakota	No Response[54]	No Response[55]	No Response	Yes[56]	Yes	**No**
Ohio	Depends[57]	Yes[58]	No[59]	Yes[60]	Depends[61]	**Yes**

[40] MI: *See* MCL 206.659 for specific rules governing the sourcing of gross business for financial institutions.

[41] **MI: *See* MCL 206.659.**

[42] MI: Michigan imposes a net equity tax on financial institutions, not an income tax. Apportionment is done using the gross business factor.

[43] **MI: Michigan terms Part II of its Income Tax Act of 1967 the Corporate Income Tax (CIT). The CIT is comprised of three components: a corporate income tax, a gross direct premiums tax, and a franchise tax. The gross direct premiums tax applies only to insurance companies, and the franchise tax applies only to financial institutions. A "financial institution" is not subject to the corporate income tax. MCL 206. 611(5).**

[44] MN: Special provisions for attributing receipts of financial institutions are provided in Minn. Stat. section 290.191, subd. 6.

[45] **NE: Banks accepting deposits from Nebraska residents do not file an income tax return but are taxed on the amount of deposits in this state or accepted from Nebraska residents. Banks not accepting deposits from Nebraska residents file a corporate income tax return.**

[46] **NE: *Id.***

[47] **NE: *Id.***

[48] NH: *See* N.H. Code Administrative Rules Rev. 304.10 Alternative apportionment for financial institutions.

[49] **NJ: *See* N.J.A.C. 18:7-8.10 and 8.12.**

[50] **NJ: *Id.***

[51] **NJ: *Id.***

[52] NYC: Under Administrative Code sections 11-508(e-3) (for UBT) and 11-604(3)(a)(10) (for GCT), certain income from financial services is sourced to the location of the customer.

[53] NC: Receipts from intangibles are sourced to the location of the payor. NCGS 105-130.4(I)(3)(b).

[54] ND: Receipts from services are assigned based on cost of performance. Other receipts are assigned based on market.

[55] **ND:** *Id.*

[56] **ND: [state follows the Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions, or a substantially similar statute or regulation].**

[57] OH: Taxpayer can choose between cost of performance and a market-based approach for the situsing of investment assets and activity and trading assets and activity pursuant to R.C. 5726.05(D).

[58] OH: A new financial institution tax was signed into law on December 27, 2012. Financial institution is defined at R.C. 5726.05(H). For entities meeting the definition, Ohio uses the market approach based on the physical location of the customer who benefited from the service or, in some situations, the location of the property securing the loan. *See* R.C. 5726.05. Other financial services companies that do not meet the definition are subject to the CAT and their gross receipts are sitused pursuant to R.C. 5751.033(H).

[59] OH: *Id.*

[60] OH: *Id.*

[61] OH: *Id.* Ohio uses the MTC formula for receipts with a few differences in order to apportion gross receipts.

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State[1]	Costs of performance[2]	Market-based (location of customers or debtors)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Formula[6]	Financial institutions tax imposed on banks and financial services companies instead of corporate income tax[7]
Oklahoma	No Response[62]	No Response[63]	No Response[64]	No Response[65]	No Response[66]	**Yes**
Oregon	No	No	Yes[67]	Yes[68]	Yes[69]	**No**
Pennsylvania	No Response[70]	No Response[71]	Yes	Yes	No	**Yes**
Rhode Island	No	Yes	No Response	Yes	No	**Yes**
Tennessee	Not Applicable[72]	Not Applicable[73]	Yes	Yes	Yes	**No**
Texas	No	No	Yes[74]	Yes[75]	No	**No**
Utah	No	Yes	No	Yes	Yes	**No**
Vermont	No	No Response	Yes[76]	No Response	No Response	**Yes**
Virginia	Yes	No	No	Yes[77]	No	**Yes**[78]
West Virginia	No	Yes	No	No	Yes	**No**
Wisconsin	No	No	Yes[79]	Yes	No[80]	**No**

[62] OK: Policy not yet developed.
[63] OK: *Id.*
[64] OK: *Id.*
[65] OK: *Id.*
[66] OK: *Id.*
[67] OR: Receipts from financials are sourced per OAR 150-314.280-(N) and methods vary depending on type.
[68] OR: *Id.*
[69] OR: *Id.*
[70] PA: Banks are subject to a bank shares tax imposed on the taxable value of their shares. 72 P.S. §7701 *et seq*. The taxable value of their shares is based upon their federal reports of condition. Mutual Thrift Institutions are subject to a tax on net income determined in accordance with generally accepted accounting principles. 72 P.S. §8501 *et seq*. The respective capital stock value and net income is apportioned to Pennsylvania using deposits, receipts and payroll factors. Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.
[71] PA: *Id.*
[72] TN: Tenn. Code Ann. §67-4-2013(b) sets forth the sourcing requirements for a financial institution's various types of receipts. Generally, sourcing of a financial institution's receipts is market-based, but the market is not always determined by the location of the customer or debtor.
[73] TN: *Id.*
[74] TX: Sourcing of revenue received by banks depends upon the type of revenue received and is based upon the standard apportionment rules described in Franchise Tax Rule 3.591(e)(8)(E).
[75] TX: *Id.*
[76] VT: The location of the institution; tax imposed on deposits.
[77] VA: Financial corporations apportion Virginia taxable income, less allocable dividends, on a one-factor formula based on cost of performance in Virginia over cost of performance everywhere. *See* Va. Code §58.1-418(A); 23 VAC 10-120-250(A).
[78] **VA: Pursuant to Va. Code §58.1-401, state and national banks, banking associations, and trust companies are exempt from the Virginia Corporate Income Tax to the extent they are subject to the Bank Franchise Tax imposed pursuant to Va. Code §58.41-1200 et seq.**
[79] WI: Sourcing of receipts varies based on the nature of the income derived. See s. Tax 2.49, Wis. Adm. Code.
[80] WI: However, many items are similar. See s. Tax 2.49, Wis. Adm. Code.

Sourcing Receipts: Construction Contractors

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Long-term construction projects located in-state[7]	Long-term construction projects located both in and out-of-state[8]
Alabama	No	No	Yes[9]	Yes	Yes	**Yes**	**Depends**
Alaska	No	Yes	No	Yes	Yes	**Yes**	**Yes**
Arizona	Yes	No	No	No	No	**Yes**	**Yes**
Arkansas	No	No	Yes[10]	Yes[11]	Yes	**Yes**	**Yes**
California	No[12]	Yes	No	Yes[13]	Yes	**Yes**	**Yes**
Colorado	No	Yes	Yes[14]	Yes	Yes	**Yes**	**Yes**
Connecticut[15]	No Response	No Response	No Response	No Response	No Response	**No Response**	**No Response**
Delaware	Yes	No	No	No	No	**Yes**	**Yes**[16]
District of Columbia	**No**	Yes	**No Response**	No	No	**Yes**	**Yes**
Florida	No	Yes	Not Applicable	No	No	**Yes**	**Yes**
Georgia	No	Yes	No Response	No	No	**Yes**	**Yes**
Hawaii[17]	No Response	No Response	No Response	Yes	Yes	**No Response**	**No Response**
Idaho	No Response	No Response	No Response	**Yes**	Yes[18]	**Yes**	**No Response**
Illinois	**No**	**Yes**	**No**	**No**	**No**	**Yes**	**Yes**
Indiana	No	Yes	**No**	No	Yes	**Yes**	**Yes**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] A long-term construction contractor must source receipts to your state based on costs of performance.

[3] A long-term construction contractor must source receipts to your state based on the market (i.e., the location of the customer).

[4] A long-term construction contractor must source receipts to your state based on a method other than costs of performance or the market.

[5] Does your state provide special rules for sourcing the receipts of a long-term construction contractor?

[6] Does your state follow the Multistate Tax Compact Special Industry Rules for Construction Contractors in Reg. IV.18.(d), or a substantially similar statute or regulation?

[7] Are receipts from long-term construction projects sourced to your state when the project is located in your state?

[8] Are receipts from long-term construction projects sourced to your state when the project is located both in your state and outside your state?

[9] AL: Receipts are attributed to the state where the construction project is located. The Percentage of Completion Method is used.

[10] AR: MTC Model Regulation.

[11] AR: Arkansas Regulation 1.26-51-718(d).

[12] CA: Regulation §25137-2 prescribes rules to be used to apportion the income of a multistate construction contractor when the contractor receives income under a long-term contract. The gross receipts attributable to California are based on a ratio of costs in and out of California, in accordance with the accounting method the taxpayer chose under I.R.C. §451 and Treas. Reg. §1.451.

[13] CA: *Id.*

[14] CO: *See* 1 CCR 201-3, Special Regulation 2A Contractors.

[15] CT: DRS has no published position.

[16] **DE: Cost of Performance, % based.**

[17] HI: Income from a long-term construction contractor that is taxable both in this state and in one or more other states shall allocate and apportion net income as provided in HRS sections 235-22 to 235-39.

[18] **ID: Idaho has adopted this special industry rule. *See* IDAPA 35.01.01.580.01.a MTC Reg. IV (d).**

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Long-term construction projects located in-state[7]	Long-term construction projects located both in and out-of-state[8]
Iowa	No	Yes	Not Applicable	Yes[19]	No	**Yes**	**Yes**[20]
Kansas	Yes	No	No	No	No	**Yes**	**No Response**
Kentucky	Yes	No	No	No	No	**Yes**	**Yes**
Louisiana[21]	No Response	No Response	No Response	No Response	No Response	**No Response**	**No Response**
Maine	No	Yes[22]	No	No	No	**Yes**	**Yes**[23]
Maryland	No	No	Yes[24]	No	No	**Yes**	**Yes**[25]
Massachusetts	Depends	Depends	Depends	No	No Response	**Depends**	**Depends**
Michigan	No	Yes	No Response	No	No	**Yes**	**Yes**[26]
Minnesota	No	Yes	No	No	No	**Yes**	**No Response**[27]
Missouri	Yes	**No**	**Not Applicable**	No	Yes	**Yes**	**Yes**
Montana	No Response	No Response	Yes	Yes	Yes	**Yes**	**Yes**
Nebraska	**No**	**Yes**	No	No	No	**Yes**[28]	**Yes**[29]
New Hampshire	Yes	No	No	No	No Response	**Yes**	**Depends**
New Jersey	Yes	No	No	No	No	**Yes**	**Yes**
New Mexico[30]	No	Yes	Yes	Yes	No	**No Response**	**No Response**
New York City	No	Yes	No Response	No Response	No	**Yes**	**Yes**
North Carolina	No	No	Yes[31]	No	No	**Yes**[32]	**Yes**[33]
North Dakota	Yes	No	No	No	No	**Yes**	**Yes**

[19] **IA: Rule 701-54.6(4) provides for the apportionment rules for construction contractors.**
[20] **IA: Iowa receipts from the portion of the contract located in Iowa are sourced to Iowa.**
[21] LA: Net income from construction and other similar services is directly allocated to the state in which the work is done.
[22] ME: Maine views market sourcing as the location of where the service is performed.
[23] **ME: The sale is sourced proportionately.**
[24] MD: Construction receipts relating to the construction or improvement of real property are sourced to the location of the property. COMAR 03.04.03.08D(3).
[25] **MD: Construction receipts relating to the construction or improvement of real property are sourced to the location of the property pursuant to COMAR 03.04.03.08D(3).**
[26] **MI: Sales of services would be sourced to Michigan based on where the recipient receives the benefit. If the recipient receives all of the services in Michigan, all receipts are included in the numerator. If the recipient receives benefit both in Michigan and another state, receipts are included in the numerator in proportion to the extent that the recipient receives benefits in Michigan. MCL 206.665(2)(a).**
[27] **MN: Receipts would be pro rata according to the portion of the construction projects attributed to the state.**
[28] **NE: Receipts would be sourced to Nebraska because the projects are fully or partially located in Nebraska, irrespective of the timeframe of the project.**
[29] **NE: *Id.***
[30] **NM: The state adopted UDITPA rules apply. See Regulation 3.5.19.12 NMAC.**
[31] NC: A construction contractor would be treated as a service provider and would source receipts from its services to the location of the income-producing activities. NCGS 105-130.4(l)(c)(3).
[32] **NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income producing activity) is performed. NCGS 105-130.4(l)(3)(c).**
[33] **NC: *Id.***

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Long-term construction projects located in-state[7]	Long-term construction projects located both in and out-of-state[8]
Ohio[34]	No	Depends	Yes	No	No Response	**Not Applicable**	**Not Applicable**
Oklahoma[35]	No Response	No Response	No Response	No Response	No Response	**No Response**	**No Response**
Oregon	No	Yes	No	Yes[36]	Yes	**Yes**	**Yes**[37]
Pennsylvania	No	No	Yes[38]	No	No	**Yes**	**Depends**[39]
Rhode Island	No	Yes	Not Applicable	No	No	**Yes**	**Yes**
Tennessee	Yes	Not Applicable	Not Applicable	No	No	**Yes**[40]	**Yes**[41]
Texas	No	No	Yes[42]	No	No	**Not Applicable**	**Not Applicable**
Utah	No	Yes	No	Yes	Yes	**Yes**	**Yes**
Vermont	No Response	Yes[43]	No Response	No	No Response	**No Response**	**No Response**
Virginia	Yes	No	Yes[44]	Yes[45]	No	**Yes**[46]	**Yes**[47]
West Virginia	No	Yes	No	No	Yes	**No Response**	**No Response**
Wisconsin	No	Yes	No	No	No	**Yes**	**Yes**

[34] OH: Receipts from construction services are sourced to Ohio if the benefit of the services are received in Ohio regardless of the location where the services are performed. If services are being performed for a customer with properties within and without Ohio and there is no separation of costs per location, the gross receipts are sourced using any reasonable, consistent, and uniform method of apportionment based on the contractor's records. O.A.C. 5703-29-17.

[35] OK: Policy not yet developed.

[36] OR: OAR 150-314-615-(F).

[37] OR: *Id.*

[38] PA: Where the service is delivered — i.e., where the construction is performed.

[39] **PA: Depends on facts and circumstances.**

[40] **TN: Yes, if cost of performance is greater than 50%.**

[41] **TN: Yes, if cost of performance is greater than 50%.**

[42] TX: Receipts from the construction of real property are apportioned to where the service is performed. Franchise Tax Rule 3.591(e)(26).

[43] VT: Receipts sourced to location of work performed. May be different from the location of customer.

[44] VA: Construction corporations electing to report income on the completed contract basis must apportion income in the ratio that business in Virginia bears to total business. Va. Code §58.1-419(A). Construction corporations not reporting under the completed contract method must determine Virginia taxable income by using the statutory apportionment formula. Va. Code §58.1-419(B); 23 VAC 10-120-260(C). If a portion of a construction corporation's income is reported under the completed contract method and a portion is reported under a percentage of completion method or some other accounting method, the applicable apportionment formula is determined by the method used to report a majority of the total business, as measured by gross revenue, conducted by the taxpayer for the taxable year. If, however, no one method is used to report a majority of the taxpayer's total business, the general apportionment formula must be used. 23 VAC 10-120-260(D).

[45] VA: *Id.*

[46] **VA: *Id.***

[47] **VA: *Id.***

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Sourcing Receipts: Telecommunications and Ancillary Service Providers

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Sales of ancillary services used by customer in-state[7]	Sales of telecommunications or ancillary services sold as part of a bundled transaction[8]
Alabama	No	Depends	Yes[9]	No	No	**Yes**	**Depends**
Alaska	Yes	No	No	No	No	**No Response**[10]	**No Response**[11]
Arizona	Yes	No	No	No	No	**Yes**	**Yes**
Arkansas	No	No	Yes[12]	No	No	**Yes**	**Yes**
California	No	Yes	No	Yes[13]	Yes[14]	**Yes**	**Depends**[15]
Colorado	No	Yes	Yes	Yes	Yes	**No Response**	**No Response**
Connecticut[16]	No Response	No Response	No Response	No Response	No Response	**No Response**	**No Response**
Delaware	Yes	No	No	No	No	**Yes**	**Yes**
District of Columbia	**No**	Yes	**Not Applicable**	**No**	No	**Yes**	**Yes**
Florida	No	Yes	Not Applicable	Yes	No	Depends[17]	Depends[18]
Georgia	No	Yes	No Response	No	No	**No Response**	**No Response**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] A telecommunications and ancillary service provider must source receipts to your state based on costs of performance.

[3] A telecommunications and ancillary service provider must source receipts to your state based on the market (i.e., the location of the customer).

[4] A telecommunications and ancillary service provider must source receipts to your state based on a method other than costs of performance or the market.

[5] Does your state provide special rules for sourcing the receipts of a telecommunications and ancillary service provider?

[6] Does your state follow the Multistate Tax Compact Special Industry Rules for Telecommunications and Ancillary Services in Reg. IV.18.(j), or a substantially similar statute or regulation?

[7] Are receipts from sales of ancillary services sourced to your state when the ancillary services are primarily used by the customer in your state?

[8] Are receipts from sales of telecommunications or ancillary services sourced to your state when the services are sold as part of a bundled transaction?

[9] AL: Sales for Telecom and Ancillary Service Providers are not sourced under Section 18, they would be sourced using Section 16 or 17, depending on the classification of the sale.

[10] **AK: Alaska has no position at this time.**

[11] **AK: *Id.***

[12] AR: ACA 26-51-717(b).

[13] CA: Regulation §§25137-8.1 & -8.2 prescribe the rules for apportioning the income of multistate television networks and film producers.

[14] CA: *Id.*

[15] **CA: Depending on the state where the benefits of the service was received, or where the good was shipped.**

[16] CT: DRS has no published position.

[17] **FL: Depends on the facts and circumstances; *See* Rule 12C-1.0155(2)(g), F.A.C.**

[18] **FL: *Id.***

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Sales of ancillary services used by customer in-state[7]	Sales of telecommunications or ancillary services sold as part of a bundled transaction[8]
Hawaii[19]	No Response	No Response	No Response	Yes	Yes	**No Response**	**No Response**
Idaho	**Yes**	**Not Applicable**	**Not Applicable**	**No**	No	**No Response**[20]	**No Response**[21]
Illinois	**No**	Yes	**No**[22]	**Yes**	**No**	**Yes**	**Yes**
Indiana	Yes	No	**No**	No	No	**No**	**No**
Iowa[23]	No	Yes	Not Applicable	Yes	No	**Yes**	**Yes**[24]
Kansas	No	No	No	No	No	**Yes**	**Yes**
Kentucky	Yes	No	No	No	No	**Yes**	**Yes**
Louisiana	No	Yes	No	Yes[25]	No	**Yes**	**Yes**
Maine	No	Yes	No	No	No	**Yes**	**Yes**
Maryland	No	Yes	No	No	No	**Yes**[26]	**Yes**[27]
Massachusetts	No	No	Yes[28]	Yes	Yes	**Depends**[29]	**Depends**[30]
Michigan	No	Yes	No Response	Yes[31]	No[32]	**Yes**[33]	**Yes**[34]
Minnesota	No	Yes	No	No	No	**Yes**	**Yes**
Missouri	Yes	**No**	**Not Applicable**	No	**No**	**Yes**	**Yes**
Montana	No Response	No Response	**Yes**	No Response	**Yes**	**Depends**	**Depends**
Nebraska	Yes	No	No	No	No	**No**[35]	**No**[36]
New Hampshire	Yes	No	No	No	No Response	**No Response**	**No Response**
New Jersey	No	Yes[37]	**No**	**Yes**[38]	No	**No**	**No**

[19] HI: Income from the sale of telecommunications and ancillary services by a person that is taxable both in this state and in one or more other states shall allocate and apportion net income as provided in HRS sections 235-22 to 235-39.

[20] **ID: Based on the costs of performance.**

[21] **ID: *Id.***

[22] **IL: *See* 304(a)(3)(b-5)**

[23] IA: Rule 701-54.7(4) provides for the apportionment for telecommunication companies.

[24] **IA: To the extent the benefit of the services are received in Iowa, the sales are sourced to Iowa.**

[25] LA: LAC 61:I.1134(D)(2).

[26] **MD: If the receipts are derived from customers within MD as determined in §D of COMAR 03.04.03.08.**

[27] **MD: *Id.***

[28] MA: *See* 830 CMR 63.38.11.

[29] **MA: See 830 CMR 63.38.11(5)(e) referencing "customer channel termination point."**

[30] **MA: *Id.***

[31] **MI: *See* MCL 206.665(13) through (19).**

[32] MI: Reg IV.18(j) relates to Publishing. Reg IV.18(i) relating to Telecommunications and Ancillary Services has not been formally adopted in Michigan. *See* MCL 206.655(13) — (19).

[33] **MI: *See* MCL 206.665(13) through 919).**

[34] **MI: Recipients from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service is in this state based on the location of the purchaser. MCL 206.665(18).**

[35] **NE: Nebraska retains cost of performance for telecommunication companies for sales of other than tangible personal property. *See* Neb. Rev. Stat. §§77–2734.14(4).**

[36] **NE: *Id.***

[37] NJ: N.J.A.C. 18:7-8.10(a), Example 2.

[38] **NJ: *Id.***

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Other[4]	Special Rules[5]	Multistate Tax Compact Special Industry Rules[6]	Sales of ancillary services used by customer in-state[7]	Sales of telecommunications or ancillary services sold as part of a bundled transaction[8]
New Mexico	No	Yes	No	No	No	**Yes**	**Yes**
New York City	No	Yes	No Response	Yes	No	**Yes**	**Yes**
North Carolina	No	Yes	No	**Yes**[39]	No	**Yes**	**Yes**
North Dakota	Yes	No	No	No	No	**Depends**[40]	**Depends**[41]
Ohio	No	No	Yes[42]	Yes[43]	No Response	**Not Applicable**	**Not Applicable**
Oklahoma[44]	No Response	No Response	No Response	No Response	No Response	**No Response**	**No Response**
Oregon	Yes	No	No	Yes[45]	No[46]	**Depends**[47]	**Depends**[48]
Pennsylvania	No	No	Yes[49]	No	No	**No Response**[50]	**No Response**[51]
Rhode Island	No	Yes	No	No	No	**Yes**	**Yes**
Tennessee	**Yes**	**No**	**No**	**No**	**No**	**No**	**No**
Texas	No	No	Yes[52]	No	No	**No Response**[53]	**No Response**[54]
Utah	No	Yes	No	Yes	No	**Yes**	**Yes**
Vermont	No Response	Yes	No Response	No	No Response	**Yes**	**Yes**
Virginia	Yes	No	No	No[55]	No	**Not Applicable**[56]	**Yes**
West Virginia	No	Yes	Yes[57]	Yes	Yes	**No Response**	**No Response**
Wisconsin	No	Yes	No	Yes[58]	No[59]	**Yes**	**Yes**

[39] **NC: N.C. Gen. Stat. 105-134(n) states that all apportionable income of a telephone company be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue.**

[40] **ND: Depends on the direct costs of performance of the income producing activity.**

[41] **ND: *Id.***

[42] OH: Different sourcing rules apply depending on the type of telecommunications and ancillary service that is being provided and factors such as time of payment (pre-paid or post-paid), origination and termination point, and/or customer's ''place of primary use'' (O.A.C. 5703-29-17).

[43] OH: *Id.*

[44] OK: Policy not yet developed.

[45] OR: ORS 314.280(3) allows optional election of 50% sales / 25% property / 25% payroll.

[46] **OR: *Id.***

[47] **OR: *Id.***

[48] **OR: *Id.***

[49] PA: Where the service is delivered.

[50] **PA: *Id.***

[51] **PA: *Id.***

[52] TX: Receipts from telecommunication services, other than telephone calls, are Texas receipts if the services are performed in Texas. Franchise Tax Rule 3.591(e)(30)(c).

[53] **TX: *Id.***

[54] **TX: *Id.***

[55] **VA: Telecommunications companies organized as corporations are subject to the minimum tax imposed by Va. Code §58.1-400.1 in lieu of the Virginia Corporate Income Tax if the amount of the corporate income tax is less than the minimum tax.**

[56] **VA: Because Virginia uses the cost of performance method of sourcing sales other than the sale of tangible personal property, it is not relevant where customers use such services.**

[57] WV: W.Va. Code §11-15B-19.

[58] WI: See Tax 2.502, Wis. Adm. Code.

[59] WI: However, many items are similar.

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Sourcing Receipts: Trucking Companies

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Mileage[4]	Other[5]	Special Rules[6]	Multi-state Tax Compact Special Industry Rules[7]	Receipts from hauling freight, mail and express shipments sourced to state when: (a) Shipment originates and terminates in-state[8]	(b) Shipment passes through, into or out of state[9]	(c) Miles traveled threshold[10]
Alabama	No	No	**Yes**	Yes[11]	Yes	Yes	**Yes**	**No Response**[12]	**No**
Alaska	No Response[13]	No Response[14]	**No Response**[15]	No Response[16]	No	No	**No Response**[17]	**No Response**[18]	**No Response**[19]
Arizona	Yes	No	**No**	No	No	No	**Yes**	**Yes**	**No**
Arkansas[20]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
California	No	No	**Yes**	Yes[21]	Yes[22]	Yes	**Yes**	**Yes**	**Yes**[23]
Colorado	No	No	**Yes**	**No**[24]	Yes	Yes	**Yes**	**No Response**[25]	**No Response**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.
[2] A trucking company must source receipts to your state based on costs of performance.
[3] A trucking company must source receipts to your state based on the market (i.e., the location of the customer).
[4] A trucking company must source receipts to your state based on the mileage
[5] A trucking company must source receipts to your state based on a method other than costs of performance or the market.
[6] Does your state provide special rules for sourcing the receipts of a trucking company?
[7] Does your state follow the Multistate Tax Compact Special Industry Rules for Trucking Companies in Reg. IV.18.(g), or a substantially similar statute or regulation?
[8] Are receipts from hauling freight, mail and express shipments sourced to your state when the shipment originates and terminates in your state.
[9] Are receipts from hauling freight, mail and express shipments sourced to your state when the shipment passes through, into or out of your state.
[10] Are receipts from hauling freight, mail and express shipments sourced to your state when the trucking company does not own or rent any real or personal property in your state, other than mobile property; make any pick-ups or deliveries in your state; or exceed a certain threshold of mobile property miles traveled in your state.
[11] AL: *See* Section 18 for special industry rules applicable to trucking companies.
[12] **AL: Determined by mileage.**
[13] AK: Alaska has no position at this time.
[14] AK: *Id.*
[15] **AK: *Id.***
[16] AK: *Id.*
[17] **AK: *Id.***
[18] **AK: *Id.***
[19] **AK: *Id.***
[20] **AR: Arkansas Regulation 5.26-51-718(d) requires bus lines and trucking companies to apportion income to Arkansas based on a mileage factor.**
[21] CA: *See* Regulation §25137-11.
[22] CA: *Id.*
[23] **CA: De minimis nexus standard. Notwithstanding any provision contained herein, this regulation shall not apply to require the apportionment of income to this state if the trucking company during the course of the income year neither: (1) owns nor rents any real or personal property in this state, except mobile property which is operated within and without this state during the income year; nor (2) makes any pick-ups or deliveries within this state; nor (3) travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income year does not exceed 3 percent of the total mobile property miles traveled in all states by the trucking company during that period; nor (4) makes more than 12 trips into this state.**
[24] CO: *See* 1 CCR 201-3, Special Regulation 6A Trucking.
[25] **CO: In-state miles.**

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Mileage[4]	Other[5]	Special Rules[6]	Multi-state Tax Compact Special Industry Rules[7]	Receipts from hauling freight, mail and express shipments sourced to state when: (a) Shipment originates and terminates in-state[8]	(b) Shipment passes through, into or out of state[9]	(c) Miles traveled threshold[10]
Connecticut	No Response	No Response	**Yes**	No Response[26]	**Yes**	No Response	**No Response**	**No Response**	**No Response**
Delaware	Yes	No	**No Response**[27]	No	No	No	**Yes**	**No**	**No**
District of Columbia[28]	**No**	**No**	**Yes**	No Response	Yes	No	**Yes**	**No**	**No**
Florida	No[29]	No	**Yes**	Yes[30]	Yes	No	**Yes**	**Yes**	**Not Applicable**
Georgia	No	No	**Yes**[31]	**No**	Yes[32]	No	**No Response**[33]	**No Response**[34]	**No Response**[35]
Hawaii[36]	No Response	No Response	**No Response**	No Response	No	No	**No Response**	**No Response**	**No Response**
Idaho[37]	**No Response**	**Not Applicable**	**Yes**	**Not Applicable**	No Response	Yes	**Yes**	**Yes**	**Yes**
Illinois	**No**	**No**	**Yes**	**No**	**Yes**[38]	**No**	**Yes**	**Yes**	**Yes**
Indiana	No	No	**Yes**	**No**	Yes	Yes	**Yes**	**Yes**	**No**
Iowa[39]	No	No	**Yes**	**Not Applicable**[40]	Yes[41]	No	**Yes**	**Yes**	**Yes**
Kansas	No	No	**No**	No	No	No	**No**	**No**	**No**
Kentucky	No	No	**Yes**	Yes[42]	Yes[43]	No	**Yes**	**Yes**	**No**
Louisiana	No	No	**Yes**	Yes[44]	Yes[45]	No	**Yes**	**No**	**No**
Maine	No	No	**Yes**	**No**	No	Yes[46]	**Yes**	**No Response**[47]	**No**
Maryland	No	No	**Yes**	**No**	No	No	**Yes**	**Yes**	**Yes**

[26] CT: Motor carriers apportion their income using a factor calculated by dividing the total miles operated in Connecticut by the total miles operated everywhere. Conn. Gen. Stat. §12-218(e).

[27] **DE: Trucking Companies should contact DE Dept of transportation.**

[28] DC: *See* DCMR 125 to 129.

[29] **FL: *See* 220.151, F.S. andRule 12C-1.0151, F.A.C.**

[30] FL: Revenue miles.

[31] **GA: *See* Regulation 560-7-7-.03.**

[32] GA: *Id.*

[33] **GA: *Id.***

[34] **GA: *Id.***

[35] **GA: *Id.***

[36] HI: Income from a trucking company that is taxable both in this state and in one or more other states shall allocate and apportion net income as provided in HRS sections 235-22 to 235-39.

[37] **ID: Idaho has adopted this special industry rule. *See* IDAPA 35.01.01.580.01.d. MTC Reg IV 18 (g).**

[38] **IL: Receipts from interstate trips are allocated to Illinois according to miles traveled.**

[39] **IA: Rule 54.7(2) provides for the mileage factor for trucking companies. It does not matter if any pickups or deliveries occur in Iowa. Any "pass through" miles are reported to Iowa.**

[40] IA: Mileage factor is used in accordance with rule 701-54.7(2).

[41] IA: *See* rule 701-54.7(2).

[42] KY: Total operating income shall be multiplied by a fraction the numerator of which is miles operated in Kentucky and the denominator of which is total miles operated.

[43] KY: 103 KAR 16:120 provides regulatory law for apportionment and allocation of trucklines, buslines and airlines.

[44] LA: All intrastate transportation revenue, plus a portion of interstate transportation revenue, based on a ''unit of transportation'' method.

[45] LA: LAC 61:I.1134(D)(1).

[46] **ME: Generally follow when applicable, not in Rule or in law.**

[47] **ME: Depends on facts and circumstances.**

State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Mileage[4]	Other[5]	Special Rules[6]	Multi-state Tax Compact Special Industry Rules[7]	Receipts from hauling freight, mail and express shipments sourced to state when: (a) Shipment originates and terminates in-state[8]	(b) Shipment passes through, into or out of state[9]	(c) Miles traveled threshold[10]
Massachusetts[48]	No Response	No Response	**No Response**	Yes	Yes	No Response	**Depends**	**Depends**	**Depends**
Michigan	No	No	**Yes**[49]	**No**	Yes[50]	No	**Yes**[51]	**Yes**[52]	**Yes**[53]
Minnesota	No	Yes	**No**	No	No	No	**Yes**	**No**	**Yes**[54]
Missouri	No	No	**Yes**	Yes	**Yes**[55]	Yes	**Yes**	**Yes**	**Yes**
Montana	No Response	No Response	**Yes**	Yes[56]	Yes	Yes	**Yes**	**Yes**	**Yes**
Nebraska	No	No	**Yes**	**No**	Yes	Yes	**Yes**	**Yes**	**Yes**[57]
New Hampshire	No[58]	No	**Yes**	Yes[59]	Yes	Yes	**Yes**	**No Response**	**No Response**
New Jersey	No	No	**Yes**[60]	**No**[61]	Yes	No	**Yes**	**Yes**	**No**
New Mexico[62]	No	No	**Yes**	**No**	Yes	No	**No Response**	**No Response**	**No Response**
New York City	No	No	**Yes**	Yes[63]	Yes[64]	No	**Yes**	**No Response**	**No**
North Carolina	No	No	**Yes**	No	Yes[65]	No	**Yes**	**No**	**No**
North Dakota	**No**[66]	No	**Yes**	No	Yes	Yes	**Yes**	**Depends**[67]	**Yes**

[48] **MA: *See* 830 CMR 63.38.3 (4): "The sales factor of a motor carrier is determined according to the rules generally applicable to corporations under the Apportionment of Income regulation."**

[49] **MI: Michigan apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. *See* MCL 206.655(11)-(12).**

[50] **MI: Special rules for sourcing the receipts of transportation services are contained in MCL 206.655(11)-(12).**

[51] **MI: Michigan apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. *See* MCL 206.655(11)-(12).**

[52] **MI: *Id.***

[53] **MI: If nexus is established under MCL 206.621 and RAB 2014-5, an out-of-state trucking company apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. *See* MCL 206.655(11)-(12) and CIT FAQ Nexus & Apportionemnt 12. There is no miles threshold.**

[54] **MN: Receipts from the performance of services are attributable to the state where the services are received. Minn. Stat. section 290.191, subd 5(j).**

[55] **MO: Follow the Multistate Tax Compact Special industry Rules for Trucking Companies in Reg. IV. 18. (g).**

[56] MT: *See* Administrative Rules of Montana 42.26.701 — 42.26.706.

[57] **NE: The thresholds are generally not to exceed 25,000 mobile property miles traveled within this state or make more than 12 trips into this state. *See* Nebraska Revenue Ruling 24-08-1.**

[58] NH: Rev 304.11 regarding alternative apportionment for transportation industries other than airlines, communication, and energy companies.

[59] NH: Transportation income is sourced based on ''revenue miles,'' non-transportation income is sourced in accordance with Rev 304.04.

[60] **NJ: N.J.A.C. 18:7-8.10(c)(4)(ii).**

[61] **NJ: *Id.***

[62] **NM: The state adopted UDITPA rules apply. *See* Regulation 3.5.19.15 NMAC.**

[63] NYC: Mileage in New York vs. Total Mileage.

[64] **NYC: 5. Receipts from trucking may be allocated to New York City on the percentage that mileage within New York City bears to total mileage within and without New York City, or on the percentage that the time operated within New York City bears to the total time operated within and without New York City. 19 Rules of the City of New York Sec. 11-65(d).**

[65] NC: For trucking companies, income is apportioned to this state by using a ''vehicle miles'' formula. Only the vehicle miles in North Carolina are included in the numerator of the sales factor. NCGS 105-130.4(o).

[66] ND: As measured by the special apportionment provisions referred to in [the question regarding special rules for sourcing the receipts of a trucking company].

[67] **ND: Yes, to the extent the activity is not de minimis according to the trucking regulations (12 trips, 25,000 miles, 3%).**

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State[1]	Costs of performance[2]	Market-based (location of customers)[3]	Mileage[4]	Other[5]	Special Rules[6]	Multi-state Tax Compact Special Industry Rules[7]	Receipts from hauling freight, mail and express shipments sourced to state when: (a) Shipment originates and terminates in-state[8]	(b) Shipment passes through, into or out of state[9]	(c) Miles traveled threshold[10]
Ohio	No	No	**Not Applicable**	Yes	Yes[68]	No Response	**Not Applicable**	**Not Applicable**	**Not Applicable**
Oklahoma[69]	No Response	No Response	**No Response**	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**
Oregon	No	No	**Yes**	**No**	Yes[70]	Yes[71]	**Yes**[72]	**Yes**[73]	**Yes**[74]
Pennsylvania	No	No	**No Response**[75]	Yes	Yes	No	**No**	**No**	**No**
Rhode Island	No	Yes	**No**	No	**No**	No Response	**Yes**	**Yes**	**No**
Tennessee[76]	Not Applicable	Not Applicable	**Yes**	**Not Applicable**	**Yes**	**No**	**Yes**	**Yes**	**No**
Texas	No	No	**No**	Yes[77]	No	No	**Yes**	**No**	**No**
Utah	No	**No**	**Yes**	Yes[78]	Yes	Yes	**Yes**	**Yes**	**No**
Vermont	No Response[79]	Yes[80]	**No Response**	No Response[81]	No	No Response[82]	**No Response**	**No Response**	**No Response**
Virginia	No	No	**Yes**	Yes	Yes[83]	No	**Not Applicable**	**Not Applicable**	**Not Applicable**
West Virginia	No	Yes[84]	**No Response**	Yes[85]	Yes	Yes	**No Response**	**No Response**	**No Response**
Wisconsin[86]	**No**	No	**No**	No	Yes	No	**Yes**	**Yes**	**No**

[68] OH: O.R.C. 5751.033(G) & 5703-29-15.
[69] OK: Policy not yet developed.
[70] OR: Revenue miles OAR 150-314-280-(J).
[71] OR: *Id.*
[72] **OR: *Id.***
[73] **OR: *Id.***
[74] **OR: *Id.***
[75] **PA: Revenue miles in PA over revenue miles everywhere.**
[76] **TN: See Tenn. Code Ann. §§67-4-2013(a)(2). The appropriate ratio shall be the average of the following two ratios: 1) the gross receipts from operations on business beginning and ending in this state without entering or passing through any other states compared with the entire gross receipts from such operations in and outside the state, and 2) the ratio of the total franchise miles or odometer miles (if there are no franchise miles) inside the state as compared to the total franchise or odometer miles in and outside of the state.**
[77] TX: Trucking companies may calculate Texas receipts by 1) if the receipts are derived from the transportation of goods in intrastate commerce within Texas or 2) the multiplication of total transportation receipts by total mileage in the transportation of goods that move in intrastate commerce within Texas divided by total mileage everywhere. Franchise Tax Rule 3.591(e)(32).
[78] UT: Revenues from the intrastate hauling of freight, mail and express are in this state. Interstate revenues from these activities are attributed to this state based on the ratio of mobile property miles in this state to mobile property miles everywhere. (MTC Trucking Rule Provisions).
[79] VT: The item listed may be factors in determining sourcing but are not definitive one way or the other.
[80] VT: *Id.*
[81] VT: Factors include the location of the business and the location of work performed.
[82] VT: The item listed may be factors in determining sourcing but are not definitive one way or the other.
[83] VA: In Virginia, motor carriers of property or passengers must apportion their net income by use of the ratio of miles traveled in-state to total vehicle miles everywhere. *See* Va. Code §58.1-417; 23 VAC 10-120-240.
[84] WV: W.Va. Code §11-15B-15.
[85] WV: *Id.*
[86] **WI: Under sec. Tax 2.47, Wis. Adm. Code, interstate motor carriers apportion their income to WI based on two factors: receipts and ton miles. Receipts are included in the numerator (in Wisconsin) if the carriage is first acquired in Wisconsin.**

Sourcing Receipts: Alternative Apportionment

State[1]	Written guidance[2]	Burden of proof on party seeking to apply alternative apportionment[3]	Burden of proof on taxpayer[4]	Taxpayer's clear and convincing evidence[5]	Taxpayer's preponderance of the evidence[6]	State's clear and convincing evidence[7]	State's preponderance of the evidence[8]
Alabama[9]	Yes	No Response	**No Response**	**No Response**	No Response	No Response	No Response
Alaska	No	**No Response**[10]	**No Response**[11]	No Response[12]	No Response[13]	Not Applicable	Not Applicable
Arizona[14]	No	**Yes**	**No**	**Yes**	No Response	No Response	No Response
Arkansas	Yes[15]	**No**	**No**	Yes	No	No	Yes
California	Yes[16]	**Yes**	**No**	Yes[17]	No[18]	Yes[19]	No[20]
Colorado	No	**Yes**	**No**	No[21]	No[22]	No	Yes
Connecticut[23]	Yes	**No Response**	**No Response**	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] If your state's alternative apportionment regime has been invoked, does the state have written guidelines on when the state or the taxpayer can use it?

[3] Does your state place the burden of proof on the party seeking to apply an alternative apportionment method?

[4] Does your state place the burden of proof on the taxpayer, without consideration as to which party is seeking to apply an alternative apportionment method?

[5] To invoke your state's alternative apportionment method, the taxpayer's burden of proof is clear and convincing evidence.

[6] To invoke your state's alternative apportionment method, the taxpayer's burden of proof is preponderance of the evidence.

[7] The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is clear and convincing evidence.

[8] The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is preponderance of the evidence.

[9] AL: Alabama adopted the MTC model language in our statute which allows alternate apportionment under certain circumstances. See Code of Alabama 1975, Section 40-27-1 Article 4,18(a) and Alabama income tax regulation 810-27-1-4-.18.

[10] **AK: Alaska has no position at this time.**

[11] **AK: *Id.***

[12] AK: *Id.*

[13] AK: *Id.*

[14] AZ: *See* A.R.S. §43-1148.

[15] AR: For financial institutions - Arkansas Code Ann. §26-51-1401(d). For all other types of corporations-Arkansas Code Annotated 26-51-718. The burden of proof for Arkansas is whether the Department was arbitrary and capricious in its use of discretionary authority to approve or require alternative apportionment.

[16] CA: California Code of Regulations, section 25137.

[17] **CA: *Microsoft Corp. v. Franchise Tax Board*(Cal. 2006) 139 P.3d 1169 and Appeal of Fluor Corporation, 95-SBE-016, Aug. 31, 1995, provide discussion concerning burden of proof with respect to alternative apportionment.**

[18] CA: *Id.*

[19] CA: *Id.*

[20] CA: *Id.*

[21] CO: Because alternative apportionment for the taxpayer is discretionary with the executive director, the department must believe that significant distortion exists. Abuse of discretion would be the appropriate standard.

[22] CO: *Id.*

[23] **CT: *see* Conn. Gen. Stat. §§12-221a, 12-223a and 12-226a and Conn. Agencies Reg. §§12-221a-1 and 12-226a-1.**

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State[1]	Written guidance[2]	Burden of proof on party seeking to apply alternative apportionment[3]	Burden of proof on taxpayer[4]	Taxpayer's clear and convincing evidence[5]	Taxpayer's preponderance of the evidence[6]	State's clear and convincing evidence[7]	State's preponderance of the evidence[8]
Delaware[24]	No	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
District of Columbia	Yes[25]	**No**	**Yes**	Yes	**No**	**Yes**	No
Florida	Yes[26]	**Yes**	**No**	**No**[27]	**Yes**[28]	Yes[29]	No[30]
Georgia	Yes[31]	**No Response**	**No Response**	No Response	No Response	No Response	No Response
Hawaii	Yes[32]	**Yes**[33]	**Yes**[34]	No Response[35]	No Response[36]	No	No
Idaho	Yes[37]	**Yes**	**No**	No Response[38]	No Response[39]	No Response[40]	No Response[41]
Illinois	**Yes**	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**
Indiana	Yes[42]	**No**	**Yes**[43]	No	No	No	No
Iowa	Yes[44]	**Yes**	**Yes**	Yes	No	Yes	No
Kansas	Yes[45]	**Yes**	**No**	No Response	No Response	No Response	No Response
Kentucky	No	**Yes**	**No**	Yes	No	Yes	No

[24] DE: Del. Code 30 Chapter 19 section 1903(c). If, in the discretion of the Secretary of Finance, the application of the allocation or apportionment provisions of this section result in an unfair or inequitable proportion of the taxpayer's entire net income being assigned to this State, then the Secretary of Finance or the Secretary's delegate may permit or require the exclusion or alteration of the weight to be given to 1 or more of the factors in the formula specified above or the use of separate accounting or other method to produce a fair and equitable result.

[25] DC: D.C. Code 47-1810.02(h).

[26] FL: Rule 12C-1.0152, F.A.C.

[27] FL: Rule 12C-1.052, F.A.C., uses the phrase ''clear and cogent evidence.''

[28] FL: *Id.*

[29] FL: *Id.*

[30] FL: *Id.*

[31] GA: Varies depending upon code section.

[32] HI: Section 18-235-38-01, Hawaii Administrative Rules.

[33] **HI: *Id.***

[34] **HI: *Id.***

[35] **HI: The taxpayer must provide data clearly showing that the apportionment formula does not fairly determine Hawaii's net income taxes due to the peculiar nature of the taxpayer's business and that the proposed method more clearly reflects income attributable to Hawaii.**

[36] **HI: *Id.***

[37] ID: Idaho Code section 63-3027(s) and IDAPA 35.01.01.560 provides for special rules including alternate methods of apportionment.

[38] ID: The Tax Commission has made no ruling on this fact situation.

[39] ID: *Id.*

[40] ID: *Id.*

[41] ID: *Id.*

[42] IN: IC 6-3-2-2(I); 45 IAC 3.1-1-62.

[43] **IN: *Indiana Dep't of State Revenue v Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012).**

[44] IA: Iowa Administrative Rule 701-54.9 provides guidance on requesting an alternative method of apportionment.

[45] KS: Taxpayer may petition or Secretary may require. Party invoking K.S.A. 79-3288 has burden of proof to demonstrate three-factor formula apportionment does not fairly represent taxpayer's business activity in state. *See* K.A.R. 92-12-53.

State[1]	Written guidance[2]	Burden of proof on party seeking to apply alternative apportionment[3]	Burden of proof on taxpayer[4]	Taxpayer's clear and convincing evidence[5]	Taxpayer's preponderance of the evidence[6]	State's clear and convincing evidence[7]	State's preponderance of the evidence[8]
Louisiana	Yes[46]	**Yes**	**Yes**	No Response[47]	No Response[48]	No Response[49]	No Response[50]
Maine	No	**No**	**Yes**	No Response[51]	No Response[52]	No Response[53]	No Response[54]
Maryland	Yes[55]	**Not Applicable**[56]	**Not Applicable**[57]	No[58]	No[59]	Not Applicable	Not Applicable
Massachusetts	Yes[60]	**Depends**	**Depends**	**Depends**	**Depends**	**No**	No
Michigan	No	**Yes**	**No**	No[61]	Yes[62]	No[63]	Yes[64]
Minnesota	Yes[65]	**Yes**	**No**	Yes	Yes	Yes	Yes
Mississippi	No	**No Response**	**No Response**	No Response	No Response	No Response	No Response
Missouri	Yes[66]	**No**	**Yes**	**No**	Yes	**Not Applicable**[67]	**Not Applicable**[68]
Montana	No Response	**Yes**[69]	**No**[70]	No[71]	No[72]	No[73]	No[74]

[46] LA: LAC 61:I.1132(B).
[47] LA: To obtain permission to use the separate accounting method, the taxpayer must show that formula apportionment produces a manifestly unfair result. In a dispute between the taxpayer and the state, the party urging the use of separate accounting has the burden to show that formula apportionment produces a manifestly unfair result.
[48] LA: *Id.*
[49] LA: *Id.*
[50] LA: *Id.*
[51] ME: For Maine purposes, the party (taxpayer or State Tax Assessor) wishing to invoke alternative apportionment must demonstrate that the apportionment provisions do not accurately reflect the taxpayer's business activity in Maine. *See* 36 M.R.S.A. §5211(17) and Rule 801(.03) & (.08)(A).
[52] ME: *Id.*
[53] ME: *Id.*
[54] ME: *Id.*
[55] MD: Guidance is provided for in Tax-General Article, §10-402, Annotated Code of Maryland and Code of Maryland Regulations (COMAR) 03.04.03.08.
[56] MD: The taxpayer must have permission from the Comptroller to use an alternative apportionment method. The Comptroller has complete discretion to approve or deny such a request.
[57] MD: *Id.*
[58] MD: *Id.*
[59] MD: *Id.*
[60] **MA: "A taxpayer seeking alternative apportionment must attach to its duly-filed return a statement of the reasons why the corporation believes that the allocation and apportionment provisions of this chapter are not reasonably adapted to approximate its net income derived from business carried on within this commonwealth and a description of the method of allocation sought by it." G.L. c. 63, s. 42.**
[61] MI: *See* MCL 203.667
[62] MI: *Id.*
[63] MI: *Id.*
[64] MI: *Id.*
[65] MN: Revenue Notice 04-07 and Minnesota Rules, part 8020.0100.
[66] **MO: 12CSR 10-2.075 (61), 12 CSR 10-2.075 (62), and 143.461 allows requests for permission to use an alternative apportionment method.**
[67] **MO: There is no burden of proof for the state.**
[68] **MO: *Id.***
[69] **MT: The party invoking the alternative apportionment method under §15-31-312, Montana Code Annotated, has the burden of proof.**
[70] **MT: *Id.***
[71] MT: To invoke alternative apportionment — must show that normal allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in the state. §15-31-312, Montana Code Annotated.
[72] MT: *Id.*
[73] MT: *Id.*
[74] MT: *Id.*

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State[1]	Written guidance[2]	Burden of proof on party seeking to apply alternative apportionment[3]	Burden of proof on taxpayer[4]	Taxpayer's clear and convincing evidence[5]	Taxpayer's preponderance of the evidence[6]	State's clear and convincing evidence[7]	State's preponderance of the evidence[8]
Nebraska	Yes[75]	**No**[76]	**Yes**[77]	No Response	No Response	No Response	No Response
New Hampshire	Yes[78]	**No Response**	**No Response**	No Response	No Response	No Response	No Response
New Jersey[79]	Yes	**Not Applicable**	**Not Applicable**	Yes[80]	No[81]	No[82]	No[83]
New Mexico	Yes[84]	**No Response**[85]	**No Response**[86]	Yes	Yes	No	No
New York City	Yes	**Yes**	**No**	No Response	No Response	No Response	No Response
North Carolina	Yes[87]	**Yes**	**No**	**Yes**[88]	No[89]	No[90]	No[91]
North Dakota	No	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**
Ohio	Yes[92]	**Yes**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma	No Response	**No**	**Yes**	No Response	No Response	No Response	No Response

[75] NE: Neb. Rev. Stat. §77-2734.15 provides for a special apportionment formula. *See* Corporate Income Tax Regulations for rules in this area.

[76] **NE: Neb. Rev. Stat. §§77-2781 places the burden of proof generally on the taxpayer for most matters**.

[77] **NE: *Id.***

[78] NH: *See* RSA 77-A:3, II(a) and N.H. Code of Administrative Rules Rev. 304.

[79] NJ: N.J.S.A. 54:10A-8 provides for a discretionary adjustment of the allocation factor by the Division. Regulation 18:7-8.3 provides guidelines. Regulation 18:7-10.1 allows taxpayers to request an adjustment. The statute and regulations do not specify a burden of proof.

[80] **NJ: Taxpayer's burden is clear and cogent evidence. To require a taxpayer to use an alternative method, the Division's discretionary adjustment must satisfy the standards of the Due Process and Commerce Clauses of the United States Constitution. See New Jersey Natural Gas Co.v.Director, Division of Taxation, 24 NJ Tax 59 (2008).**

[81] NJ: *Id.*

[82] NJ: *Id.*

[83] NJ: *Id.*

[84] NM: Special Rules - Regulations 3.5.19.8 through 19 NMAC.

[85] **NM: The state cannot provide a definitive position on these issues at this time.**

[86] **NM: *Id.***

[87] NC: NCGS 105-130.4(t1) provides that ''[a] corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.''

[88] **NC: *Id.***

[89] **NC: *Id.***

[90] **NC: *Id.***

[91] **NC: *Id.***

[92] OH: For CAT, an alternative method of situsing of gross receipts may be obtained through a request to the tax commissioner. The situsing provisions of R.C. 5751.033(A) through (H) must not apply to the taxpayer. The request must be made within the applicable statute of limitations. R.C. 5751.033(J). For pass through entities subject to income tax withholding or individuals subject to individual income tax, alternative apportionment can be requested under R.C. 5747.21(B) or R.C. 5733.05(B)(2)(d) respectively. The standard to invoke the apportionment method for both taxpayers and the state under 5747.21(B) requires a ''reasonable'' showing that the statutory formula ''does not fairly represent the extent of business activity in this state.''

State[1]	Written guidance[2]	Burden of proof on party seeking to apply alternative apportionment[3]	Burden of proof on taxpayer[4]	Taxpayer's clear and convincing evidence[5]	Taxpayer's preponderance of the evidence[6]	State's clear and convincing evidence[7]	State's preponderance of the evidence[8]
Oregon[93]	Yes	No Response	No Response	No Response	No Response	No Response	No Response
Pennsylvania	No	**Yes**	**No**	Yes	No	Yes	No
Rhode Island[94]	No	**Yes**	**Yes**	Yes	No	Yes	No
Tennessee	Not Applicable[95]	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas	No Response[96]	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Utah	No	**Yes**[97]	**No**[98]	Yes	No	Yes	No
Vermont	No Response	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia	Yes[99]	**Yes**	**Yes**	Yes[100]	No	No	No
West Virginia	Yes[101]	**Yes**	**No Response**	No	Yes[102]	No	Yes
Wisconsin	Yes[103]	**Yes**	**Yes**	Yes[104]	Yes[105]	No[106]	No[107]

[93] OR: ORS 314.670 (Extent of business activity within Oregon). **"If the application of the allocation and apportionment provisions of ORS 314.605 to 314.675 do not fairly represent the extent of the taxpayer's business activity in the state, the taxpayer may petition..." for approval to use an alternative apportionment method.**

[94] RI: Refer to Rhode Island General Law 44-11-15.

[95] TN: Tennessee has no statutory alternative apportionment provisions. Tenn. Code Ann. §67-4-2014 does permit the Commissioner of Revenue to grant or require a variance from the statutory apportionment provisions if the statutory provisions do not fairly represent the taxpayer's business activities in Tennessee. Other than the statutory provisions and Tenn. Comp. R. & Regs. 1320-6-1-.35, there are no written guidelines with regard to when a variance may be imposed or granted.

[96] TX: Entities may not elect to use the MTC's 3-factor apportionment formula **or any alternative formula** in lieu of the single factor apportionment formula based on gross receipts as specifically provided for in Texas Tax Code §171.105.

[97] **UT: Generally.**

[98] **UT: Not generally.**

[99] VA: The statutory authority for alternative apportionment is Va. Code §58.1-421. Virginia has also established policies on alternative apportionment through 23 VAC 10-120-280 and numerous rulings of the Tax Commissioner.

[100] VA: The taxpayer must demonstrate clear and cogent evidence.

[101] WV: W. Va. Code §§11-24-7(h) and 7a; 110 C.S.R. 24.7a.1.e. and 110 C.S.R. 24.7a. The burden of proof rests on whichever party (i.e., the Tax Commissioner or the taxpayer) seeks employment of the alternative apportionment method.

[102] WV: W.Va. Code §11-24-7(h)(3)(B).

[103] WI: Section 71.25(6), Wis. Stats. (2011-2012), addresses allocation and separate accounting and apportionment. In general, a corporation that is engaged in unitary business both in and outside of Wisconsin uses a single sales factor apportionment to determine their Wisconsin share of income from the unitary business. However, corporations in certain specialized industries such as direct air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, and telecommunications companies are required to apportion using more than one factor. A corporation engaged in a nonunitary business in and outside Wisconsin is required to use separate accounting. A nonunitary business is one in which the operations in Wisconsin are not dependent upon or contributory to the operations outside Wisconsin. If a unitary corporation or combined group believes separate accounting more clearly reflects the corporation's or combined group's Wisconsin net income, the unitary business must obtain the approval of the Department prior to using separate accounting, s. Tax 2.44, Wis. Adm. Code (August 2013 Register). In addition, a qualifying combined group may petition the department to use an alternative apportionment method (s. 71.255(5)(b), Wis. Stats. (2011-12); s. Tax 2.64, Wis. Adm. Code (August 2013 Register). A qualifying combined group is a combined group for which 30 percent or more of the combined unitary income would, in the absence of combined reporting, be required to be apportioned using more than one factor under a method for certain specialized industries.

[104] WI: *Id.*

[105] WI: *Id.*

[106] WI: *Id.*

[107] WI: *Id.*

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Sourcing Receipts: State Conformity to the Multistate Tax Compact and Regulations (Part 1 of 2)

State[1]	MTC party[2]	Material provisions[3]	Article III(1) Allocation/ Apportionment[4]	Article IV Division of Income[5]	Business income definition[6]	Sales definition[7]	Three-factor formula[8]	"Compensation paid in this state" definition[9]
Alabama	Yes	No	No Response	No	No	Yes	No	Yes
Alaska	Yes	Yes[10]	Yes[11]	Yes[12]	Yes[13]	Yes[14]	Yes[15]	Yes[16]
Arizona	No	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Arkansas	Yes	No	No Response[17]	No Response[18]	Yes	Yes	No[19]	Yes
California	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Colorado	Yes	No	No	Yes	Yes	Yes	No	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] Your state is a party to the Multistate Tax Compact (i.e., the Compact is currently a part of your state's enacted tax statutes).

[3] If the state is a party to the Multistate Tax Compact, does the state conform to all effective provisions of the material provisions of the Multistate Tax Commission's (MTC) Multistate Tax Compact (Articles I through XII), except for Article IX, Arbitration, which has never been implemented.

[4] If the state is a party to the Multistate Tax Compact, does the state conform to Article III(1) of the Multistate Tax Compact (allowing taxpayer to elect to apportion and allocate income according to state law or according to Multistate Tax Compact Article IV).

[5] If the state is a party to the Multistate Tax Compact, does the state conform to Article IV of the Multistate Tax Compact (UDITPA).

[6] If the state is a party to the Multistate Tax Compact, does the state conform to the definition of "business income" in Article IV(1)(a) of the Multistate Tax Compact.

[7] If the state is a party to the Multistate Tax Compact, does the state conform to the definition of "sales" in Article IV(1)(g) of the Multistate Tax Compact.

[8] If the state is a party to the Multistate Tax Compact, does the state conform to the three-factor apportionment formula in Article IV(9) of the Multistate Tax Compact.

[9] If the state is a party to the Multistate Tax Compact, does the state conform to the definition of "compensation paid in this State" in Article IV(14) of the Multistate Tax Compact.

[10] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact. Alaska does not conform to these provisions for oil and gas corporations.

[11] AK: *Id.*

[12] AK: *Id.*

[13] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact.

[14] AK: *Id.*

[15] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact. Alaska does not conform to these provisions for oil and gas corporations.

[16] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact.

[17] AR: Article III does allow taxpayers to apportion according to Article IV. However, Arkansas has modified Article IV to require a double weighted sales factor.

[18] AR: *Id.*

[19] AR: *Id.*

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State[1]	MTC party[2]	Material provisions[3]	Article III(1) Allocation/ Apportionment[4]	Article IV Division of Income[5]	Business income definition[6]	Sales definition[7]	Three-factor formula[8]	"Compensation paid in this state" definition[9]
Connecticut	No	Not Applicable[20]	Not Applicable[21]	Not Applicable[22]	Not Applicable[23]	Not Applicable[24]	Not Applicable[25]	Not Applicable[26]
Delaware	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia[27]	Yes	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Florida[28]	No	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Georgia	No	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Hawaii	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes[29]	Yes	Yes	Yes	No Response[30]	Yes
Illinois	No	**No**	**No**	**No**	**No**	**Yes**	**No**	**No Response**[31]
Indiana	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa[32]	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Louisiana	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	No	**No**	**No**	**Yes**	**No**	**No**	**No**	**No**
Maryland	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Michigan	**No**	**No**	No	No	No	No	No	Yes
Minnesota	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**

[20] **CT: Connecticut does not conform to the provisions of the Multistate Tax Compact.**
[21] **CT: *Id.***
[22] **CT: *Id.***
[23] **CT: *Id.***
[24] **CT: *Id.***
[25] **CT: *Id.***
[26] **CT: *Id.***
[27] DC: District decoupled with Articles III and IV.
[28] FL: Florida is an Associate Member.
[29] ID: *See* IDAPA 35.01.01.310 (Rule 310).
[30] ID: Notwithstanding the Compact's three factor formula, Idaho Code section 63-3027(i) requires the use of a double-weighted sales factor except for certain corporations that are utilities.
[31] **IL: Illinois uses only the sales factor.**
[32] IA: While Iowa is not a member of the compact, some of Iowa's administrative rules are similar to those developed by the MTC. **For example, the definition of business income and receipts from services are similar for Iowa as those done by the MTC.**

State[1]	MTC party[2]	Material provisions[3]	Article III(1) Allocation/ Apportionment[4]	Article IV Division of Income[5]	Business income definition[6]	Sales definition[7]	Three-factor formula[8]	"Compensation paid in this state" definition[9]
New Hampshire	No	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
New Jersey	No	**No**	**No**	**No**	**No**	**No**	**No**	**No**
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No	**No**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
North Carolina	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ohio	No	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oklahoma	No	**No**	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes[33]	No	No	Yes[34]	Yes[35]	Yes[36]	No[37]	Yes[38]
Pennsylvania	No	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Rhode Island	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Tennessee[39]	No	**No**	**No**	**No**	**No[40]**	**Yes**	**No**	**Yes**
Texas	Yes	No	No	No	No	No	No	No
Utah	Yes	No	No	No	Yes	Yes	No	Yes
Vermont	No	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Wisconsin	No	**No**	**No**	**No**	**No**	**No**	**No**	**No[41]**

[33] OR: Oregon repealed Multistate Tax Compact in 2013 (formerly ORS 305.655) and adopted a modified Compact (*see* ORS 305.653) with Articles 3 and 4 intentionally omitted. Although the Compact now does not contain Article 4, the general UDITPA provisions of Article 4 have in large part been adopted and made part of ORS Chapter 314 (*see* ORS 314.605 to 314.675).

[34] OR: *Id.*

[35] OR: *Id.*

[36] OR: *Id.*

[37] OR: *Id.*

[38] OR: Oregon repealed Multistate Tax Compact in 2013 (formerly ORS 305.655) and adopted a modified Compact (*see* ORS 305.653) with Articles 3 and 4 intentionally omitted. Although the Compact now does not contain Article 4, the general UDITPA provisions of Article 4 have in large part been adopted and made part of ORS Chapter 314 (*see* ORS 314.605 to 314.675).

[39] TN: Tennessee is an associate member of the MTC.

[40] **TN: Tennessee's definition of business earning includes the MTC's definition, but adds to it.**

[41] **WI: Wisconsin does not conform to the MTC Multistate Tax Compact, however Wisconsin law has provisions similar to those found in the Compact.**

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Sourcing Receipts: State Conformity to the Multistate Tax Compact and Regulations (Part 2 of 2)

State[1]	"Sales of tangible personal property in this State" definition[2]	"Sales of other than tangible personal property in this State" definition[3]	Alternative apportionment Article IV(18)[4]	"Apportionable income" Article IV.1(a)[5]	"Receipts" Article IV.1(g)[6]	Market-based sourcing Article IV.17(a)[7]	MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5) and (6)[8]	MTC Allocation and Apportionment Regulation IV.1.(b)[9]	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3)[10]
Alabama	Yes	No	Yes	**No**[11]	**No**	**No**[12]	No	No	No
Alaska	Yes[13]	Yes[14]	Yes[15]	**No**	**No**	**No**	No	No	No
Arizona	**No Response**	**No Response**	**No Response**	**No**	**No**	**No**	**No Response**	**No Response**	**No Response**
Arkansas	Yes	Yes	Yes	**No**	**No**	**No**	No	No	No
California	**No**	**No**	**No**	**No**	**No**[16]	**No**[17]	**No**	**No**	**No**
Colorado	Yes	Yes	Yes	**No Response**	**No Response**	**No Response**	Yes	No	Yes
Connecticut[18]	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
Delaware	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MS and SC did not participate in this portion of the survey.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.
NV, SD, WA and WY do not impose a corporate tax based on income.

[2] If the state is a party to the Multistate Tax Compact, does the state conform to the definition of "sales of tangible personal property in this State" in Article IV(16) of the Multistate Tax Compact.

[3] If the state is a party to the Multistate Tax Compact, does the state conform to the definition of "sales of other than tangible personal property in this State" in Article IV(17) of the Multistate Tax Compact.

[4] If the state is a party to the Multistate Tax Compact, does the state conform to Article IV(18) of the Multistate Tax Compact regarding alternative apportionment.

[5] If the state is a party to the Multistate Tax Compact, does the state conform to

[6] If the state is a party to the Multistate Tax Compact, does the state conform to Article IV.1(g) changing "sales" to "receipts" and narrowing the definition of what was fomerly "sales" to exclude hedging transactions and treasury receipts from the sales factor.

[7] If the state is a party to the Multistate Tax Compact, does the state conform to Article IV 17(a) moving from cost-of-performance to market-based sourcing for services and intangibles

[8] If the state is a party to the Multistate Tax Compact, does the state conform to MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5), and (6) (i.e., "Trade or Business," "Transactional Test," and "Functional Test").

[9] If the state is a party to the Multistate Tax Compact, does the state conform to MTC Allocation and Apportionment Regulation IV.1.(b) "Principles for Determining the Existence of a Unitary Business."

[10] If the state is a party to the Multistate Tax Compact, does the state conform to the 2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) that expanded the definition of "business activity" to include "income producing activity performed on behalf of a taxpayer by an agent or independent contractor..."

[11] **AL: No, but business income definition was expanded. *See* 40-27-1.1.**

[12] **AL: No, but market sourcing was adopted for tax years 2011 forward.**

[13] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact.

[14] AK: *Id.*

[15] AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact. Alaska does not conform to these provisions for oil and gas corporations.

[16] **CA: RTC §25120(e) and RTC §25120(f) define sales as all gross receipts of the taxpayer not allocated under 25123 to 25127. RTC §25120(f) excludes hedging transactions and treasury receipts from the sales factor.**

[17] **CA: RTC §25136 employs market-based sourcing for sales of other than tangible personal property.**

[18] **CT: Connecticut does not conform to the provisions of the Multistate tax Compact.**

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State[1]	"Sales of tangible personal property in this State" definition[2]	"Sales of other than tangible personal property in this State" definition[3]	Alternative apportionment Article IV(18)[4]	"Apportionable income" Article IV.1(a)[5]	"Receipts" Article IV.1(g)[6]	Market-based sourcing Article IV.17(a)[7]	MTC Allocation and Apportionment Regulation IV.1.(a)(3)(4), (5) and (6)[8]	MTC Allocation and Apportionment Regulation IV.1.(b)[9]	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3)[10]
District of Columbia[19]	**No**	**No**	**No Response**	**No**	**No**	**Yes**	**No Response**	**No Response**	**No Response**
Florida[20]	**No Response**	**No Response**	**No Response**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**No Response**	**No Response**	**No Response**
Georgia	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Hawaii	Yes	Yes	Yes	**No**	**No**	**No**	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	**No**	**No**	**No**	No Response[21]	No Response[22]	No Response[23]
Illinois	**Yes**	**No**	**No**	**Yes**	**No**	**No**	**No**	**No**	**No**
Indiana	Not Applicable	Not Applicable	Not Applicable	**No**	**No**	**No**	**No**	**No**	**No**
Iowa[24]	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Kansas	Yes	Yes	Yes	**No**	**No**	**No**	Yes	Yes	No
Kentucky	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Louisiana	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
Maine	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Maryland	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
Massachusetts	**No Response**	**No Response**	**No Response**	**No**	**No**	**Depends**	**No Response**	**No Response**	**No Response**
Michigan	Yes	No	**No**	**No**	**No**	**No**	No	No	No
Minnesota	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Missouri	Yes	Yes	Yes	**No**	**No**	**No**	Yes	Yes	No
Montana	No Response	No Response	No Response	**No**	**No**	**No**	No Response	No Response	No Response
Nebraska	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
New Hampshire	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
New Jersey	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
New Mexico	Yes	Yes	Yes	**No**	**No**	**No**	No	No	No

[19] DC: District decoupled with Articles III and IV.
[20] FL: Florida is an Associate Member.
[21] ID: Idaho's language is for the most part consistent with that of the MTC regulations. *See* IDAPA 35.01.01.330 thru IDAPA 35.01.01.336 (business income); IDAPA 35.01.01.340 thru 35.01.01.344 (Unitary Principals).
[22] ID: *Id.*
[23] ID: Idaho added language similar to that of the MTC regulation. *See* IDAPA 35.01.01.550.03.
[24] IA: While Iowa is not a member of the compact, some of Iowa's administrative rules are similar to those developed by the MTC. **For example, the definition of business income and receipts from services are similar for Iowa as those done by the MTC.**

State[1]	"Sales of tangible personal property in this State" definition[2]	"Sales of other than tangible personal property in this State" definition[3]	Alternative apportionment Article IV(18)[4]	"Apportionable income" Article IV.1(a)[5]	"Receipts" Article IV.1(g)[6]	Market-based sourcing Article IV.17(a)[7]	MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5) and (6)[8]	MTC Allocation and Apportionment Regulation IV.1.(b)[9]	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3)[10]
New York City	**No Response**	**No Response**	**No Response**	**No**	**No**	**No**	**No Response**	**No Response**	**No Response**
North Carolina	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
North Dakota	Yes	Yes	Yes	**No**	**No**[25]	**No**	Yes[26]	Yes[27]	No
Ohio	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Oklahoma	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Oregon	Yes[28]	Yes[29]	Yes[30]	**No Response**[31]	**No Response**[32]	**No Response**[33]	Yes	Yes	Yes
Pennsylvania	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Rhode Island	Not Applicable	Not Applicable	Not Applicable	**No Response**	**No Response**	**No Response**	Not Applicable	Not Applicable	Not Applicable
Tennessee[34]	**Yes**	**Yes**	**No**	**No**	**No**	**No**	**No**	**No**[35]	**No**
Texas	No	No	No	**No**	**No**	**No**	No	No	No
Utah	Yes	No	Yes	**No**	**No**	**No**	Yes	Yes	No
Vermont	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Virginia	Not Applicable	Not Applicable	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable
West Virginia	No Response	No Response	No Response	**No Response**	**No Response**	**No Response**	No Response	No Response	No Response
Wisconsin	**No**[36]	**No**	**No**[37]	**No**	**No**	**No**[38]	**No**	**No**	**No**

[25] **ND: Existing regulations in North Dakota Administrative Code 81-03-09-26 generally already exclude such receipts.**
[26] ND: These regulations have not been adopted but are generally followed in principle as a matter of policy and are consistent with existing regulations.
[27] ND: *Id.*
[28] OR: *Id.*
[29] OR: *Id.*
[30] OR: *Id.*
[31] **OR: To be determined.**
[32] **OR: *Id.***
[33] **OR: *Id.***
[34] TN: Tennessee is an associate member of the MTC.
[35] **TN: But see unitary business definition under TCA §67-4-2004(51).**
[36] **WI: Wisconsin does not conform to the MTC Multistate Tax Compact, however Wisconsin law has provisions similar to those found in the Compact.**
[37] **WI: *Id.***
[38] **WI: *Id.***

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Combined Reporting

Despite Recent Movement Toward Combined Reporting, Uniformity on Key Provisions Is Lacking Among States

With the enactment of mandatory combined reporting regimes in Massachusetts in 2008 and Wisconsin in 2009, 23 of the 45 states that impose a corporate income tax now require corporate parents to file a single return that includes the tax attributes of their subsidiaries. But even among the states that require combined returns, there is a lack of uniformity with respect to many requirements.

First among them is how each state defines the composition of the group. For some states, the entities that must be included within a combined group is determined according to the jurisdiction's definition of a ''unitary business.'' Other jurisdictions will look to an ''ownership threshold'' to determine the entities that must be included.

Bloomberg BNA asked each state if it:

- uses a ''unitary business'' definition to determine which entities must be included within a combined group;
- looks to an ''ownership threshold'' to determine which entities must be included within a combined group; or
- uses some other standard in addition to, or instead of, the ''unitary business'' definition or ''ownership threshold.''

Water's Edge, Worldwide Reporting

The states also use different rules with respect to water's edge and worldwide reporting for purposes of determining the composition of a combined group. The default method in some jurisdictions is water's edge (*i.e.*, non-U.S. affiliates that conduct a certain amount of business outside the U.S. may be excluded from the combined return). The default method in other states is worldwide reporting (non-U.S. affiliates must be included in the combined return).

In addition to the default rules, many states allow a combined group to elect whether to file on a water's edge or worldwide basis.

Some states require the combined group to include affiliates doing business in a jurisdiction that the state deems to be a tax haven.

Bloomberg BNA asked each jurisdiction if it:

- uses water's edge reporting (nexus only, all unitary members) as the default method for determining the composition of a combined group;
- uses worldwide reporting (all unitary members) as the default method for determining composition of a combined group;
- requires the exclusion from the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity;
- requires the inclusion in the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity; and
- requires an entity doing business in a tax haven, as defined by your state, to be included within a water's edge group.

The method that an affiliate uses to apportion income can also affect the composition of a combined group. Some jurisdictions prohibit parents from including within the combined group related entities that use an industry-specific apportionment formula. Other states require such entities to be included within the combined group.

Tax Base

The method by which a combined group must compute tax also varies among the states. Some jurisdictions compute the group's income tax liability on an aggregate basis and allow members to share tax credits and offset losses between one another. Other states require each member to compute income on an isolated basis and do not allow members to share credits or offset losses between one another.

Bloomberg BNA asked each state if it computes the income tax liability of the group on an aggregate basis and allows members to:

- share tax credits between one another; and
- offset losses between one another.

Apportionment

Important differences exist with respect to the way in which the numerator of a combined group's sales factor is calculated. Some states include in the numerator of the combined group's sales factor the in-state sales of a combined group member that lacks nexus with the jurisdiction. Other states exclude such sales.

Bloomberg BNA asked each state if it:

- includes in the numerator of the combined group's sales factor the in-state sales of a no nexus combined group member notwithstanding Pub. L. No. 86-272 (*i.e.*, *Finnigan* approach); or
- does not include in the sales factor numerator sales by a no nexus combined group member for purposes of determining taxable income in your state for the other group members (*i.e.*, *Joyce* approach).

Combined Reporting: Composition of Group (Part 1 of 2)

State[1]	Unitary business definition[2]	Ownership threshold[3]	Other standard[4]	Water's-edge reporting[5]	Worldwide reporting[6]	Exclude members with business activity outside U.S. of at least 80 percent[7]
Alabama[8]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes[9]	No	Yes[10]	Yes	No
Arizona	Yes	No	No	Yes	No	Yes[11]
Arkansas[12]	No	No	No	No	No	No
California	Yes	No	No	No	Yes	No[13]
Colorado[14]	No	No	Yes	Yes	No	Yes
Connecticut[15]	Yes[16]	No	No	**Yes**[17]	**No**	No Response[18]
Delaware[19]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	Yes	**No**	Yes[20]	**No**[21]	Yes
Florida	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Your state uses a ''unitary business'' definition to determine which entities must be included within a combined group.

[3] Your state looks to an ''ownership threshold'' to determine which entities must be included within a combined group.

[4] Your state uses some other standard in addition to, or instead of, the ''unitary business'' definition or ''ownership threshold.''

[5] Your state uses water's-edge reporting (nexus only, all unitary members) as the default method for determining the composition of a combined group.

[6] Your state uses worldwide reporting (all unitary members) as the default method for determining the composition of a combined group.

[7] Your state requires the exclusion from the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.

[8] AL: Alabama does not have any specific provision for combined reporting.

[9] AK: ''Control'' is alternative test for oil and gas companies.

[10] AK: Required for all companies except oil and gas companies which are required to use worldwide combination.

[11] AZ: Please *see* A.R.S. 43-1132(A), (B), and 43-1101(5).

[12] AR: Arkansas does not accept returns filed on a unitary combined basis.

[13] CA: Unless Water's Edge.

[14] CO: *See* 39-22-303(11), C.R.S. (Combined report required if corporations meet three of six tests).

[15] CT: Connecticut permits an election to be made to file a unitary return under Conn. Gen. Stat. §12-218d(d) if certain criteria are met. Additionally, a nexus combined return including entities subject to Connecticut tax that are part of the same federal consolidated group may be elected under Conn. Gen. Stat. §12-223a.

[16] CT: Yes, for unitary return under Conn. Gen. Stat. §12-218d(d).

[17] **CT: *See* CT-1120U instructions.**

[18] CT: DRS has no published position.

[19] DE: Delaware does not have combined reporting.

[20] DC: Water's-edge is mandatory. Worldwide is optional with approval. Domestic entities with more than 80 percent income outside U.S. are included. Other test for unitary is control. Special apportionment entities included except qualified high technology companies, exempt entities, etc.

[21] DC: *Id.*

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State[1]	Unitary business definition[2]	Ownership threshold[3]	Other standard[4]	Water's-edge reporting[5]	Worldwide reporting[6]	Exclude members with business activity outside U.S. of at least 80 percent[7]
Georgia[22]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	No	No	Yes	No	No
Idaho	Yes	Yes	No	No	Yes	No[23]
Illinois	Yes[24]	**No**[25]	**Yes**[26]	No[27]	No[28]	Yes
Indiana	Yes	Yes	No[29]	Yes	No	Yes
Iowa[30]	No	No	Yes	No	No	No
Kansas	Yes	No[31]	Yes[32]	No[33]	No	No
Kentucky	No	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	Not Applicable
Louisiana[34]	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Yes	No	No	Yes	No	No
Maryland[35]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts[36]	Yes	Yes	Depends	Yes	No	Depends
Michigan	Yes[37]	Yes	Yes[38]	Yes[39]	No[40]	Yes
Minnesota	Yes	No	No	No[41]	No[42]	No

[22] GA: Georgia does not generally allow combined reporting.
[23] ID: Idaho Code 63-3027(t), and Administrative Rules (IDAPA 35.01.01) 340-344.
[24] IL: A combined group is defined in IITA Section 502(e) to include only corporations (other than S corporations) that are members of a unitary business group and taxable in Illinois. The term ''unitary business group'' is defined more broadly in IITA Section 1501(a)(27), but does not extend to any person with 80% or more of their business activity outside the United States.
[25] **IL: *Id.***
[26] **IL: *Id.***
[27] IL: *Id.*
[28] IL: *Id.*
[29] IN: Financial Institutions Tax requires that all corporations be transacting business in Indiana.
[30] IA: Iowa only provides for nexus consolidated returns, including those companies in the same federal affiliated group that have nexus in Iowa. *See* Iowa Code section 422.37(2). Therefore, you must have 80% ownership to file an Iowa consolidated return, and only those companies in the federal group having nexus can be included in the consolidated Iowa return.
[31] KS: In light of Kansas Supreme Court decision in *In Re Tax Appeal of Panhandle Eastern Pipe Line Co*.
[32] KS: Kansas uses the dependency / contribution test to determine if two or more entities are unitary.
[33] KS: Kansas uses the domestic combination method, which can result in inclusion in the combined group of companies that are incorporated in the United States but do business abroad.
[34] LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.
[35] MD: Maryland is not a Combined Filing State.
[36] MA: *See* 830 CMR 63.32B.2.
[37] MI: In addition to an ownership test, the CIT also requires that the entities have ''business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other.'' MCL 206.611(6).
[38] MI: The definition of a ''unitary business group'' includes an ownership or control test in addition to two relationship tests. *See* MCL 206.611.
[39] MI: Foreign operating entities as defined by MCL 206.607(3) are specifically excluded from inclusion in a unitary business group. MCL 206.611(6).
[40] MI: *Id.*
[41] MN: Starting in 2013, foreign entities included in the federal consolidated return are included in the Minnesota unitary report except foreign corporations.
[42] MN: *Id.*

State[1]	Unitary business definition[2]	Ownership threshold[3]	Other standard[4]	Water's-edge reporting[5]	Worldwide reporting[6]	Exclude members with business activity outside U.S. of at least 80 percent[7]
Mississippi	Yes[43]	Yes	No Response	No Response	No Response	No Response
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	Yes	No[44]	No	No	Yes	No Response[45]
Nebraska	Yes	Yes	No	**Yes**	**No**[46]	No
New Hampshire	Yes	No	No	No Response	No	Yes
New Jersey[47]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	No	No	No	No
New York City	Yes	Yes	**Yes**[48]	**No**	**No**	No
North Carolina[49]	Yes	Yes	Yes	No	No	Yes
North Dakota	Yes	Yes	No	No	Yes	No[50]
Ohio[51]	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	Not Applicable
Oklahoma[52]	No Response[53]	No Response	No Response	No Response	No Response	No Response
Oregon[54]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	**Yes**	**Yes**	**No**	**Yes**	**No**	**Yes**
Tennessee[55]	Yes	No	No	Yes	No	No

[43] MS: Mississippi Title 35, Part III, Subpart 08, Chapter 07.
[44] MT: Must be owned > 50% to be included in unitary group - but not only factor in unitary determination.
[45] MT: *See* water's edge provisions.
[46] NE: The combination is subject to the I.R.C. limitation.
[47] NJ: New Jersey is a separate reporting state.
[48] **NYC: Substantial incorporate transactions among related corporations. See Ad. Code Sec. 11-605.4.**
[49] NC: Please see North Carolina General Assembly S.L. 2012-43.
[50] ND: Response is based on the default method of worldwide combined reporting, which would require inclusion of all unitary companies owned > 50%.
[51] OH: For PTEs, a provision expressly allowing combination has not been promulgated. For purposes of CAT, there is mandatory combined reporting if a person meets certain ownership/control levels. Please see R.C. 5751.011, R.C. 5751.012 and/or O.A.C. 5703-29-02. For the new financial institution tax, the tax is based upon total equity as reported on federal regulatory filings and usually the top-tiered holding company will be the filer. *See* R.C. 5726.01(N).
[52] OK: *See* 68 O.S. §2367 and OAC 710:50-17-30 through 710:50-17-34.
[53] OK: Combined return / separate nexus for each entity.
[54] OR: All questions n/a because Oregon is a consolidated state and doesn't allow ''combined reporting'' as it's commonly defined.
[55] TN: Tenn. Code Ann. Sec. 67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. Sec. 67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. Sec. 67-4-2006 to determine the excise tax base. The terms ''unitary business'' and ''unitary group'' are defined in Tenn. Code Ann. §67-4-2004 (51).

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State[1]	Unitary business definition[2]	Ownership threshold[3]	Other standard[4]	Water's-edge reporting[5]	Worldwide reporting[6]	Exclude members with business activity outside U.S. of at least 80 percent[7]
Texas	Yes	Yes	No	No Response[56]	No Response[57]	No Response[58]
Utah	Yes	No	Not Applicable	Yes[59]	No	No
Vermont	Yes	No Response[60]	No	Yes	No	No Response[61]
Virginia[62]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	No	No	Yes	No	Yes[63]
Wisconsin	Yes	Yes	Yes[64]	Yes[65]	No	Depends[66]

[56] TX: Per Franchise Tax Rule Section 3.590(b)(2)(A), a combined group may not include a taxable entity that conducts business outside the U.S. if 80% or more of the taxable entity's property and payroll are assigned to locations outside the U.S. If either the property factor or payroll factor is zero, the denominator is one. The combined group may not include a taxable entity that conducts business outside the U.S. and has no property or payroll if 80% or more of the taxable entity's gross receipts are assigned to locations outside the U.S.

[57] TX: *Id.*

[58] TX: *Id.*

[59] UT: Utah requires waters edge combined reporting and inclusion of all unitary group members, whether or not doing business in the state.

[60] VT: 50% ownership is one of the factors. Additional considerations are described in Vermont regulation 1.5862(d)-4.

[61] VT: Excludes overseas business when payroll and property are > 80% not in United States.

[62] VA: Virginia does not require or permit the filing of combined returns that include corporations that do not have nexus with the state. Since 1981, Virginia law has explicitly prohibited worldwide combined reporting.

[63] WV: Exclusion from the unitary business group of a member whose business activity outside the United States is 80 percent or more of the member's total business is mandatory only if the unitary business group, absent an election to affirmatively use worldwide reporting, uses water's-edge reporting by default. Inclusion in the unitary business group of a member whose business activity is 80 percent or more of the member's total business activity is mandatory only if the unitary business group elects to use worldwide reporting.

[64] WI: A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules.

[65] WI: The factors that control a corporation's status under water's edge rules are: (1) whether the corporation is foreign or domestic, (2) whether the corporation is an 80/20 corporation, and (3) income sourced as foreign or U.S.

[66] WI: In general, a foreign 80/20 corporation is excluded from the Wisconsin combined group. A domestic 80/20 corporation is included only if it has U.S. source income that meets certain requirements.

Combined Reporting: Composition of Group (Part 2 of 2)

State[1]	Include members with business activity outside U.S. of at least 80 percent[2]	Entity in tax haven included in water's-edge group[3]	Foreign entity included in water's-edge group[4]	Prohibits including related entities using industry-specific apportionment formula[5]	Requires including related entities using industry-specific apportionment formula[6]	Offers elective provisions[7]
Alabama[8]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	No	Yes	Depends	No	Yes	No
Arizona	No	No	No	No	No	Yes[9]
Arkansas[10]	No	No	No	No	No	No
California	Yes	No[11]	No[12]	No	Yes	Yes[13]
Colorado[14]	No	No	No[15]	No	Yes	No
Connecticut[16]	No Response[17]	No Response[18]	No Response[19]	No Response[20]	No Response[21]	No Response[22]
Delaware[23]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	Yes	Yes	No	Yes	Yes
Florida	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Your state requires the inclusion in the unitary business group members whose business activity outside the United State is 80 percent or more of the member's total business activity.

[3] Your state requires an entity doing business in a tax haven, as defined by your state, to be included within a water's-edge group.

[4] Your state requires an entity that is foreign, but derives income from intangibles, to be included within a water's-edge group.

[5] Your state prohibits including within the combined group related entities that use an industry-specific apportionment formula.

[6] Your state requires including within the combined group related entities that use an industry-specific apportionment formula.

[7] Your state offers elective provisions to a combined group, such as allowing the group to determine whether to be comprised on a water's-edge or a worldwide basis.

[8] AL: Alabama does not have any specific provision for combined reporting.

[9] AZ: A.R.S. 43-947 allows affiliated groups of corporations to elect to file a consolidated return. An affiliated group may only file a consolidated return if the group properly elected or was required to file a consolidated federal return under 1501 of the Internal Revenue Code.

[10] AR: Arkansas does not accept returns filed on a unitary combined basis.

[11] CA: No, but Subpart F income may result in partial inclusion of foreign entities.

[12] CA: *Id.*

[13] CA: Water's Edge; RTC §§25110, 25113.

[14] CO: *See* 39-22-303(11), C.R.S. (Combined report required if corporations meet three of six tests).

[15] CO: Foreign entity will be required to file a separate return as a nexus taxpayer.

[16] CT: Connecticut permits an election to be made to file a unitary return under Conn. Gen. Stat. §12-218d(d) if certain criteria are met. Additionally, a nexus combined return including entities subject to Connecticut tax that are part of the same federal consolidated group may be elected under Conn. Gen. Stat. §12-223a.

[17] CT: DRS has no published position.

[18] CT: *Id.*

[19] CT: *Id.*

[20] CT: The unitary group must apportion its income to Connecticut using the three-factor apportionment formula, with double-weighted sales, regardless of whether any entities included in such return would otherwise be entitled to use industry-specific apportionment formula. *See* Special Notice 2003(22).

[21] CT: *Id.*

[22] CT: DRS has no published position.

[23] DE: Delaware does not have combined reporting.

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State[1]	Include members with business activity outside U.S. of at least 80 percent[2]	Entity in tax haven included in water's-edge group[3]	Foreign entity included in water's-edge group[4]	Prohibits including related entities using industry-specific apportionment formula[5]	Requires including related entities using industry-specific apportionment formula[6]	Offers elective provisions[7]
Georgia[24]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	No	Yes	No	No
Idaho	No[25]	No	No	No	Yes	Yes[26]
Illinois	No	No	No	Yes	No	No
Indiana	No	No	No	No	No	Yes[27]
Iowa[28]	No	No	No	No	No	No
Kansas	Yes	No[29]	No	No	Yes[30]	No
Kentucky	Not Applicable	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Louisiana[31]	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Yes	No	No	No	No	No
Maryland[32]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts[33]	Depends	No	Depends[34]	No	Yes	Yes
Michigan	No	Not Applicable[35]	No[36]	No	Yes[37]	No
Minnesota	No	No	No	No	No	No
Mississippi	No Response	No Response	No Response	No Response	No Response	No Response
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	Yes[38]	Yes[39]	Depends	No	Yes	Yes[40]

[24] GA: Georgia does not generally allow combined reporting.
[25] ID: Idaho Code 63-3027(t), and Administrative Rules (IDAPA 35.01.01) 340-344.
[26] ID: Idaho Code 63-3027B & 63-3027C.
[27] IN: The DOR must use water's edge; the taxpayer may elect to use worldwide.
[28] IA: Iowa only provides for nexus consolidated returns, including those companies in the same federal affiliated group that have nexus in Iowa. *See* Iowa Code section 422.37(2). Therefore, you must have 80% ownership to file an Iowa consolidated return, and only those companies in the federal group having nexus can be included in the consolidated Iowa return.
[29] KS: No specific requirements for entities doing business in a tax haven.
[30] KS: Yes, if the entities using industry specific apportionment formula are otherwise unitary with other members of the combined group.
[31] LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.
[32] MD: Maryland is not a combined filing state.
[33] MA: *See* 830 CMR 63.32B.2.
[34] MA: *See* 830 CMR 63.32B.2(5)(b).
[35] MI: Michigan does not define ''tax havens.''
[36] MI: Unless the entity is a disregarded subsidiary of a domestic corporation.
[37] MI: Provided the entities satisfy the control and relationship tests of MCL 206.611(6).
[38] MT: Yes, if no water's edge election.
[39] MT: §15-31-322, MCA, requires corporations in a unitary relationship with the taxpayer and incorporated in a tax haven to be included in the water's edge group.
[40] MT: Water's edge election is available - election is effective for 3-year period. Election must be made on Montana Form WE-ELECT.

State[1]	Include members with business activity outside U.S. of at least 80 percent[2]	Entity in tax haven included in water's-edge group[3]	Foreign entity included in water's-edge group[4]	Prohibits including related entities using industry-specific apportionment formula[5]	Requires including related entities using industry-specific apportionment formula[6]	Offers elective provisions[7]
Nebraska	Yes	Not Applicable[41]	No	No Response[42]	No Response[43]	No
New Hampshire	No	No	No	No	Yes	No
New Jersey[44]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Not Applicable[45]	Not Applicable[46]	No	Yes	No
New York City	No	**No**	**No**	**No**	No Response	No Response
North Carolina[47]	No	No	No	No	Yes	No
North Dakota[48]	Yes	No	No	No	No	Yes[49]
Ohio[50]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma[51]	No Response	No Response	No Response	No Response	No Response	No Response
Oregon[52]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	**Yes**	**Yes**	**No**	**No**	**Yes**[53]	**No**[54]
Tennessee[55]	Yes	No	No	No	Yes	No

[41] NE: Nebraska does not define ''doing business in a tax haven.''

[42] NE: Insurance companies may only be included in a combined group with other insurance companies. Other companies with an industry specific formula in the Regulations may be included in the combined group with other corporations that do no use the specific formula.

[43] NE: *Id.*

[44] NJ: New Jersey is a separate reporting state.

[45] NM: New Mexico does not have a definition of a tax haven.

[46] NM: New Mexico does not have a Water's-Edge election option.

[47] NC: Please see North Carolina General Assembly S.L. 2012-43.

[48] ND: Responses are based on the default method of worldwide combined reporting, which would require inclusion of all unitary companies owned > 50%.

[49] ND: North Dakota does allow a taxpayer to make a water's edge election for a unitary group; the election is binding for 5 years. For makeup of the water's edge group, see NDCC Chapter 57-38.4.

[50] OH: For PTEs, a provision expressly allowing combination has not been promulgated. For purposes of CAT, there is mandatory combined reporting if a person meets certain ownership/control levels. Please see R.C. 5751.011, R.C. 5751.012 and/or O.A.C. 5703-29-02. For the new financial institution tax, the tax is based upon total equity as reported on federal regulatory filings and usually the top-tiered holding company will be the filer. *See* R.C. 5726.01(N).

[51] OK: *See* 68 O.S. §2367 and OAC 710:50-17-30 through 710:50-17-34.

[52] OR: All questions n/a because Oregon is a consolidated state and doesn't allow ''combined reporting'' as it's commonly defined.

[53] **RI: Rhode Island only allows single sales factor apportionment for all C corporations.**

[54] **RI: *Id.***

[55] TN: Tenn. Code Ann. Sec. 67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. Sec. 67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. Sec. 67-4-2006 to determine the excise tax base. The terms ''unitary business'' and ''unitary group'' are defined in Tenn. Code Ann. §67-4-2004 (51).

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State[1]	Include members with business activity outside U.S. of at least 80 percent[2]	Entity in tax haven included in water's-edge group[3]	Foreign entity included in water's-edge group[4]	Prohibits including related entities using industry-specific apportionment formula[5]	Requires including related entities using industry-specific apportionment formula[6]	Offers elective provisions[7]
Texas	No Response[56]	No	No	No	No Response[57]	No
Utah	Yes	No	No	No	Yes	Yes[58]
Vermont	No	Not Applicable	No	Not Applicable	Not Applicable	No
Virginia[59]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes[60]	Yes	Yes	No	No	Yes[61]
Wisconsin	Depends[62]	No[63]	Depends[64]	No[65]	Yes[66]	Yes[67]

[56] TX: Per Franchise Tax Rule Section 3.590(b)(2)(A), a combined group may not include a taxable entity that conducts business outside the U.S. if 80% or more of the taxable entity's property and payroll are assigned to locations outside the U.S. If either the property factor or payroll factor is zero, the denominator is one. The combined group may not include a taxable entity that conducts business outside the U.S. and has no property or payroll if 80% or more of the taxable entity's gross receipts are assigned to locations outside the U.S.

[57] TX: An entity is included in a combined group if it meets the ownership and unitary provisions of Texas Tax Code 171.1014 and Tax Rule 3.590.

[58] UT: Utah allows a combined group to make a binding worldwide election, revocable only with prior Commission approval based on the showing of a significant change in circumstances. Utah also allows a group of affiliated corporations, all of which are conducting business in Utah and none of which are unitary with any of the other corporations in the group making the election, to make an election to file a waters edge combined report.

[59] VA: Virginia does not require or permit the filing of combined returns that include corporations that do not have nexus with the state. Since 1981, Virginia law has explicitly prohibited worldwide combined reporting.

[60] WV: Exclusion from the unitary business group of a member whose business activity outside the United States is 80 percent or more of the member's total business is mandatory only if the unitary business group, absent an election to affirmatively use worldwide reporting, uses water's-edge reporting by default. Inclusion in the unitary business group of a member whose business activity is 80 percent or more of the member's total business activity is mandatory only if the unitary business group elects to use worldwide reporting.

[61] WV: W. Va. Code §11-24-13f provides that water's-edge reporting is mandated absent affirmative election to report based on worldwide unitary combined reporting basis.

[62] WI: In general, a foreign 80/20 corporation is excluded from the Wisconsin combined group. A domestic 80/20 corporation is included only if it has U.S. source income that meets certain requirements.

[63] WI: Tax havens are not specifically addressed in the water's edge provisions. However, the department has broad authority to make adjustments to combined reports that represent an avoidance or evasion of tax.

[64] WI: The water's edge factors should be applied to the foreign entity and its income derived from intangibles to determine if the entity should be included in the Wisconsin combined group. [The factors that control a corporation's status under water's edge rules are: (1) whether the corporation is foreign or domestic, (2) whether the corporation is an 80/20 corporation, and (3) income sourced as foreign or U.S.]

[65] WI: An entity's type of apportionment formula is not used to determine whether it is included in a Wisconsin combined group. [A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules.]

[66] WI: *Id.*

[67] WI: A commonly controlled group may forego the unitary business test by making the controlled group election.

Combined Reporting: Tax Base

State[1]	Computes liability on aggregate basis and allows members to share credits[2]	Computes liability on aggregate basis and allows members to offset losses[3]	Matching rule[4]	Acceleration rule[5]
Alabama[6]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	Yes[7]	Yes	Yes
Arkansas[8]	No	No	No	No
California	No Response[9]	No[10]	Yes[11]	Yes
Colorado	Yes	Yes	Yes	Yes
Connecticut	**Yes[12]**	Yes[13]	No Response[14]	No Response[15]
Delaware[16]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	**Yes**[17]	Yes	Yes
Florida	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia[18]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Your state computes the income tax liability of the group on an aggregate basis and allows members to share tax credits between one another.

[3] Your state computes the income tax liability of the group on an aggregate basis and allows members to offset losses between one another.

[4] Your state conforms to the ''matching rule'' under U.S. Treas. Regs. §1.1502-13 (*i.e.*, intercompany transactions shall be taken into account as if the seller and buyer were divisions of a single corporation).

[5] Your state conforms to the ''acceleration rule'' under U.S. Treas. Regs. §1.1502-13 (*i.e.*, intercompany items shall be taken into account when the effect of treating the seller and buyer as divisions of a single corporation cannot be achieved, such as when either the seller or the buyer leaves the combined reporting group).

[6] AL: Alabama does not have any specific provision for combined reporting.

[7] AZ: Please *see* CTR 91-2 and AZ Admin. Code R15-2D-302.

[8] AR: Arkansas does not accept returns filed on a unitary combined basis.

[9] CA: California does not compute franchise or income tax liability of the group on an aggregate basis. California does not allow credit sharing between combined members (*see* RTC §23663).

[10] CA: CCR §25106.5(c).

[11] CA: CCR §25106.5-1(a)(2).

[12] CT: Yes, if unitary return filed under Conn. Gen. Stat. §12-218d(d). Also, see Conn. Gen. Stat. §12-223a for rules on nexus combined returns.

[13] CT: *Id.*

[14] CT: DRS has no published position.

[15] CT: *Id.*

[16] DE: Delaware does not have combined reporting.

[17] **DC: Assuming current loses and not NOLs.**

[18] GA: Georgia does not generally allow combined reporting.

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State[1]	Computes liability on aggregate basis and allows members to share credits[2]	Computes liability on aggregate basis and allows members to offset losses[3]	Matching rule[4]	Acceleration rule[5]
Idaho	No[19]	No[20]	Yes	Yes
Illinois	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes
Iowa[21]	Yes	Yes	Yes	Yes
Kansas	No	No	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana[22]	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	Yes
Maryland[23]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Yes[24]	Yes[25]	Yes[26]	Yes[27]
Michigan	Yes	Yes	No	No
Minnesota	**No Response**[28]	No	No Response[29]	No Response[30]
Mississippi	No[31]	Yes[32]	No Response	No Response
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No	No	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	No Response[33]	No Response[34]	No	No
New Jersey[35]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	Yes	Yes

[19] ID: IDAPA 35.01.01.200 & 365 - Each corporation in combined report calculates its own NOL & credits and is responsible for payment of its share of tax. Except for Idaho investment tax credit which can be shared. IDAPA 35.01.01.711.
[20] ID: *Id.*
[21] IA: Iowa only allows for nexus consolidated returns, including only companies having nexus in Iowa in the consolidated return.
[22] LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.
[23] MD: Maryland is not a Combined Filing State.
[24] MA: 830 CMR 63.32B.2(9).
[25] MA: 830 CMR 63.32B.2(8).
[26] MA: 830 CMR 63.32B.2(6).
[27] MA: *Id.*
[28] **MN: The Credit for Increasing Research Activities may be shared between members.**
[29] MN: All intercompany transactions between entities included in the unitary business are eliminated. (Minn. Stat. section 290.17, subd. 4(j)).
[30] MN: *Id.*
[31] MS: Mississippi Title 35, Part III, Subpart 08, Chapter 07.
[32] MS: *Id.*
[33] NH: *See* Rev. 306.
[34] NH: *See* Rev. 302.09 and 302.10.
[35] NJ: New Jersey is a separate reporting state, **except for specific industries**.

State[1]	Computes liability on aggregate basis and allows members to share credits[2]	Computes liability on aggregate basis and allows members to offset losses[3]	Matching rule[4]	Acceleration rule[5]
New York City	Yes	Yes	Yes	No Response
North Carolina[36]	Yes	Yes	Yes	Yes
North Dakota	No Response[37]	No	No Response[38]	No Response[39]
Ohio[40]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma[41]	No Response	No Response	No Response	No Response
Oregon[42]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	**Yes**[43]	**Yes**[44]	**Yes**	**Yes**
Tennessee[45]	Yes	Yes	No	No
Texas	No Response[46]	No Response[47]	No Response[48]	No Response[49]
Utah	Yes	Yes	Yes	Yes
Vermont	No	Yes[50]	Yes	Yes

[36] NC: Please see North Carolina General Assembly S.L. 2012-43.

[37] ND: Income tax and credits are computed separately for each nexus company; only two credits may be shared (research expense & wind energy credits), and one other may be sold (investment in Angel Fund).

[38] ND: To the extent that these affect federal taxable income, the answer would be yes.

[39] ND: *Id.*

[40] OH: For purposes of CAT, if a person is registered as a consolidated elected taxpayer group, such group may exclude gross receipts between the members, but the tax base remains as taxable gross receipts. The new financial institution tax uses total equity as its tax base.

[41] OK: *See* 68 O.S. §2367 and OAC 710:50-17-30 through 710:50-17-34.

[42] OR: All questions n/a because Oregon is a consolidated state and doesn't allow ''combined reporting'' as it's commonly defined. However, Oregon does compute tax on an aggregate basis and allows sharing of tax credits for members included on the consolidated unitary return. Oregon also conforms to the matching and acceleration rules.

[43] **RI: A tracing protocol must be used to track credits for inclusion and exclusion for credits generated prior to combined reporting**.

[44] **RI: *Id.***

[45] TN: Intercompany transactions are eliminated when filing combined returns for excise tax purposes. Tenn. Code Ann. §67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. §67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. §67-4-2006 to determine the excise tax base. The terms ''unitary business'' and ''unitary group'' are defined in Tenn. Code Ann. §67-4-2004 (51).

[46] TX: Members share eligible Texas tax credits such as the Temporary Credit for Business Loss Carryforwards. The business loss carryforward does not follow the member to a separately filed report or another combined group, and if the member dissolves, terminates, or other leaves the group, the business loss carryover of that member is no longer eligible for use. Tax Rule Section 3.594(c)(3).

[47] TX: Texas Tax Code Section 171.1014(c) states that a combined group shall determine its total revenue by: (1) determining the total revenue of each of its members as if the member were an individual taxable entity; (2) adding the total revenues of the members together; and (3) subtracting to the extent included in total revenue, items of total revenue received from a member of a combined group.

[48] TX: A taxable entity that is part of a federal consolidated group shall compute its total revenue as if it had filed a separate return for federal income tax purposes. TTC Section 171.1011(d).

[49] TX: *Id.*

[50] VT: As described in Regulation 1.5862(d)-9(a).

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State[1]	Computes liability on aggregate basis and allows members to share credits[2]	Computes liability on aggregate basis and allows members to offset losses[3]	Matching rule[4]	Acceleration rule[5]
Virginia[51]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes[52]	Yes[53]	Yes[54]	Yes[55]
Wisconsin	No[56]	No[57]	Yes	Yes

[51] VA: Virginia has not adopted unitary combined reporting.

[52] WV: W.Va. Code §11-24-13(d) and W.Va. Code of State Regulations, 110.24.13e.1.c provides for the computation of tax liability of the group on an aggregate basis; W. Va. Code §11-24-13a(g) and §11-24-13c(b)(2) prohibit members of a combined group from sharing tax credits between one another; §11-24-13c(b)(2), however, does allow unused and unexpired economic development tax credits to be shared.

[53] WV: W.Va. Code §11-24-13c(b)(G) and W.Va. Code of State Regulations, 110.24.13c.1 allows net operating loss carryovers to be shared as deductions.

[54] WV: W.Va. Code §11-24-13d(e) and W.Va. Code of State Regulations, 110.24.13d.1.a, 110.24.13d.1.b, 110.24.13d.1.e and 110.24.13d.1.f.

[55] WV: W.Va. Code of State Regulations, 110.24.13d.1.b and 110.24.13d.1.f.

[56] WI: A corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group reports its share of unitary income on the combined report which is filed by the designated agent of the unitary business. A corporation may share its research credits with other members under certain circumstances.

[57] WI: A corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group reports its share of unitary income on the combined report which is filed by the designated agent of the unitary business. A corporation may share its Wisconsin net business loss carryforwards with other members under certain circumstances.

Combined Reporting: Apportionment

State[1]	*Finnigan* approach[2]	*Joyce* approach[3]	Eliminates intercompany transactions[4]
Alabama[5]	Not Applicable	Not Applicable	Not Applicable
Alaska	No	Yes	Yes[6]
Arizona	Yes	No	Yes[7]
Arkansas[8]	No	No	No
California	Yes[9]	No	Yes
Colorado	No	Yes	Yes
Connecticut	No Response[10]	No Response[11]	Yes
Delaware[12]	Not Applicable	Not Applicable	Not Applicable
District of Columbia	**No Response**	**No Response**	**No Response**
Florida	Not Applicable	Not Applicable	Not Applicable
Georgia[13]	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	Yes
Idaho	No	Yes	Yes
Illinois	No	Yes	Yes
Indiana	Yes	No	Yes
Iowa[14]	No	Yes	Yes
Kansas	Yes[15]	No	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Your state includes in the numerator of the combined group's sales factor the in-state sales of a no nexus combined group member notwithstanding Pub. L. No. 86-272 (*i.e.*, *Finnigan* approach).

[3] Your state does not include in the sales factor numerator sales by a no nexus combined group member for purposes of determining taxable income in your state for the other group members (*i.e.*, *Joyce* approach).

[4] Your state eliminates intercompany transactions (receipts, rents, etc.) from the apportionment factors.

[5] AL: Alabama does not allow combined reporting under any circumstances.

[6] AK: Intercompany tariffs are included for oil and gas companies.

[7] AZ: Please *see* AZ Admin. Code R15-2D-405.

[8] AR: Arkansas does not accept returns filed on a unitary combined basis.

[9] CA: Pub. L. No. 86-272 is irrelevant to apportionment.

[10] CT: DRS has no published position.

[11] CT: *Id.*

[12] DE: Delaware does not have combined reporting.

[13] GA: Georgia does not generally allow combined reporting.

[14] IA: Iowa only allows a nexus consolidated return, whereby a consolidated return can be filed only including companies having nexus in Iowa. Iowa does not provide for combined reporting.

[15] KS: *See* K.A.R. 92-12-112.

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State[1]	*Finnigan* approach[2]	*Joyce* approach[3]	Eliminates intercompany transactions[4]
Kentucky	Not Applicable[16]	Not Applicable	Yes
Louisiana[17]	No Response	No Response	No Response
Maine	Yes	No	Yes
Maryland[18]	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Yes[19]	Yes	Yes[20]
Michigan	Yes	No	Yes
Minnesota	No Response[21]	No Response[22]	Yes
Mississippi[23]	No	Yes	Yes
Missouri	Not Applicable	Not Applicable	Not Applicable
Montana	No	Yes	Yes
Nebraska	No	Yes	Yes
New Hampshire	No	Yes	Yes
New Jersey[24]	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Yes	Yes
New York City	Yes	**No**	Yes
North Carolina[25]	Yes	No	Yes
North Dakota	No	Yes	Yes
Ohio[26]	Not Applicable	Not Applicable	Not Applicable
Oklahoma[27]	No Response	No Response	No Response

[16] KY: Applies to corporations filing an elective consolidated return in accordance with the provisions of Section 1502 of the Internal Revenue Code. All elective consolidated return filings will expire for taxable years beginning in 2011, and once an election has expired a taxpayer must file a separate return unless the taxpayer is a member of an affiliated group required to file a nexus consolidated return.

[17] LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.

[18] MD: Maryland is not a combined filing state.

[19] MA: 830 CMR 63.32B.2(7).

[20] MA: *Id.*

[21] MN: The Minnesota 2013 legislature enacted — Starting in 2013, Minn. Stat. Section 290.17, subd. 4 was amended to require that all sales of a unitary business made within Minnesota be included in the sales factor of a corporation that is both a member of the unitary business and subject to the corporate franchise tax. This is neither the *Finnigan* nor the *Joyce* approach.

[22] MN: *Id.*

[23] MS: Mississippi Title 35, Part III, Subpart 08, Chapter 06.

[24] NJ: New Jersey is a separate reporting state, **except for specific industries**.

[25] NC: Please see North Carolina General Assembly S.L. 2012-43.

[26] OH: For purposes of CAT, there is mandatory combined reporting if a person meets certain ownership/control levels. Please see R.C. 5751.011, R.C. 5751.012 and/or O.A.C. 5703-29-02. Situsing of those gross receipts are not changed by the requirement of combined reporting.

[27] OK: *See* 68 O.S. §2367 and OAC 710:50-17-30 through 710:50-17-34.

State[1]	*Finnigan* approach[2]	*Joyce* approach[3]	Eliminates intercompany transactions[4]
Oregon[28]	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable
Rhode Island	**Yes**	**No**	**Yes**
Tennessee[29]	Yes	No	Yes
Texas	No	Yes	Yes[30]
Utah	Yes	No	Yes
Vermont	No	Yes	No Response[31]
Virginia[32]	No	No	No
West Virginia	No	Yes[33]	Yes
Wisconsin	Yes[34]	Not Applicable	Yes[35]

[28] OR: All questions n/a because Oregon is a consolidated state and doesn't allow ''combined reporting'' as it's commonly defined. However, Oregon does use the *Joyce* approach and requires elimination of intercompany transactions amongst members of the consolidated unitary group included on the Oregon return.

[29] TN: Tenn. Code Ann. §67-4-2004(51) states that a ''unitary business'' or ''unitary group'' includes those entities that are engaged in a unitary business transacted wholly in, or in and out of Tennessee, even if some of the entities would not be subject to excise tax in Tennessee if considered apart from the unitary group. In Tennessee, unitary groups of financial institutions file as a single entity. Intercompany transactions are eliminated when filing combined returns for excise tax purposes. Tenn. Code Ann. §67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. §67-4-2014 to file excise tax returns on a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. §67-4-2006 to determine the excise tax base. The terms ''unitary business'' and ''unitary group'' are defined in Tenn. Code Ann. §67-4-2004(51). However, Tenn. Code Ann. §67-4-2007(d) permits LLCs whose single member is a corporation to be disregarded for Tennessee excise tax purposes.

[30] TX: However, per TTC Section 171.1055(b), the numerator of the apportionment factor will include certain sales of tangible personal property made to third party purchasers if the tangible personal property is ultimately delivered to a purchaser in Texas without substantial modification. For example, drop shipments made from a Texas location to a Texas purchaser would be included in Texas receipts based on the amount billed to the third party purchaser if the seller is a member of the combined group and the seller does not have nexus.

[31] VT: Defers intercompany transaction income until the object is resold in some cases (Reg. 1.5862(d) -7(e)(5)).

[32] VA: Virginia has not adopted unitary combined reporting.

[33] WV: W.Va. Code of State Regulations, 110.24.7.7.d.2.

[34] WI: A Wisconsin combined group will not have no-nexus members because all members are considered as doing business in the state if any one member is doing business in the state. Therefore, all in-state sales will be included in the members' sales numerators.

[35] WI: *Id.*

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Non-U.S. Entities

Non-U.S. Based Entities Must Navigate Varying Income Tax Treatment Among States

Conducting business across international borders is a commonplace occurrence in today's economy as a result of the expansion of global markets, the Internet, and other recent technological developments. But the state tax treatment of non-U.S. based entities doing business within the United States can be difficult to ascertain and unpredictable.

At the federal level, non-U.S. entities can rely on treaty provisions to offer guidance on the tax consequences of most types of transactions. Under the bilateral tax treaties, a non-U.S. company generally is not subject to U.S. tax on business income derived in the U.S. unless the income is attributable to a permanent establishment in the U.S. The definition of ''permanent establishment'' varies by treaty, but it is generally defined as a place of management, an office, a construction site, or an agent of the non-U.S. company with authority to enter into contracts.

At the state level, whether a non-U.S. entity is subject to tax depends on the entity having nexus with the particular state. Most states adhere to an economic nexus rationale for income taxes, which does not require a physical presence. As a result, a non-U.S. company can achieve nexus with a state even if it lacked a permanent establishment.

Pub. L. No. 86-272 Protection

Another question is whether a state extends the protection afforded under Pub. L. No. 86-272 to non-U.S. entities. Pub. L. No. 86-272 prohibits the imposition of state income-based taxes against businesses engaged in the sale of tangible personal property whose activities in the taxing state are limited to the solicitation of orders. This protection applies ''interstate commerce,'' but not to foreign commerce. States have the option, however, to extend the protection to foreign commerce.

If nexus with a state is established, the non-U.S. entity's actual tax liability would depend on the state's starting point for computing its income tax. The starting point in ''water's-edge'' states is taxable income within the U.S. Under this method, if a state starts its computation with federal taxable income, assuming that the state does not require an addition of treaty-exempt income, then the company's tax liability would be zero.

But not all non-U.S. entities qualify for this treatment because of the so-called ''80/20 rule,'' which is the main method that the states use to determine if a non-U.S. corporation should be included in a combined group for water's-edge purposes. Under this rule, a state that requires or permits the filing of a water's-edge combined return will exclude from the combined return a non-U.S. entity whose income apportionment percentage outside of the U.S. is 80 percent or more. But there are variances in the method used by the states to determine if a non-U.S. based company has met this standard.

Computation of Income

In a state that begins its computation with worldwide income, a non-U.S. entity could have state tax liability even if it had no federal income tax liability. Because nearly every state uses federal income as the starting point for computing taxable income within their jurisdiction, non-U.S. based entities must begin the state computation process by completing a ''pro forma'' federal tax return.

Bloomberg BNA asked each state specify if it:

- determines the state taxable income of a non-U.S. entity by permitting federal income tax treaty exemptions or other limits to control liability for state income taxation (*i.e.*, the non-U.S. entity will only have state taxable income if it has a ''permanent establishment'' in the U.S. and reports income on Federal Form 1120-F);
- requires a non-U.S. entity that is not subject to federal income tax, but subject to the state's income-based tax, to compute the state's tax by first completing a ''pro forma'' federal tax return or computation of federal income;
- requires a non-U.S. entity not subject to federal tax, but subject to state income-based tax, to use a starting point in determining state taxable income other than federal taxable income (*i.e.*, $0);
- imposes tax on a non-U.S. entity's apportioned worldwide taxable income;
- determines the source of income for purposes of taxing nonbusiness income by using the federal source rules;
- uses federal source rules to determine the non-US income of an 80-20 corporation for water's edge or other purposes;
- imposes tax only on the income of the U.S. branch of a non-U.S. entity;
- imposes income tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F;
- denies deductions of a foreign business that does not file a federal return within a specified period of time after its due date; or
- imposes franchise tax or other non-income based tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F.

Tax Treatment of Non-U.S. Entities (Part 1 of 2)

State[1]	Pub. L. No. 86-272 protections[2]	Permanent establishment[3]	Pro forma federal tax return[4]	Starting point other than federal taxable income[5]	Worldwide taxable income[6]	Federal source rules for nonbusiness income[7]
Alabama	Yes	Yes	No	No	No	Yes
Alaska	Yes	No	Yes	No Response[8]	Yes[9]	No
Arizona[10]	Yes	Yes	No	No	No	No Response
Arkansas	Yes	No[11]	Yes	No	No	No[12]
California	No	No	No Response[13]	No Response[14]	Depends[15]	No
Colorado	No	No	Yes	No	No	No
Connecticut	No Response[16]	No Response[17]	No Response[18]	No Response[19]	No Response[20]	No Response[21]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Does your state extend the protections under Pub. L. No. 86-272 to business entities that are not organized under the law of a state or local taxing jurisdiction in the U.S. (i.e., foreign corporations not eligible for Pub. L. No. 86-272 protections)?

[3] Does your state, when determining the state taxable income of a non-U.S. entity, permit federal income tax treaty exemptions or other limits to control liability for state income taxation (i.e., the non-U.S. entity will only have state taxable income if it has a ''permanent establishment'' in the U.S. and reports income on Federal Form 1120-F)?

[4] Does your state require a non-U.S. entity that is not subject to federal income tax, but subject to your state's income-based tax, to compute your state's tax by first completing a ''pro forma'' federal tax return or computation of federal income?

[5] Does your state require a non-U.S. entity that is not subject to federal tax, but subject to your state's income-based tax, to use a starting point in determining state taxable income other than federal taxable income (i.e., $0)?

[6] Does your state impose tax on a non-U.S. entity's apportioned worldwide taxable income?

[7] Does your state determine the source of income for purposes of determining taxability of nonbusiness income by using the federal source rules under I.R.C. §861 *et seq.*?

[8] AK: Taxpayer may elect to report the income of foreign entities using book income.

[9] AK: Tax is imposed if foreign entity has nexus.

[10] AZ: Arizona starts with federal taxable income. Therefore, if a foreign entities federal taxable income is zero, then Arizona's starting point is zero. However, if the foreign company has nexus in Arizona, even if they have zero federal taxable income, they will still be required to file a return and pay the $50 minimum tax.

[11] AR: Arkansas does not recognize foreign tax treaties and nexus for foreign corporations is determined the same as for domestic corporations. Public Law 86-272 is the nexus standard for Arkansas.

[12] AR: Arkansas does not use federal source rules for determining sourcing of nonbusiness income. It uses ACA 26-51-704 through 708.

[13] CA: Not required, but may be helpful. California generally calculates taxable income as provided by the Internal Revenue Code. However, there are small differences. There are two ways to complete Form 100 (calculating California taxable income): (a) the federal reconciliation method, or (b) the California computation method. Instructions to calculate under these two methods are found under the ''Form 100'' booklet.

[14] CA: Like the previous question, instructions to calculate the starting point for taxable income depends on which method each taxpayer chooses.

[15] CA: If taxpayers do not file a water's edge election, then all business income is apportionable. Under the water's-edge method, taxpayers determine their income derived from or attributable to California by including only the income and factors of specific affiliated entities. Rules determining what income is taxable in California are found under RTC §25110 and the regulations thereunder.

[16] CT: DRS has no published position.

[17] CT: *See* Conn. Gen. Stat. §12-216a and IP 2010(29.1).

[18] CT: *Id.*

[19] CT: *Id.*

[20] CT: *Id.*

[21] CT: DRS has no published position.

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State[1]	Pub. L. No. 86-272 protections[2]	Permanent establishment[3]	Pro forma federal tax return[4]	Starting point other than federal taxable income[5]	Worldwide taxable income[6]	Federal source rules for nonbusiness income[7]
Delaware	No	Yes	Yes	No	No	Yes
District of Columbia	No	Yes	**Not Applicable**	**Not Applicable**	**No Response**	Yes
Florida	Yes	Yes[22]	No	No	No	No[23]
Georgia	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes[24]	No[25]	No	No	No[26]	No[27]
Idaho	No Response[28]	No Response[29]	No Response[30]	No Response[31]	No Response[32]	No[33]
Illinois	Yes	No Response[34]	No	No	No	No Response[35]
Indiana	Yes	Yes	Not Applicable	Not Applicable	No	Yes
Iowa	Yes	Yes[36]	No	No	No	Yes
Kansas	No	Yes	No Response	No Response	No Response	No Response
Kentucky	Yes	No	Yes	No	No	Yes
Louisiana	Yes	Yes	No	No	No Response[37]	No Response[38]
Maine	Yes	Yes	No	No	No	Yes
Maryland	Yes	Yes	No	No	No	No[39]
Massachusetts[40]	Yes	Depends	Yes	No	Yes	Depends

[22] FL: If the taxpayer must file federally to claim the treaty exemption, they must also file in Florida.
[23] FL: Rule 12C-1.016, F.A.C. *See also* ss. 220.03(1)(r), 220.16, F.S.
[24] HI: Section 18-235-4-05(c) and 18-235-4-05(e), Hawaii Administrative Rules.
[25] HI: *Id.*
[26] HI: *Id.*
[27] HI: Sections 235-21 to 235-28, Hawaii Revised Statutes.
[28] ID: The Tax Commission has made no ruling on this fact situation.
[29] ID: *Id.*
[30] ID: *Id.*
[31] ID: *Id.*
[32] ID: Idaho is a worldwide combined reporting state; thus, if the foreign entity is part of the unitary group, it would be included within the worldwide combined report. If the foreign entity is transacting business within Idaho, it would be required to report it's share of the income apportioned to Idaho.
[33] ID: Idaho Code sections 63-3027(d) through (h) govern the allocation of nonbusiness income, which is basically the same as the UDITPA.
[34] IL: The starting point in the computation of Illinois base income of a corporation is federal taxable income. Therefore, in general, items of income and deduction that are included in the computation of federal taxable income are included in the computation of Illinois base income, while items of income that are excluded in computing federal taxable income, or deductions that are denied in computing federal taxable income, are likewise excluded or denied in the computation of Illinois base income.
[35] IL: *Id.*
[36] IA: The starting point for Iowa corporation income tax is federal taxable income as properly computed. A corporation must have income subject to federal income tax in order to require the filing of an Iowa return. In the absence of federal taxable income, there can be no Iowa taxable income. This is noted in the following ruling: http://itrl.idr.iowa.gov/mx/hm.asp?id=99240163.
[37] LA: Other than specific modifications to federal income and deduction items (none specifically related to non-U.S. entities), Louisiana requires that the same items that are required/allowed in computing federal taxable income be used in determining net income. Louisiana net income is then determined by applying Louisiana's allocation and apportionment provisions.
[38] LA: *Id.*
[39] MD: Maryland does not tax nonbusiness income of a non-U.S. entity.
[40] MA: *See* TIR 10-16, 08-11; DD 01-8, LRs 00-5, 00-11 and Schedule U-M and Instructions.

State[1]	Pub. L. No. 86-272 protections[2]	Permanent establishment[3]	Pro forma federal tax return[4]	Starting point other than federal taxable income[5]	Worldwide taxable income[6]	Federal source rules for nonbusiness income[7]
Michigan	Yes	No[41]	Yes	No	No	No[42]
Minnesota	No	No[43]	Yes	No	**Yes**	No[44]
Mississippi	No	No[45]	Yes	Yes	No	Yes
Missouri	Yes	Yes	No	Not Applicable	Yes	No
Montana	Yes	Depends	Depends	Depends	Yes	Depends
Nebraska[46]	Yes	Yes	**Not Applicable**	**Not Applicable**	No	Not Applicable
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	No[47]	**Yes**	**No**	Yes	Not Applicable
New Mexico	Yes	Yes	No	No	Yes	Yes
New York City	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes	No[48]	Yes[49]	No[50]	No	Yes
North Dakota	Yes	No	Yes	Yes	Yes	No
Ohio[51]	No Response	No Response	No Response	No Response	No Response	No Response
Oklahoma	Yes	Yes	No	No Response	No Response	No Response
Oregon	Yes	No[52]	Yes	Yes[53]	No	**Yes**
Pennsylvania	Yes	No	Yes	Yes	No	No
Rhode Island	Yes	Yes	Yes	No	Yes	Yes

[41] MI: *See* MCL 206.625(2).
[42] MI: The CIT does not define nonbusiness income.
[43] MN: A ''pro forma'' federal tax return is required to determine federal taxable income excluding tax treaty exemptions.
[44] **MN: Nonbusiness income is attributed as provided in Minn. Stat. Section 290.17, subd. 2.**
[45] MS: The State's apportionment method is used.
[46] NE: Nebraska taxes whatever the IRS taxes.
[47] NJ: Tax is computed as if no treaty exemptions existed.
[48] NC: G.S. 105-130.3 imposes a tax on the State net income of every C Corporation doing business in this state. G.S. 105-130.2(15) defines ''State net income'' as ''[T]he taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.''
[49] NC: *Id.*
[50] NC: *Id.*
[51] OH: These questions do not seem to be addressed toward a gross receipts tax. However, a foreign entity may be subject to CAT if it has the requisite threshold of taxable gross receipts.
[52] OR: Non-US corporation taxes are addressed in ORS 317.010 and Administrative Rule. Specifically from OAR 150-317.010(10)-(B), ''(3) Oregon taxable income is determined by calculating the corporation's federal taxable income as if the corporation was subject to federal income taxes and making certain modifications as provided by Oregon law. As provided under ORS 317.625, income from outside the United States is accounted for in the computation of Oregon taxable income without regard to IRC sections 861 to 864. Income classified as income from outside the United States and excluded from federal taxable income must be added to the federal taxable income calculation required by this rule as an ''other addition.''
(4) Oregon has adopted the federal IRC provisions for computing taxable income, but did not adopt the federal provisions that define exempt corporations. Oregon law in ORS 317.080 lists those corporations that are exempt from Oregon corporate taxes.''
[53] OR: This question appears to be the same as [the question asking if a ''pro forma'' federal return is required].

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State[1]	Pub. L. No. 86-272 protections[2]	Permanent establishment[3]	Pro forma federal tax return[4]	Starting point other than federal taxable income[5]	Worldwide taxable income[6]	Federal source rules for nonbusiness income[7]
Tennessee[54]	No	Yes	Yes	No	No	No
Texas	No[55]	No Response[56]	No Response	No Response	No Response	No Response
Utah	Yes	Yes[57]	Yes[58]	No	Yes[59]	Yes[60]
Vermont	No Response	Yes	Not Applicable	Not Applicable	No Response	No Response
Virginia	Yes[61]	Yes	Not Applicable	Not Applicable	No	Yes
West Virginia	Yes	Yes[62]	Yes	Yes	Yes[63]	Yes
Wisconsin	No	Yes	Yes	No	No[64]	Yes

[54] TN: Tennessee has very few non-U.S. entities with franchise, excise tax nexus. Generally, Tennessee follows the ''waters edge'' approach when determining income subject to taxation. This usually means that the starting point is federal form 1120F income. Nonbusiness income would be determined by applying Tenn. R. & Regs. 1320-6-1-.23, Tenn. Code Ann. §67-4-2004(32), and 67-4-2011.

[55] TX: Pub. L. No. 86-272 does not apply to the Texas franchise tax. Tax rule 3.586(e).

[56] TX: The franchise tax base is taxable margin, not taxable income. Total revenue, a component of margin, is specifically defined in TTC 171.1011 and is tied to the amounts entered on specific lines from the federal return, to the extent the amount entered complies with federal income tax law, minus statutory exclusions.

[57] **UT: Under review.**

[58] UT: This would be applicable where a worldwide combined election is made and the income and apportionment factors of foreign corporations are therefore included in the combination.

[59] UT: *Id.*

[60] UT: Utah uses Federal 1120 Line 28 or equivalent as a starting point by statute. If all expense lines are zero pursuant to I.R.C. provisions, then the expenses would not be allowable for Utah purposes either. However, Utah law does not expressly address this issue. Therefore, it is not considered a penalty but merely piggybacking on the equivalent of Federal Taxable Income from Federal 1120, Line 28, without the benefit of expenses incurred but not allowed.

[61] VA: *See* 23 VAC 10-120-120.

[62] WV: W.Va. Code §11-24-13f(a)(5).

[63] WV: W.Va. Code §11-24-13f(a).

[64] WI: Tax is imposed on all income that is effectively connected with the conduct of a trade or business in the United States and any additional U.S. source income.

Tax Treatment of Non-U.S. Entities (Part 2 of 2)

State[1]	Federal source rules for non-U.S. income of 80-20 corporation[2]	U.S. branch of non-U.S. entity[3]	Non-U.S. entity not subject to federal tax[4]	Federal deductions denied[5]	Franchise tax or other nonincome-based tax[6]
Alabama	Not Applicable	Yes	Yes	No	Yes
Alaska	No	No	Yes[7]	No Response[8]	Yes[9]
Arizona[10]	No Response	No Response	No	No Response	No
Arkansas	Not Applicable	Yes	Yes	No	Yes
California	No	No[11]	Depends[12]	No	Depends[13]
Colorado	No Response	No Response	Yes	No	Not Applicable
Connecticut	No Response[14]	No Response[15]	No Response[16]	No Response[17]	No Response[18]
Delaware	Yes	Yes	Yes	Yes	No Response
District of Columbia	Yes	Yes	**No**	No	No
Florida	Yes	Yes[19]	Yes	Yes[20]	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
NV, SD, WA and WY do not impose a corporate tax based on income.
SC did not participate in this portion of the survey.
MS's responses are from 2013.
NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state has only begun implementing the reform provisions, it said it would be premature for it to opine on the income tax portions of the survey at this time.

[2] Does your state use federal source rules to determine the non-U.S. income of an 80-20 corporation for water's edge or other purposes?

[3] Does your state impose tax only on the income of the U.S. branch of a non-U.S. entity?

[4] Does your state impose income tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?

[5] If a foreign business does not file a federal return within a specified period of time after its due date (usually 18 months after the original due date), federal deductions are denied. Does the state follow a similar rule?

[6] Does your state impose franchise tax or other nonincome-based tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?

[7] AK: Tax is imposed if foreign entity has nexus.

[8] AK: Alaska has no position at this time.

[9] AK: Tax is imposed if foreign entity has nexus.

[10] AZ: Arizona starts with federal taxable income. Therefore, if a foreign entities federal taxable income is zero, then Arizona's starting point is zero. However, if the foreign company has nexus in Arizona, even if they have zero federal taxable income, they will still be required to file a return and pay the $50 minimum tax.

[11] CA: If taxpayers do not file a water's edge election, then all business income is apportionable. Under the water's-edge method, taxpayers determine their income derived from or attributable to California by including only the income and factors of specific affiliated entities. Rules determining what income is taxable in California are found under RTC §25110 and the regulations thereunder.

[12] CA: *Id.*

[13] CA: *Id.*

[14] CT: DRS has no published position.

[15] CT: *See* Conn. Gen. Stat. §12-216a and IP 2010(29.1).

[16] CT: *Id.*

[17] CT: DRS has no published position.

[18] CT: *See* Conn. Gen. Stat. §12-216a and IP 2010(29.1).

[19] FL: Florida starts with federal income.

[20] FL: *Id.*

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State[1]	Federal source rules for non-U.S. income of 80-20 corporation[2]	U.S. branch of non-U.S. entity[3]	Non-U.S. entity not subject to federal tax[4]	Federal deductions denied[5]	Franchise tax or other nonincome-based tax[6]
Georgia	No Response	No Response	No Response	No Response	No Response
Hawaii	No[21]	No[22]	Yes[23]	No	Yes
Idaho	No	No Response[24]	No Response[25]	No Response[26]	No Response[27]
Illinois	No Response[28]	No Response[29]	No Response[30]	No Response[31]	No Response[32]
Indiana	Yes	No	No	Yes	No
Iowa	Yes	Yes	No	Yes	No
Kansas	No Response	No Response	No Response	No Response	No Response
Kentucky	Yes	Yes	Yes	Yes[33]	Yes
Louisiana[34]	No Response	No Response	No Response	No Response	No Response
Maine	Yes	Yes	No	Yes	No
Maryland	No	Yes	No	Yes[35]	No
Massachusetts[36]	Yes	Depends	Depends	No	Yes

[21] HI: Section 18-235-38.5-02, Hawaii Administrative Rules.
[22] HI: Section 18-235-4-05(c) and 18-235-4-05(e), Hawaii Administrative Rules.
[23] HI: *Id.*
[24] ID: Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity that has a U.S. branch is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. If the foreign entity is transacting business within Idaho, it would be responsible for the Idaho tax on its share of the income apportioned to Idaho.
[25] ID: Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. However, if the foreign entity has no income connected to the United States and is simply filing a protective federal form 1120F, the protective 1120F would not be included within Idaho's Waters-edge combined report for a taxable year until such time as it is determined at the federal level that it had income connected to the United States for that taxable year.
[26] ID: The Tax Commission has made no ruling on this fact situation.
[27] ID: Idaho does have a franchise tax, the calculation of which is the same as it is under Idaho's income tax. The taxpayer would only be subject to the income tax or the franchise tax, not both. Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. However, if the foreign entity has no income connected to the United States and is simply filing a protective federal form 1120F, the protective 1120F would not be included within Idaho's Waters-edge combined report for a taxable year until such time as it is determined at the federal level that it had income connected to the United States for that taxable year.
[28] IL: The starting point in the computation of Illinois base income of a corporation is federal taxable income. Therefore, in general, items of income and deduction that are included in the computation of federal taxable income are included in the computation of Illinois base income, while items of income that are excluded in computing federal taxable income, or deductions that are denied in computing federal taxable income, are likewise excluded or denied in the computation of Illinois base income.
[29] IL: *Id.*
[30] IL: *Id.*
[31] IL: *Id.*
[32] IL: Questions regarding franchise tax should be addressed to the Illinois Secretary of State.
[33] KY: Federal taxable income is the starting point for computing Kentucky taxable income.
[34] LA: Other than specific modifications to federal income and deduction items (none specifically related to non-U.S. entities), Louisiana requires that the same items that are required/allowed in computing federal taxable income be used in determining net income. Louisiana net income is then determined by applying Louisiana's allocation and apportionment provisions.
[35] MD: Maryland follows the federal rules. If deductions are not allowed at the federal level, that will be reflected in the federal taxable income, which is the starting point for Maryland taxable income.
[36] MA: *See* TIR 10-16, 08-11; DD 01-8; LRs 00-5, 00-11; and Schedule U-M and Instructions.

State[1]	Federal source rules for non-U.S. income of 80-20 corporation[2]	U.S. branch of non-U.S. entity[3]	Non-U.S. entity not subject to federal tax[4]	Federal deductions denied[5]	Franchise tax or other nonincome-based tax[6]
Michigan	No	No	Yes	Yes[37]	No
Minnesota	No	No	**Yes**	Yes[38]	No
Mississippi	No Response	Yes	Yes	No[39]	Yes
Missouri	No	No	Yes	No[40]	Yes
Montana	Yes	Yes[41]	Yes	Depends	No Response
Nebraska	No Response	No Response	No	Yes	No
New Hampshire	No Response	No Response	No Response	No Response	No Response
New Jersey	No	**No**	Yes	No	Yes[42]
New Mexico	No	No	No	Yes	No
New York City	No Response	No Response	No Response	No	No Response
North Carolina	Yes	Yes	Yes	Yes	Yes[43]
North Dakota	No	No	Yes	No	No
Ohio[44]	No Response	No Response	No Response	No Response	No Response[45]
Oklahoma	No Response	No Response	No Response	No Response	No Response
Oregon	**No**	Yes	Yes	Yes[46]	No
Pennsylvania	No	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes[47]	Yes
Tennessee[48]	No	Yes	Yes	No	Yes
Texas	No Response	No Response	No Response	No Response	No Response

[37] MI: Federal taxable income is the starting point for determination of CIT liability.

[38] MN: Minn. Stat. Section 290.01, subd. 19 defines Minnesota net income as federal taxable income as defined in I.R.C. Section 63. Any federal deductions that are denied are reflected in federal taxable income and Minnesota net income. The denied federal deductions are not intended as a equivalent to a state penalty.

[39] MS: The State does not follow the federal rule in computing penalty. The penalty is calculated based on the state's net taxable income.

[40] MO: We would use the higher federal taxable income.

[41] MT: Tax would be imposed on entity with Montana activity — unitary group would include U.S. and non-U.S. entities.

[42] NJ: A non-US corporation doing business in New Jersey would be subject to the New Jersey Corporation Business Tax, which is a franchise tax based on income.

[43] NC: G.S. 105-114(b)(3) defines ''Doing business'' for franchise tax purposes as: ''[E]ach and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.''

[44] OH: These questions do not seem to be addressed toward a gross receipts tax. However, a foreign entity may be subject to CAT based on its taxable gross receipts.

[45] OH: The new financial institution tax will be imposed on a non-US financial institution with Ohio customers or loans secured with Ohio property.

[46] OR: Oregon doesn't have additional penalties specific to foreign business filing deadlines.

[47] RI: The higher federal income starting point serves as the equivalent of the state's penalty in addition to a late filing penalty and late payment penalty.

[48] TN: Tennessee has very few non-U.S. entities with franchise, excise tax nexus. Generally, Tennessee follows the ''water's edge'' approach when determining income subject to taxation. This usually means that the starting point is federal form 1120F income. Nonbusiness income would be determined by applying Tenn. R. & Regs. 1320-6-1-.23, Tenn. Code Ann. §67-4-2004(32), and 67-4-2011.

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State[1]	Federal source rules for non-U.S. income of 80-20 corporation[2]	U.S. branch of non-U.S. entity[3]	Non-U.S. entity not subject to federal tax[4]	Federal deductions denied[5]	Franchise tax or other nonincome-based tax[6]
Utah	No	No Response[49]	No[50]	Yes[51]	Yes[52]
Vermont	No Response	No	No	Yes[53]	No
Virginia	Not Applicable	No	No	Yes	No
West Virginia	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	No[54]	No[55]	Yes[56]	Yes[57]

[49] UT: Same as Federal, or, in other words, Utah has a starting point using Federal 1120, Line 28 as a starting point and makes additions and subtractions from there. Since there is no addition or subtraction relating to this area, Utah piggybacks federal laws and amounts with respect to the income of the U.S. Branch of a non-U.S. entity.

[50] UT: Unless the taxpayer made a worldwide filing election.

[51] UT: Utah uses Federal 1120 Line 28 or equivalent as a starting point by statute. If all expense lines are zero pursuant to I.R.C. provisions, then the expenses would not be allowable for Utah purposes either. However, Utah law does not expressly address this issue. Therefore, it is not considered a penalty but merely piggybacking on the equivalent of Federal Taxable Income from Federal 1120, Line 28, without the benefit of expenses incurred but not allowed.

[52] UT: This would be applicable where a worldwide combined election is made and the income and apportionment factors of foreign corporations are therefore included in the combination.

[53] VT: Higher federal income starting point serves as the equivalent of Vermont's penalty.

[54] WI: If the non-U.S. entity has U.S. source income taxable to Wisconsin, we will tax that income regardless if the income is from a U.S. branch of the entity or not.

[55] WI: If the non-U.S. entity is not subject to federal tax, they would not be subject to Wisconsin income or franchise tax because federal taxable income is the starting point for computing Wisconsin taxable income. However, they may be subject to the Wisconsin economic development surcharge even though they are not subject to Wisconsin income or franchise tax.

[56] WI: Yes, the higher federal income is the starting point; there is no separate penalty.

[57] WI: The entity may be subject to the Wisconsin economic development surcharge unless it is not organized under Wisconsin law and does not have any business activities in Wisconsin and it has gross receipts of less than $4 million.

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Sales Tax Policies

States Identify Sourcing Rules, Clarify Application To Various Interstate and Intrastate Transactions

Every state imposing sales and use taxes provides sourcing rules to identify the location of a sale and to determine which jurisdiction is entitled to the revenue generated from the transaction.

Yet, sourcing has become a complicated endeavor for taxpayers. Sourcing rules vary from state to state and may depend upon the object of the transaction. They may be further complicated by the type of transaction and mode of delivery.

When either the buyer or seller is located in a different state or local jurisdiction, sourcing rules impact the amount of tax ultimately collected by a state or local jurisdiction. Based on the increasing frequency of interstate transactions and aggressive enforcement tactics used by cash-strapped states, demand for state guidance on sourcing has never been higher.[1]

Destination-Based Sourcing, Origin-Based Sourcing

As a practical matter, sourcing rules generally attempt to incorporate the destination concept to impose the tax where the good or service is consumed. However, a state may choose to source sales on either a destination-basis or on an origin-basis, or even vary rules for interstate and intrastate transactions.

Under destination-based sourcing rules, the location where the consumer takes delivery of the tangible personal property is the place of the sale. The jurisdiction where delivery takes place is entitled to the tax revenue generated from the transaction.

Under origin-based sourcing rules, the location where the vendor receives the order for the good or service is the place of the sale. The jurisdiction where the order is received will collect the tax revenue on the sale.

Destination-based sourcing is often used for sales of tangible personal property as the final destination of a transferred good can usually be determined. Because the destination of a sale of services can be difficult to determine, some states use origin-based sourcing rules for these transactions.

Origin-based sourcing rules are easily enforced, but can lead to economic distortion as they often result in a destination state collecting little or no tax. For example, if a remote seller in state A sources all of its sales to state A where the order is received, then no tax will be collected in destination state B upon delivery.

[1] Sourcing rules for sales and use taxes are thoroughly discussed in 1270 T.M., Sales and Use Taxes: Streamlined Sales Tax System, at 1270.02.F.

Streamlined Approach to Sourcing

In an effort to rectify inconsistency, the Streamlined Sales and Use Tax Agreement requires member states to adopt standard sourcing rules.

Under the standard sourcing rules, retail sales of products, regardless of characterization as tangible personal property, digital goods, or services, are generally sourced on a destination-basis. Destination-based sourcing rules are also provided for leases and rentals, sales of advertising and promotional direct mail, and sales of telecommunication and related services.

However, member states with local jurisdictions may elect to use origin-based sourcing rules for intrastate retail sales of tangible personal property and digital goods, and intrastate direct mail sales.

Historically, the adoption of the uniform sourcing rules has been a sticking point for states to join the Agreement. Currently, 20 full member states have adopted the uniform sourcing rules, and four associate member states are working toward full compliance.

Cloudy Forecast for Sourcing Software

Rapid technological advancement has left taxpayers scrambling to determine the application of sourcing rules to sales of software delivered via a tangible medium versus electronic download, and, further, for amounts paid by customers to access software that is not actually delivered to the customer. Common examples of software access include web-based e-mail, broadband gaming, and legal or business research databases.

Many states' sales and use tax rules have yet to provide comprehensive guidance on the tax implications created by new technology. Software has been treated as tangible personal property based on its comparable ability to be physically perceived when transferred in a tangible medium. However, electronically delivered software does not share the same physical characteristics, regardless of the fact that its content and function may be identical.

Many states classify software as tangible personal property, regardless of the method of delivery. Alternatively, a number of states have focused on the delivery method to determine whether software is taxed as tangible personal property. Instead of squeezing software into the definition of tangible personal property or hinging taxability on the delivery method, states could specifically classify software transactions as taxable.

The differing approaches states take to classify software transactions further compounds the complexity and lack of uniformity for sourcing rules, which often

depend upon an item's status as taxable tangible personal property or the transaction itself as taxable.

Transactions in which businesses allow customers to remotely access and use software without delivering the software to the customer represent further advancement in technology. The recent release of new technology to support expanded cloud computing services indicates that businesses are continuing to move in the direction of using, or providing, cloud computing services, for which taxability and sourcing rules are extremely variable.

Some taxpayers maintain that a transaction in which customers pay to access software that is not actually delivered has an appearance and basic qualities that are usually attributable to a sale of services. However, depending upon the state, the transaction may actually be treated as a sale of tangible personal property, such as by being a license of prewritten software, as a sale of services, or even as a nontaxable transaction.

Varying state sourcing rules frequently provide that amounts paid by out-of-state customers to access software that is not physically delivered to the customer are sourced to:

- the location where the software is used;
- the location of the customer's billing address;
- the location of the server; or
- to another location, such as the retailer's place of business, as is the rule in Pennsylvania.

Sourcing rules for some states even use concepts that are usually applied in the income tax context, such as sourcing to the location where the customer is located under market-based sourcing, or that are applied to sales of taxable services.

Sourcing to the location of the seller is easier to determine and enforce for both sales of software and the service of providing access to software without delivery. However, some taxpayers argue that the transactions should be sourced to the location where the customer uses, consumes, or takes possession of the software. This approach, they say, is consistent with the consumption nature of the sales tax.

Emergence of Social Media Coupons Raises Issues of Taxable Value, Nexus

Transactions involving the redemption of deal-of-the-day vouchers and similar items issued by social media coupon companies, such as Groupon and LivingSocial, have raised a number of sales and use tax issues.

Deal-of-the-day vouchers do not neatly fit into the rules that states already have for traditional discounts, rebates, retailer coupons, and manufacturer coupons because the vouchers are issued by third-party marketing companies.

Few states have indicated whether sales tax applies to the full value of an item purchased using a third-party's e-coupon discount, or to the discounted value of the item. For example, if a customer purchases a coupon that allows her to purchase a basketball for $10 from a retailer, when that basketball is normally sold for $20, the question is whether the retailer should collect and remit sales tax on the $20 full value of the basketball, or the $10 discounted sales price.

So far, state guidance is limited to administrative publications issued by a handful of states. The states that have issued guidance are divided into two camps: those that impose tax on the full sales price, versus those that impose tax on the discounted sales price.

Additionally, nexus could arise as an issue for these companies. Some argue that an out-of-state, third-party social media company offering deal-of-the-day vouchers has substantial nexus with a state by having its coupons redeemed at in-state retailers and restaurants.

Bloomberg BNA Survey Clarifies State Positions on Sourcing

In light of the varying rules for sourcing that are currently in effect throughout the country, Bloomberg BNA asked the states to clarify their position with respect to specific types of transactions. State tax department personnel identified the sourcing rules in place for each state relating to interstate and intrastate sales of tangible personal property and services, as well as any impact that the method of delivery has for taxation of software as tangible personal property, and sourcing rules applied to amounts paid for access to software that is not physically delivered to the customer. The state responses are presented in the following charts.

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Sales Tax Nexus Policies: Nexus Enforcement Policies

State[1]	Nexus for entire year for trailing nexus[2]	Nexus for entire year plus additional year for trailing nexus[3]	Nexus for entire year plus more than an additional year for trailing nexus[4]	Trailing nexus depends on magnitude of activity[5]
Alabama	No Response	No Response	No Response	No Response
Arizona	Yes	No	No	No
Arkansas	Yes	Not Applicable	Not Applicable	Not Applicable
California	No Response[6]	No	No	No Response[7]
Colorado	Depends	Depends	Depends	Depends
Connecticut[8]	No Response	No Response	No Response	No Response
Delaware	No	No	No	No
District of Columbia	No	No	No	No[9]
Florida[10]	No	No	No	No
Georgia	Depends[11]	Depends[12]	Depends[13]	Yes[14]
Hawaii[15]	Depends	Depends	Depends	Depends
Idaho	No	No	No	No
Illinois[16]	No Response	No Response	No Response	No Response

[1] This chart is appearing for the first time in 2015. As a result, none of the responses are in bold.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] Your state would find taxable nexus for the entire taxable year (but no more), for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[3] Your state would find taxable nexus for the entire taxable year, plus an additional year (but no more), for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[4] Your state would find taxable nexus for the entire taxable year, plus more than an additional year, for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

[5] Do ''trailing nexus'' determinations depend on the magnitude of the nexus-creating activity (e.g., three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum supertanker)?

[6] CA: The trailing nexus period generally consists of the quarter in which the retailer ceases the activities that had caused it to be a ''retailer engaged in business'' in California, as well as the entire quarter that follows. Depending on the facts and circumstances specific to each retailer, the period of trailing nexus may be shorter or longer than the general ''quarter-plus-a-quarter'' approach.

[7] CA: *Id.*

[8] CT: DRS has no published position.

[9] DC: Under the D.C. Code, §47-2201(h)(2), ''Engaging in business in the District includes the selling, delivering, or furnishing in the District, or any activity in connection with those terms...Additionally, 'The having of any representative, agent, salesman, canvasser, or solicitor operating in the District for the purpose of making sales at retail. It does not matter what kind of vehicle these agents use in making the sales at retail..

[10] FL: Generally, nexus ceases at the time in which any connection or activity that created nexus ceases. Taxpayers registered with the Department must complete final coupon and request cancellation of sales tax number.

[11] GA: Georgia statutes and regulations do not expressly address trailing nexus. Whether [nexus would be found for the entire year, a year plus an additional year or more than an additional year for a corporation that stops a nexus-creating activity during the tax year] would depend on the specific facts of each case.

[12] GA: *Id.*

[13] GA: *Id.*

[14] GA: Georgia would apply a case-by-case analysis.

[15] HI: *See* Section 18-237-13, Hawaii Administrative Rules.

[16] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Nexus for entire year for trailing nexus[2]	Nexus for entire year plus additional year for trailing nexus[3]	Nexus for entire year plus more than an additional year for trailing nexus[4]	Trailing nexus depends on magnitude of activity[5]
Indiana	Yes	No[17]	No[18]	No[19]
Iowa	Yes	No	No	No
Kansas	Depends	Depends	Depends	Depends
Kentucky	Yes	No	No	No
Louisiana	Yes	No	No	No
Maine[20]	No	No	No	No
Massachusetts	Depends	Depends	Depends	No
Michigan	Yes[21]	No	No	No
Minnesota	Yes[22]	Yes[23]	No	No
Missouri	Yes	Yes[24]	Yes[25]	No
Nebraska	Yes	No	No	No
Nevada	No	No	No	No
New Jersey	No	No	No	No
New Mexico	Yes	Yes	No	No
New York	No	No	No	No
North Carolina[26]	No	No	No	No
North Dakota	No	Yes	No	No
Ohio[27]	No Response	No Response	No Response	No Response
Pennsylvania	No	No	No	No
Rhode Island[28]	Yes	No	No	No
South Dakota	Yes	No	No	No
Tennessee	Yes[29]	No	No	Not Applicable

[17] IN: Assumes a permanent cessation of activity.
[18] IN:*Id.*
[19] IN: *Id.*
[20] ME: A taxpayer with established nexus who then ceases all nexus-creating activities as of a certain date should inform Maine Revenue Services of this fact in writing and provide all relevant details. The date certain should correspond to the last day of a filing period (monthly, quarterly, etc.), depending on which filing period the taxpayer uses.
[21] MI: Generally, the remainder of month plus an additional 11 months. *See* RAB 1999-1.
[22] MN: Once nexus is created the taxpayer has nexus for 11 months.
[23] MN: *Id.*
[24] MO: Assuming registration not withdrawn with Department of Revenue.
[25] MO: *Id.*
[26] NC: Based on the corporation's nexus being created by one activity.
[27] OH: When an out-of-state seller no longer has nexus creating contacts, the out-of-state seller may cancel its registration and stop collecting and remitting use tax on its sales in this state. However, if the out-of-state seller reestablishes nexus by engaging in any nexus creating contacts within twelve months of its registration cancellation, the Department of Taxation will presume that the new contact remains part of a regular presence in this state. Thus, the out-of-state seller continued to have nexus during the interim period. The out-of-state seller will be required to reinstate its registration and pay tax on all its sales in this state during the interim period, and continue collecting tax on a prospective basis.
[28] RI: Not enough information provided to make a general answer. Each case would be looked at individually based on the type of business that operated in the state and any further activity that business may have in the state. If a business has extended warranties with customers after leaving RI and periodically services these warranties, this would constitute an ongoing nexus.
[29] TN: The corporation would be required to file returns until it properly terminated.

State[1]	Nexus for entire year for trailing nexus[2]	Nexus for entire year plus additional year for trailing nexus[3]	Nexus for entire year plus more than an additional year for trailing nexus[4]	Trailing nexus depends on magnitude of activity[5]
Texas[30]	No	No	No	No
Utah	Yes	No[31]	No[32]	No
Vermont	Yes	No Response	No Response	No Response
Virginia[33]	No	No	No	No
Washington	No	No	Yes	No
West Virginia	Yes	Yes	No	No
Wisconsin	Yes[34]	No	No	No
Wyoming[35]	No	No	No	No

[30] TX: An out-of-state seller ceases to be engaged in business in this state when the seller no longer has nexus with this state and no longer intends to engage in activities that would establish nexus with the state. For example, a seller who enters the state each year to participate in an annual trade show does not cease to be engaged in business in this state between one trade show and the next. In contrast, a seller who discontinues the product line that it marketed and sold in this state, and who does not anticipate entering the state to solicit new business, has ceased to be engaged in business in this state.

[31] UT: If the corporation stops activity after the period when nexus was created there would be nothing subject to tax in Utah.

[32] UT: *Id.*

[33] VA: PD 98-67

[34] WI: If nexus began partway through the year, nexus would be established from that point through the end of the seller's tax year. For a more detailed explanation please refer to Pub 228, page 4, Sellers at a ''One-Time'' Event in Wisconsin, http://www.revenue.wi.gov/pubs/pb228.pdf.

[35] WY: The Corporation's sales/use tax license can be terminated at any time the corporation ceases to have nexus activities in our state.

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Sales Tax Policies: Sourcing and Method of Delivery (Part 1 of 2)

State[1]	Interstate destination-based[2]	Intrastate destination-based[3]	Intrastate origin-based[4]	Interstate sourcing to location of repairs[5]	Intrastate sourcing to location of repairs[6]
Alabama	Yes	Yes	No	Yes	Yes
Arizona[7]	Yes[8]	No[9]	No Response[10]	Yes[11]	Yes[12]
Arkansas	Yes	Yes	No	Yes	Yes
California[13]	No	No	No	No	No
Colorado	Yes	Yes	No	No	No
Connecticut	No Response[14]	Not Applicable	Not Applicable	No Response[15]	Not Applicable
Delaware	**Yes**	**Yes**	**No**	**Yes**	**Yes**
District of Columbia	Yes	Not Applicable	Not Applicable	Yes[16]	Not Applicable
Florida	Yes	Yes	No	Yes	Yes
Georgia	Yes	Yes	No	Yes	Yes
Hawaii	**Yes**[17]	Yes	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in this portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] For interstate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?

[3] For intrastate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?

[4] For intrastate transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale?

[5] For interstate transactions, does your state source services, such as repairs, to the location where the repairs were made?

[6] For intrastate transactions, does your state source services, such as repairs, to the location where the repairs were made?

[7] AZ: Arizona's transaction privilege tax is imposed on the vendor. The vendor is subject to tax on the gross income of the business. All sales are subject to tax unless there is a specific deduction provided in the statute. Sales to nonresidents **of motor vehicles only** are not subject to tax if the vendor ships or delivers the **motor vehicle** to an out-of-state location. Sales to residents are subject to tax regardless of whether the vendor ships or delivers the **tangible personal property** to an out-of-state location.

[8] AZ: Yes, for state and county TPT purposes, if the vendor otherwise has sufficient nexus with the state. As explained in TPR 08-1, sourcing for state and county TPT purposes may vary from sourcing for city privilege tax purposes.

[9] AZ: Under the Model City Tax Code, AZ cities and towns have a three-pronged test of what constitutes an ''Out-of-City Sale.''

[10] AZ: If an order is received at a retail location of a vendor, the transaction would be sourced to the retail location.

[11] AZ: For prime contracting TPT, modification activities (which, before 1/1/15, include repairs to real property) are sourced to the location of the project.

[12] AZ: *Id.*

[13] CA: In all instances, the ''source'' is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

[14] CT: Sales of tangible personal property take place where transfer of title occurs.

[15] CT: Sales of services taxable where provided if the services are accepted or received in Connecticut for consumption or use in Connecticut. *See* Conn. Agencies Regs. § 12-407(2)(i)(DD)-1.

[16] DC: Labor outside the District on repairs made is exempt from the sales tax unless it is incidental to services performed in District.

[17] HI: If out-of-state seller has Hawaii nexus, sale is taxed if delivered to a Hawaii customer. If no nexus, customer is subject to Use Tax.

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State[1]	Interstate destination-based[2]	Intrastate destination-based[3]	Intrastate origin-based[4]	Interstate sourcing to location of repairs[5]	Intrastate sourcing to location of repairs[6]
Idaho	Yes	Not Applicable[18]	Not Applicable[19]	No Response[20]	Not Applicable[21]
Illinois[22]	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Not Applicable	Not Applicable	Yes	Not Applicable
Iowa	Yes	Yes	No	No	No
Kansas	Yes	Yes	No	No	Yes[23]
Kentucky	Yes	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Yes	Yes	No	Yes	Yes[24]
Maine	Yes[25]	Not Applicable	Not Applicable	No	Not Applicable
Massachusetts[26]	Yes	Not Applicable	Not Applicable	No	Not Applicable
Michigan	Yes	Not Applicable[27]	Not Applicable[28]	No Response[29]	Not Applicable[30]
Minnesota	Yes[31]	Yes	No	**Yes**	Depends
Missouri	Yes	No	Yes	Yes[32]	Yes[33]
Nebraska	Yes	Yes	No[34]	No[35]	No[36]
Nevada	Yes	Yes	No	Not Applicable[37]	Not Applicable[38]
New Jersey	Yes	Not Applicable	Not Applicable	No	Not Applicable
New Mexico	No	No	Yes	No	No
New York	Yes	Yes	No	No Response[39]	No Response[40]

[18] ID: The Idaho State Tax Commission does not administer any of the local option sales taxes.
[19] ID: *Id.*
[20] ID: Repair labor is not taxable. Idaho would tax the use of the parts in Idaho but gives reciprocity for taxes rightly paid to other states.
[21] ID: The Idaho State Tax Commission does not administer any of the local option sales taxes.
[22] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[23] KS: Yes, for tangible personal property.
[24] LA: This answer applies to repairs only, not other services.
[25] ME: Origin-based sourcing for FTD sales by florists.
[26] MA: *See* 830 CMR 63.38.1.
[27] MI: Michigan does not have local jurisdiction sales taxes.
[28] MI: *Id.*
[29] MI: Services are not subject to Michigan sales tax.
[30] MI: Michigan does not have local jurisdiction sales taxes.
[31] MN: Telefloral uses origin-based sourcing.
[32] MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.
[33] MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable. **Assuming no business location in Missouri that carries out repair services.**
[34] NE: origin sourcing used only for floral ''wire'' orders.''
[35] **NE: In general the sale is sourced to where the service is first used.**
[36] **NE: *Id.***
[37] NV: The State of Nevada does not tax services, so there are no statutes dealing with the sourcing of services.
[38] NV: *Id.*
[39] NY: If repair is made out of state, and repaired property is used in state by resident, use tax is due.
[40] NY: Generally, services are sourced where repair is made unless vendor delivers repaired property elsewhere.

State[1]	Interstate destination-based[2]	Intrastate destination-based[3]	Intrastate origin-based[4]	Interstate sourcing to location of repairs[5]	Intrastate sourcing to location of repairs[6]
North Carolina	Yes	Yes[41]	No[42]	No	No
North Dakota	Yes	Yes	No	Depends[43]	Depends[44]
Ohio	Yes	No	Yes	Yes[45]	Yes
Pennsylvania	Yes	No	Yes	No	No
Rhode Island	Yes	Not Applicable	Not Applicable	Yes	Not Applicable
South Dakota	Yes	Yes	No	No	No
Tennessee	No[46]	No[47]	No[48]	Yes[49]	Yes[50]
Texas	Yes	No	Yes[51]	No	**Depends**[52]
Utah	Yes	No	Yes	Yes	No Response[53]
Vermont	Yes	Yes	No	Yes[54]	Yes[55]
Virginia	Yes	No	Yes	Not Applicable	Not Applicable[56]

[41] NC: ''Other direct mail'' is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of business, when the use of this address does not constitute bad faith, or to the jurisdictions where the other direct mail is delivered if it is purchased pursuant to a direct pay permit.

[42] **NC: Unless G.S. 105-164.4G or G.S. 105-164.4I would require it.**

[43] ND: It would depend on whether the invoice is lump-sum billed or not. Under lump-sum bills, the tax is due by the repairer at the point of the repair regardless if it is an inter or intrastate transaction.

[44] ND: *Id.*

[45] OH: Services are sourced to the location where the consumer receives the service.

[46] TN: If the transfer of title or possession, or both, exchange, lease or rental of property takes place in Tennessee, a sale has occurred in Tennessee. *See* Tenn. Code Ann. §67-6-102(78)(A). Destination does not always determine sourcing. *See* Important Notice issued October 2001.

[47] TN: Generally, intrastate transaction receipts are sourced to the dealer's location from which sales are shipped or from which they are delivered. *See* Tenn. Comp. R. & Reg. 1320-5-2-.05.

[48] TN: *Id.*

[49] TN: *See LeTourneau Sales & Serv. Inc. v. Olsen*, 691 S.W.2d 531 (Tenn. 1985).

[50] TN: Answer assumes that the repair takes place at the dealer's location in Tennessee.

[51] TX: Texas uses origin sourcing for interstate sales of tangible personal property and most taxable services. Point of origin is seller's place of business where the order is received. A place of business is any location operated by the retailer for the purpose of receiving orders. Warehouses and distribution centers are considered places of business if they receive three or more orders within a calendar year.

[52] TX: Depends on the type of service. Texas uses origin sourcing for intrastate sales of tangible personal property and most taxable services. The following services are sourced as indicated:
Amusement Services — Local sales tax due based on where the performance or event occurs. §321.203(h)
Cable TV — Local taxes due based on where the customer receives the service. §321.203(j)
Landline Telecommunications Services — Local taxes on landline telecommunications services sold on a call-by-call basis are based on the location of the telephone or other device from which the call or other transmission originates. If the seller cannot determine where the telecommunication originates, collect local tax on the address to which the service is billed. §321.203(g-1) — (g-3)
Mobile Telecommunication Services — Local taxes on mobile telecommunications services (e.g., cell phones) are based on the place of primary use. §321.203(g) and §151.061
Natural Gas and Electricity — Local taxes based on where the customer receives the gas or electricity. §321.203(f)
Nonresidential Real Property Repair and Remodeling — Local taxes for labor and materials are based on the location of the job site. §321.203(n)
Waste Collection Services — Local taxes based on where the waste is collected. §321.203(k)

[53] UT: The seller may elect to determine the location of a sale, lease, or rental of a service if the seller makes any sale, lease, or rental of tangible personal property. If this provision is not met, the service is sourced where the service takes place.

[54] VT: Vermont does not subject repair services to the sales tax. However, materials for some services are subject to tax.

[55] VT: *Id.*

[56] **VA: Generally, Virginia does not tax the sale of services.**

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State[1]	Interstate destination-based[2]	Intrastate destination-based[3]	Intrastate origin-based[4]	Interstate sourcing to location of repairs[5]	Intrastate sourcing to location of repairs[6]
Washington	Yes	Yes	No[57]	**No Response**[58]	No[59]
West Virginia[60]	Yes	Yes	No	No	No
Wisconsin[61]	Yes	Yes	No	No[62]	No[63]
Wyoming[64]	Yes	Yes	No	**No**	**No**

[57] WA: Sales of motor vehicles, boats, trailers, and sales by qualified florists are excluded from destination sourcing and are sourced by on the location from which delivery is made to the customer.

[58] **WA: Retail service such as repairs are sourced to the location where the repaired item is delivered to the customer, if that is the same place as where the repairs occur, the sales are source to where the repairs are performed.**

[59] **WA: *Id.***

[60] WV: W.Va. Code § 11-15B-15.

[61] WI: Under Streamlined Sales Tax, Wisconsin adopted uniform sourcing rules in Sec. 77.522, Wis. Stats. (2011-12), which have a destination-based sourcing hierarchy. It only reverts to origination-based sourcing if the transaction does not fall under any other part of the sourcing hierarchy.

[62] WI: Generally, a service is sourced to location where buyer makes first use of the service, which for repair services will generally be the location where buyer regains possession of the repaired item. Exceptions may apply. Place of sale determined under sourcing hierarchy in Sec. 77.522, Wis. Stats. (2011-12).

[63] WI: *Id.*

[64] WY: Generally speaking the location where a customer receives or takes receipt of tangible personal property is the location where sales tax is sourced. **With regard to services the location where the customer receives the sourced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax.** However, our sourcing rules do provide for the sourcing of sales tax when it cannot be determined where the customer receives the property or service [W.S. 39-15-102(f)(i)].

Sales Tax Policies: Sourcing and Method of Delivery (Part 2 of 2)

State[1]	Interstate sourcing to where repaired item delivered[2]	Intrastate sourcing to where repaired item delivered[3]	Delivery method affects "TPP"[4]	In-state customers remotely accessing software on server[5]	Sourcing software[6]
Alabama	Yes	Yes	No	No	Not Applicable
Arizona	No Response[7]	No Response[8]	No	Yes	Where the software is used.
Arkansas	Yes	Yes	Yes	No Response	Where the software is used.
California[9]	No	No	Yes	No	If the software is accessed remotely and the customer does not receive any tangible personal property, it does NOT matter where the software is "sourced" as there is no taxable transaction.
Colorado	No	No	No	Yes	Where the software is used.
Connecticut	No Response[10]	Not Applicable	No Response[11]	No Response[12]	Where the software is used.
Delaware	**No**	**No**	**Yes**	**Yes**	**Location of the server**
District of Columbia	Yes	Yes	No	Yes	**No Response**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in this portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] For interstate transactions, does your state source services, such as repairs, to the location where the buyer regains possession of the repaired item?

[3] For intrastate transactions, does your state source services, such as repairs, to the location where the buyer regains possession of the repaired item?

[4] Does the method by which an item is delivered from a remote seller to a purchaser in your state affect whether the item is taxed as tangible personal property (e.g., canned software delivered on a DVD or CD ROM versus electronic download)?

[5] Are amounts paid by in-state customers to remotely access canned or prewritten software that is hosted on a server subject to sales or use tax in your state?

[6] Which method does your state use to source amounts paid for software that is accessed, but not delivered, to a customer in your state: (a) by the location of the server; (b) by the customer's billing address; (c) by where the software is used; (d) other?

[7] AZ: If a vendor is otherwise subject to TPT for gross receipts from repairs to personal property, repaired property delivered out of state for exclusive use out of state would sourced to the customer's location. Arizona's transaction privilege tax is imposed on the vendor. The vendor is subject to tax on the gross income of the business. All sales are subject to tax unless there is a specific deduction provided in statute. Sales to nonresidents are not subject to tax if the vendor ships or delivers the goods to an out-of-state location. Sales to residents are subject to tax regardless of whether the vendor ships or delivers the goods to an out-of-state location.

[8] AZ: If the vendor is subject to TPT on the gross receipts derived from such repairs to TPP, sourcing will be to the vendor's location. Arizona's transaction privilege tax is imposed on the vendor. The vendor is subject to tax on the gross income of the business. All sales are subject to tax unless there is a specific deduction provided in statute. Sales to nonresidents are not subject to tax if the vendor ships or delivers the goods to an out-of-state location. Sales to residents are subject to tax regardless of whether the vendor ships or delivers the goods to an out-of-state location.

[9] CA: In all instances, the "source" is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

[10] CT: Sales of services taxable where provided if the services are accepted or received in Connecticut for consumption or use in Connecticut. *See* Conn. Agencies Regs. § 12-407(2)(i)(DD)-1.

[11] CT: Yes, for canned software if delivered on a DVD or CD ROM, taxed as tangible personal property; if delivered via electronic download, taxed as computer service. *See* Policy Statement 2004(2) and Policy Statement 2006(8).

[12] CT: *See* Policy Statement 2004(2) and Policy Statement 2006(8).

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State[1]	Interstate sourcing to where repaired item delivered[2]	Intrastate sourcing to where repaired item delivered[3]	Delivery method affects "TPP"[4]	In-state customers remotely accessing software on server[5]	Sourcing software[6]
Florida	No Response[13]	No Response[14]	Yes	No[15]	Other[16]
Georgia	No	No	Yes	No	Not Applicable
Hawaii	Yes[17]	Yes[18]	No	Yes	Where the software is used.
Idaho	No Response[19]	Not Applicable[20]	**Yes**[21]	**No**	**Not Applicable**[22]
Illinois[23]	No Response	No Response	No Response	No Response	No Response
Indiana	No	Not Applicable	No	Yes	The transaction would be sourced first to where the tpp is used. If that information is not available, it would be sourced to where the customer was billed.
Iowa	Yes	Yes	Yes	No	Where the software is used.
Kansas	Yes	Yes	No	No	Other[24]
Kentucky	Not Applicable	Not Applicable	No	No	Do not currently tax.
Louisiana	No	No	No Response[25]	No Response[26]	No Response[27]
Maine	Yes	Not Applicable	No	No	Not Applicable
Massachusetts[28]	No	No	No	Depends	Other[29]
Michigan	No Response[30]	No Response[31]	No Response[32]	Yes[33]	Other[34]

[13] FL: When tangible personal property is shipped into Florida, repaired, and shipped back to the owner in another state by common carrier or mail, the amount charged for the repair is not subject to sales tax. If tangible personal property is sent out of Florida to be repaired in another state and returned, the transaction is subject to sales tax.
[14] FL: *Id.*
[15] FL: Charges to rent or use another person's server in Florida are taxable.
[16] FL: Software accessed or downloaded electronically is not subject to Florida sales and use tax.
[17] HI: This assumes that the buyer regains possession of the repaired item in the same place that the item will be used.
[18] HI: *Id.*
[19] ID: Repair labor is not taxable. Where the seller or its agent, common carrier, etc. delivers the goods to the buyer is the taxable point of sale.
[20] ID: The Idaho State Tax Commission does not administer any of the local option sales taxes in the state.
[21] **ID: Yes, a sale of canned software is taxable only if it is delivered on tangible storage media.**
[22] **ID: Charges for remotely accessed computer software are not taxable.**
[23] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[24] KS: Not taxable.
[25] LA: The Department has no position on this issue at this time.
[26] LA: *Id.*
[27] LA: *Id.*
[28] MA: *See* 830 CMR 63.38.1.
[29] MA: Canned software treated as TPP whether delivered on a tangible medium or otherwise. Sourced to Massachusetts if shipped to purchaser in Massachusetts — destination rule. Custom software — income-producing activity is deemed to be performed in MA to the extent by licensee in Massachusetts. *See* 830 CMR 63.38.1(9)(e).
[30] MI: Services are not subject to Michigan sales tax.
[31] MI: *Id.*
[32] MI: Sale of canned software is subject to tax regardless how it is delivered. Sale of digital goods (*e.g.*, digital books) is not subject to tax, though sale of tangible form of the same product (*e.g.*, physical copies of the same books) is subject to tax.
[33] MI: The specific facts of the situation would have to be assessed under RAB 1999-5.
[34] MI: The sale would be sourced to the purchaser's address available from the seller's business records, or if that address is not available, to an address for the purchaser obtained at the completion of the sale. *See* MCL 205.69(1)(c) — (d).

State[1]	Interstate sourcing to where repaired item delivered[2]	Intrastate sourcing to where repaired item delivered[3]	Delivery method affects "TPP"[4]	In-state customers remotely accessing software on server[5]	Sourcing software[6]
Minnesota	Yes	Yes	Depends[35]	**Depends**	Other[36]
Missouri	**No**[37]	**No**[38]	Yes[39]	**No**	Other[40]
Nebraska	Yes	Yes	No	No	**By the location of the server.**[41]
Nevada	Not Applicable[42]	Not Applicable[43]	Yes	No	Not Applicable[44]
New Jersey	Yes	Yes	No	No	No Response[45]
New Mexico	No	No	No	Yes	By the location of the server.
New York	Yes[46]	Yes[47]	No	Yes	Where the software is used.[48]
North Carolina	Yes	Yes	No	No	Not Applicable
North Dakota	Depends[49]	Depends[50]	No[51]	No[52]	By the location of the server.
Ohio	No	Yes[53]	No	Yes[54]	Where the software is used.
Pennsylvania	Yes	No	Yes[55]	Yes	By where the software is used.
Rhode Island	Yes	Yes	Yes[56]	No[57]	By the location of the server.[58]
South Dakota	Yes	Yes	No	Yes	We would look first to the location of the customer or where they take possession. If this is unknown, then we would look to the customer's billing address.

[35] MN: Prewritten software is always taxable regardless of method of delivery.
[36] MN: Remote access to software or software as a service is not taxable.
[37] MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.
[38] MO: *Id.*
[39] MO: *Id.*
[40] MO: *Id.*
[41] **NE: The sale of software is sourced to the location of the server. Charges for accessing remote software are not taxed.**
[42] NV: The State of Nevada does not tax services, so there are no statutes dealing with the sourcing of services.
[43] NV: *Id.*
[44] NV: The State does not tax any software that is delivered or accessed electronically.
[45] NJ: Sourced N.J.S.A. 54:32B-3.1.
[46] NY: Services are sourced to the point of delivery to the customer.
[47] NY: *Id.*
[48] NY: *See* Adobe Systems, Inc., TSB-A-08(62)S.
[49] ND: It would depend on whether the invoice is lump-sum billed or not. Under lump-sum bills, the tax is due by the repairer at the point of the repair regardless if it is an inter or intrastate transaction.
[50] ND: *Id.*
[51] ND: *Id.*
[52] ND: Software is always taxable as tangible physical property regardless [of] how it is transferred or purchased.
[53] OH: If picked up at the vendor's location.
[54] OH: Remote access of software is taxed as an automatic data processing service.
[55] PA: Except for canned software, an item must be delivered on a tangible medium for it to be taxable.
[56] RI: Prewritten computer software and prewritten computer software maintenance agreements (upgrades) delivered electronically are subject to tax effective 10/1/2011.
[57] RI: Amount paid to remotely access canned or prewritten software that is hosted on a server is not subject to tax provided there is no downloading of prewritten computer software.
[58] RI: Tax is sourced to the server location. If software is electronically delivered directly to a computer, it is sourced to the location the software is delivered to.

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State[1]	Interstate sourcing to where repaired item delivered[2]	Intrastate sourcing to where repaired item delivered[3]	Delivery method affects "TPP"[4]	In-state customers remotely accessing software on server[5]	Sourcing software[6]
Tennessee	No[59]	No	No	No[60]	By the location of the server.[61]
Texas	Yes	**Depends**[62]	No	Yes	Other[63]
Utah	Yes	No Response[64]	No	Yes	By the customer's billing address or where the software is used as provided by the lessee.
Vermont	No[65]	No[66]	No Response[67]	Yes	Where the software is used.
Virginia	Not Applicable[68]	Not Applicable[69]	Yes[70]	No	No Response[71]
Washington	Yes	Yes	No[72]	Yes[73]	**By where the software is used.**
West Virginia	Yes[74]	Yes[75]	No	No	By where the software is used.[76]

[59] TN: *See LeTourneau Sales & Serv. Inc. v. Olsen*, 691 S.W.2d 531 (Tenn. 1985). Answers assume that repair does not take place at the customer/buyer's location.

[60] TN: Because, there is no transfer of possession or control of the software.

[61] TN: Location of server where the software is being used by the seller, who pays the sales tax because he is the user and consumer of tangible personal property in his business of selling nontaxable services. Answer assumes that the canned or prewritten software was not purchased in Tennessee. If purchased in Tennessee, canned or prewritten software is subject to Tennessee sales tax. If placed on a server after it is was subjected to tax in Tennessee, the software would not be taxed again when accessed. *See* Tenn. Code Ann. §67-6-231.

[62] TX: Depends on the type of service. Texas uses origin sourcing for intrastate sales of tangible personal property and most taxable services. The following services are sourced as indicated:
Amusement Services — Local sales tax due based on where the performance or event occurs. §321.203(h)
Cable TV — Local taxes due based on where the customer receives the service. §321.203(j)
Landline Telecommunications Services — Local taxes on landline telecommunications services sold on a call-by-call basis are based on the location of the telephone or other device from which the call or other transmission originates. If the seller cannot determine where the telecommunication originates, collect local tax on the address to which the service is billed. §321.203(g-1) — (g-3)
Mobile Telecommunication Services — Local taxes on mobile telecommunications services (e.g., cell phones) are based on the place of primary use. §321.203(g) and §151.061
Natural Gas and Electricity — Local taxes based on where the customer receives the gas or electricity. §321.203(f)
Nonresidential Real Property Repair and Remodeling — Local taxes for labor and materials are based on the location of the job site. §321.203(n)
Waste Collection Services — Local taxes based on where the waste is collected. §321.203(k)

[63] TX: Texas taxes software **access** as a data processing service rather than the sale of software. Therefore, for intrastate sales, Texas local sales tax is based on the location of the service provider and Texas tax is presumed to be due if the seller and purchaser are both in Texas. A purchaser who will use the software both in and out of Texas may, in some circumstances, claim multi-state benefit and issue an exemption certificate to the seller; purchaser is then responsible for accruing tax on the portion used in Texas. For interstate sales where customer is located outside of Texas, Texas tax is not due if software will not be used in Texas.

[64] UT: The seller may elect to determine the location of a sale, lease, or rental of a service if the seller makes any sale, lease, or rental of tangible personal property. If this provision is not met, the service is sourced where the service takes place.

[65] VT: Vermont does not subject repair services to the sales tax. However, materials for some services are subject to tax.

[66] VT: *Id.*

[67] VT: Method of delivery does not affect taxability for digital downloads. Methods of delivery may affect taxability of other products such as photographs.

[68] **VA: Generally, Virginia does not tax the sale of services.**

[69] **VA: *Id.***

[70] VA: **The Department of Taxation** generally holds that transactions involving data accessed online are nontaxable service transactions (P.D. 97-405).

[71] VA: Not taxable.

[72] WA: Sales of prewritten computer software are treated as sales of tangible personal property and subject to sales tax whether delivered on tangible medium (CD or DVD) or delivered electronically. Other items are deemed "retail sales" of digital products, but may not be classified as tangible items (RCW 82.04.050).

[73] WA: Sales of prewritten computer software are treated as sales of tangible personal property and subject to sales tax whether delivered on tangible medium (CD or DVD) or downloaded. This answer may not apply to other "items."

[74] WV: W.Va. Code §11-15B-15.

[75] WV: *Id.*

[76] WV: W. Va. Code §11-15B-14(a)(3) would allow digital goods to be sourced to the state in which first use of the digital goods occurred.

State[1]	Interstate sourcing to where repaired item delivered[2]	Intrastate sourcing to where repaired item delivered[3]	Delivery method affects "TPP"[4]	In-state customers remotely accessing software on server[5]	Sourcing software[6]
Wisconsin	Yes[77]	Yes[78]	No[79]	No Response[80]	No Response[81]
Wyoming	**Yes**[82]	**Yes**[83]	No	No[84]	Depends[85]

[77] WI: Under Streamlined Sales Tax, Wisconsin adopted uniform sourcing rules in Sec. 77.522, Wis. Stats. (2011-12), which have a destination-based sourcing hierarchy. It only reverts to origination-based sourcing if the transaction does not fall under any other part of the sourcing hierarchy. Generally, a service is sourced to location where buyer makes first use of the service, which for repair services will generally be the location where buyer regains possession of the repaired item. Exceptions may apply. Place of sale determined under sourcing hierarchy in sec. 77.522, Wis. Stats. (2011-12).

[78] WI:*Id.*

[79] WI: Under Streamlined Sales Tax, Wisconsin adopted uniform sourcing rules in Sec. 77.522, Wis. Stats. (2011-12), which have a destination-based sourcing hierarchy. It only reverts to origination-based sourcing if the transaction does not fall under any other part of the sourcing hierarchy.

[80] WI: For prewritten software that is physically located outside of Wisconsin, the purchaser's use tax liability is incurred as of the time when the software is used by the purchaser or the purchaser's agent from a location in Wisconsin. Please refer to Answer #4 & #5 of the Frequently Asked Questions (FAQs) entitled Computer — Hardware, Software, Services; Sales occurring on and after October 1, 2009, found on the Department's web site at: www.revenue.wi.gov/faqs/pcs/computer.html.

[81] WI: For prewritten computer software, the method of delivery does not matter. By definition, prewritten computer software is tangible personal property regardless of the method in which it is delivered. However, for other items the method of delivery does make a difference. For example, music sold on a CD is taxed as tangible personal property, but music downloaded via the Internet is taxed as a specific digital good. Please refer to Frequently Asked Questions (FAQs) entitled Computer — Hardware, Software, Services; Sales occurring on and after October 1, 2009, found on the Department's website at: www.revenue.wi.gov/faqs/pcs/computer.html.

[82] WY: Generally speaking the location where a customer receives or takes receipt of tangible personal property is the location where sales tax is sourced. **With regard to services the location where the customer receives the sourced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax.** However, our sourcing rules do provide for the sourcing of sales tax when it cannot be determined where the customer receives the property or service [W.S. 39-15-102(f)(i)]

[83] WY: *Id.*

[84] WY: In order for a sale to occur, per Wyoming statute there must be an exchange of tangible personal property or taxable service for consideration [W.S. 39-15-101(a)(vii)]. According to the simple facts presented in this question, consideration is provided; however, the customer does not receive any property or service in exchange. As such, Wyoming does not consider this a sale and, therefore, does not impose sales tax on this transaction.

[85] WY: *Id.*

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Sales Tax Policies: Social Media Coupons

State[1]	Full value of item purchased[2]	Discounted value of item purchased[3]	Full value of item purchased if certificate only indicates full value[4]	Third-party social media company collects tax[5]
Alabama	No	Yes	Yes	No
Arizona	Yes	No	No	No
Arkansas	No	Yes[6]	No	No
California	No	Yes	No	No
Colorado	No	Yes	Not Applicable	Not Applicable
Connecticut[7]	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes
Florida	Yes	No	Yes	No[8]
Georgia[9]	No Response[10]	No Response[11]	No Response[12]	No
Hawaii	No	Yes	Yes	No
Idaho	No	**Yes**[13]	**No**[14]	No
Illinois[15]	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in this portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

Assumptions: Assume an out-of-state, third-party social media coupon company (e.g., Groupon or LivingSocial) issues coupons that allow consumers to purchase items at a retail store or restaurant in your state at a discount. For example, a coupon for a restaurant meal valued at $100 can be purchased for $50. Sales tax on the transaction is to be collected by the retailer or restaurant when the coupon is redeemed.

[2] At the time the item is purchased and the coupon is redeemed, your state requires the retailer or restaurant to collect and remit tax on the full value of the item purchased (*e.g.*, tax would be imposed on $100 even though the customer actually paid $50 as a result of the certificate).

[3] At the time the item is purchased and the coupon is redeemed, your state requires the retailer or restaurant to collect and remit tax on the discounted value of the item purchased (*e.g.*, tax would be imposed on $50 even though the full value of the meal was $100).

[4] At the time the item is purchased and the coupon is redeemed, your state requires the restaurant or retailer to collect and remit tax on the full value of the item purchased if the certificate only indicates the full value of the item purchased and the discounted price is not disclosed on the certificate.

[5] At the time the item is purchased and the coupon is redeemed, your state requires the out-of-state, third-party social media company (*e.g.*, Groupon or LivingSocial) to collect and remit tax on the amount it received for issuing the certificate because it achieved substantial nexus with your state by allowing coupons to be redeemed at in-state retailers and restaurants.

[6] AR: The amount subject to sales tax is the total gross receipts received by the merchant from all parties as a result of the sales transaction.

[7] CT: DRS has no published position.

[8] FL: The online voucher is treated the same as the purchase of a gift card in that the sale of the card itself is not taxable when acquired. However, when the voucher is redeemed, sales tax is based on the full retail sales price of merchandise acquired.

[9] GA: Georgia is performing a detailed review of the tax issues related to transactions involving the sale and use of coupons. Georgia recently completed a Streamlined Sales and Use Tax Best Practices matrix regarding the treatment of vouchers/coupons and will update that matrix as appropriate.

[10] GA: Under review.

[11] GA: *Id.*

[12] GA: *Id.*

[13] ID: The discounted price need not be disclosed on the certificate if there is readily obtainable and reliable evidence that the coupon in question was purchased at a reduced price. If unavailable or unreliable, the **full** coupon value is taxable.

[14] ID: *Id.*

[15] IL: We are currently examining this topic. *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Full value of item purchased[2]	Discounted value of item purchased[3]	Full value of item purchased if certificate only indicates full value[4]	Third-party social media company collects tax[5]
Indiana[16]	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa[17]	Yes	No	Yes	No
Kansas	Yes	No	No Response	No
Kentucky	No	Yes[18]	Yes	No
Louisiana	No Response[19]	No Response[20]	No Response[21]	No
Maine	No	Yes	No	No
Massachusetts[22]	No	Yes	Yes	No
Michigan	No[23]	Yes[24]	Yes[25]	No
Minnesota	No Response[26]	No Response[27]	Yes	No
Missouri	Yes	No	Yes	No
Nebraska[28]	Yes	No	No	No
Nevada	No	Yes	Yes	No
New Jersey	No	Yes	Yes	No
New Mexico	Yes	No	Yes	No
New York[29]	Yes	No	Yes	No
North Carolina	No[30]	Yes[31]	Yes[32]	No

[16] IN: The Indiana Department of Revenue has not finalized a position on this issue yet.

[17] IA: Sales tax will be collected at the restaurant when the purchaser redeems the certificate. If the discount certificate does not state on its surface how much was paid for it, sales tax will be collected on the full price — $100. However, if the discount certificate states on its face that the purchase price of the certificate was $50, then sales tax will be collected on the purchase price — $50. The amount that the retailer is reimbursed by the certificate seller is irrelevant for sales tax purposes.

[18] KY: Response assumes the discounted price paid by the customer is documented.

[19] LA: The initial sale of the discounted voucher is a nontaxable transaction for sales and use tax purposes. When a consumer redeems the voucher at the local business for a taxable product, the tax is due on the total price the customer paid for the voucher rather than the total value of the voucher if the voucher indicates the discounted price or if the local retailer knows and retains documentation of the discounted price. Otherwise, the tax is due on the total face value.

[20] LA: *Id.*

[21] LA: *Id.*

[22] MA: *See* DD 12-4.

[23] MI: Unless the retailer/restaurant cannot substantiate the actual amount of consideration paid for the certificate.

[24] MI: If the retailer/restaurant can substantiate the actual amount of consideration paid for the certificate.

[25] MI: Unless the retailer/restaurant can otherwise substantiate the actual amount of consideration paid for the certificate.

[26] MN: If the retailer knows the amount that the customer paid for the group discount voucher, then the amount the customer paid is subject to sales tax when the group discount voucher is redeemed. If the retailer doesn't know what the customer paid, then the face value of the group discount voucher is taxable when the voucher is redeemed.

[27] MN: *Id.*

[28] NE: Nebraska considers the item sold by the social media company to be a voucher/certificate; not a ''coupon.'' Nebraska considers the sale of the voucher/certificate by a third party and the sale of property or services by a retailer as two separate transactions; the ''Sale Price'' for each transaction is computed separately. The sale of the voucher/certificate by the third party is a nontaxable sale of an intangible. The transfer of property or services to a customer in exchange for ''consideration'' is a separate sale. The ''Sales Price'' for the second transaction includes the total amount of consideration, whether valued in money or otherwise. The voucher/certificate is a medium of payment and the face value of the voucher/certificate represents consideration of the retailer on the sale; regardless of the amount paid to a third party to acquire the voucher/certificate. Sales tax applies to the full selling price of the taxable property or services before the amount of the voucher/certificate is applied as a form of payment. Neb. Rev. Stat. §77-2701.35 — Sales Price, defined.

[29] NY: *See* TSB-M-11(16)S, Sales Tax Treatment Relating to the Sale and Redemption of Certain Prepaid Vouchers.

[30] NC: North Carolina's position is based on the Best Practices adopted by the Streamlined Sales Tax Governing Board.

[31] NC: *Id.*

[32] NC: *Id.*

State[1]	Full value of item purchased[2]	Discounted value of item purchased[3]	Full value of item purchased if certificate only indicates full value[4]	Third-party social media company collects tax[5]
North Dakota[33]	No Response	No Response	No Response	No Response
Ohio	Yes	Not Applicable	Not Applicable	No
Pennsylvania	Yes	No	Yes	No
Rhode Island	No[34]	Yes[35]	No	No
South Dakota	No	Yes	**Yes**	No
Tennessee	No[36]	Yes	No	No[37]
Texas	Depends[38]	Depends[39]	Depends[40]	No Response[41]
Utah	No	Yes	Yes	No
Vermont	Yes	No	Yes[42]	No
Virginia[43]	No Response	No Response	No Response	No Response
Washington	Depends[44]	Depends[45]	Yes	No
West Virginia	Yes	No	No	Yes
Wisconsin	No[46]	Yes[47]	Yes	No
Wyoming	No[48]	Yes[49]	Yes	No[50]

[33] ND: Questions 1 - 4 cannot be accurately responded to since it is unknown as to the conditions of the contract between the third-party social media company and the retailer. The specific contract conditions will affect the taxability of the different situations in questions 1 - 4.

[34] RI: Sales tax is due on the total consideration received by the restaurant (amount paid by the customer plus any third party consideration received from the third party).

[35] RI: *Id.*

[36] TN: The sales price does not include discounts, including cash, term or coupons that are not reimbursed by a third party but are allowed by a seller and taken by the purchaser on a sale. *See* Tenn. Code Ann. §67-6-102 (79)(B)(i).

[37] TN: The social media company is not selling tangible personal property.

[38] TX: Yes, if a sale is recorded in seller's books as a sale of $100. If the sale is recorded by the seller in their records at a discounted price, then the sales tax is based on the discounted price.

[39] TX: *Id.*

[40] TX: *Id.*

[41] TX: The third-party social media company is not engaged in business simply by allowing coupons to be redeemed at in-state sellers. They are engaged in business in Texas if they perform any activities identified in Tax Code 151.107 and 151.024. A third party social media company that has nexus is not required to collect tax on its sales of most deals (generally regarded as ''intangibles until redeemed''). However, third party company may be held responsible for tax collection on sales that constitute an admission to a taxable amusement service. Rule 3.298(a)(8) defines ''sale of an amusement service admission'' as: ''The transfer of title to, or possession of, a ticket or other admission document for consideration, or the collection of an admission, membership, or enrollment fee, whether by individual performance, subscription series, or membership privilege, or through the use of a coin-operated or credit-card-operated machine. The consideration paid may secure the admission privilege for an individual or a group of individuals . . .''

[42] VT: The answer is ''yes'' without regard to whether the discounted price is disclosed.

[43] VA: The Department has never ruled on the sales tax implications of purchasing social media coupons.

[44] WA: Sales tax is due on the amount actually paid by the consumer. If the coupon states the amount paid by the consumer, then that amount is subject to sales tax. Otherwise, tax is due on the total value of the coupon.

[45] WA: *Id.*

[46] WI: As long as retailer is aware that customer purchased coupon for $50.

[47] WI: *Id.*

[48] WY: Provided the price the customer paid for the coupon is disclosed on the certificate, sales tax would be collected on the discounted price. If the price the customer paid for the coupon is not disclosed on the face of the certificate, sales tax would be collected on the full value of the item purchased [W.S. 39-15-101(A)(viii)].

[49] WY: *Id.*

[50] WY: The sale of the coupon is not a taxable event in Wyoming **as** the purchaser is exchanging one form of currency for another (i.e., cash or cash equivalent for a certificate).

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Sales Tax Nexus

States Address Sales and Use Tax Nexus Issues, Conformity to Streamlined Sales and Use Tax Agreement

Sales and use taxes, a primary revenue source for many states, have become more difficult to comply with, and administer, as sales transactions have become more complicated and the Internet has made it easier for remote sellers to sell into a state without physical contact. Attempts to require remote sellers to collect sales or use tax are limited by the U.S. Constitution.[1]

Two of the most significant constitutional restrictions on a state's ability to compel an out-of-state seller to collect and remit use tax on its sales to in-state residents are the Due Process Clause of the 14th Amendment and the Commerce Clause. To avoid running afoul of each of these provisions, there must be a sufficient connection or ''nexus'' between the out-of-state taxpayer and the state seeking to tax the activities of that taxpayer.

Due Process, Commerce Clauses

In *National Bellas Hess Inc. v. Illinois Dept. of Rev.*, 386 U.S. 753 (1967), the U.S. Supreme Court examined the Due Process Clause to find that a mail-order vendor based in Missouri lacked the ''minimal connection'' required to support taxation in Illinois. This limitation on the imposition of sales or use tax collection requirements was upheld on Commerce Clause grounds in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In *Quill*, an Illinois-based office equipment and supply vendor solicited sales in North Dakota by catalog and telephone. North Dakota maintained that Quill had a statutory requirement to collect tax on its sales to North Dakota residents because the company ''engaged in the regular solicitation of sales'' by catalog or mail.

In upholding the statute's collection requirement, the North Dakota Supreme Court acknowledged that the statute was inconsistent with *Bellas Hess*. But the court reasoned that *Bellas Hess* should be disregarded because the ''tremendous social, economic, commercial, and legal innovations since 1967'' had rendered the decision an ''obsolescent precedent.'' Instead, the court applied an economic nexus test and ruled that Quill had sufficient nexus because North Dakota had created ''an economic climate that fosters demand for'' Quill's products, and maintained a legal infrastructure that protected that market.

[1] For a detailed discussion of this issue, *see* 1420 T.M., *Limitations on States' Jurisdiction to Impose Sales and Use Taxes*.

Physical Presence

However, the U.S. Supreme Court reversed, rejecting the state's economic nexus theory and reaffirming the traditional physical presence rule. The court contrasted the Due Process Clause's emphasis on fundamental fairness and notice to the individual defendant with the Commerce Clause's safeguards against over encroaching state regulation on interstate commerce and concluded that the nexus requirements of each clause ''are not identical.''

The court explained that contacts that may satisfy Due Process may nevertheless be insufficient to meet Commerce Clause standards. Based on this analytical distinction, the court concluded that Quill's contacts satisfied the Due Process ''minimum contacts'' nexus test, but failed to constitute ''substantial nexus'' as required by the Commerce Clause. The court then defined ''substantial nexus'' in terms of physical contacts. Under this rule, some direct in-state presence (either through employees, an in-state office, or place of business) creates the nexus that triggers the imposition of sales or use tax collection requirements.

Streamlined Sales Tax Initiative

Recognizing their lack of authority to require remote sellers to collect sales tax, many states are developing and participating in a streamlined sales tax system. Under the system, a remote seller volunteers to pay sales tax in return for participating in a sales tax regime with uniform provisions aimed at easing compliance. These provisions are codified in the Streamlined Sales and Use Tax Agreement (SSUTA), which has been adopted in whole or in part by many states.

However, the streamlined sales tax initiative is still a work in progress. Many states have not adopted any of the SSUTA's provisions. Some of the states that are participating in the initiative have not adopted key components of the agreement such as uniform sourcing provisions.

Bloomberg BNA Survey Identifies Nexus Creating Activities

We asked the states whether an out-of-state corporation's performance of certain activities within their borders would create substantial nexus for purposes of triggering the imposition of sales or use tax collection requirements on the corporation. The states were spe-

cifically asked to address matters such as occasional in-state employee visits, trade show nexus, and Internet sales.

The states were also asked whether a variety of activities performed by services providers, or related to cloud computing, would cause an out-of-state corporation to have substantial nexus for sales and use tax purposes.

With respect to cloud computing, we asked the states to identify whether certain activities would create nexus for an out-of-state corporation that charges fees to an in-state customer for the right to access non-downloadable prewritten software or information on the corporation's website.

Registering With State Agencies

This year, we asked new questions regarding the sales tax nexus implications of registering with, or seeking licenses from, state agencies or departments for various purposes. We asked whether registering with the Secretary of State to transact business would trigger nexus, as well as whether more specific registrations, such as for payroll or workers' compensation purposes, would create sales tax collection responsibilities.

Drop Shipments

We also asked new questions to clarify states' treatment of drop shipment transactions, in which a distributor or common carrier delivers goods to in-state customers on behalf of an out-of-state retailer or manufacturer. Our questions seek to clarify this area by including various scenarios depending on whether the distributor has nexus with the state, and on which party holds title to the goods at the time of delivery.

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Nexus-Creating Activities: Sales and Use Tax — General Activities

State[1]	Reimbursements for in-home office[2]	Maintains bank account[3]	Maintains a P.O. box[4]	Local telephone books[5]	Local phone numbers[6]	800 phone numbers[7]
Alabama	**Yes**	**No**	**Yes**	**No**	**No**	**No**
Arizona	No	No	No	No	No	No
Arkansas	Yes	No	No	No	No	No
California	Yes	No	Yes[8]	No	No	No
Colorado	No	No	Yes[9]	No	Yes	No
Connecticut[10]	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	No	Yes	No
Florida[11]	Yes	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	No	Depends	Yes	Depends	Depends
Hawaii	Yes	No	Yes	Yes	Yes	No
Idaho	Yes	No Response[12]	No Response[13]	No Response[14]	No Response[15]	No
Illinois[16]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	No
Kansas	Yes	No	No	No	No	No
Kentucky	Yes	No	No	No	No	No
Louisiana	Yes	No	No	No	No	No
Maine	Yes	No	No	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.
[2] The corporation reimburses its in-state salespersons for the costs of maintaining an in-home office.
[3] The corporation maintains a bank account in your state.
[4] The corporation maintains a post office box in your state.
[5] The corporation is listed in the local telephone books of cities in your state.
[6] The corporation uses local phone numbers in your state, which are forwarded to its headquarters in another state.
[7] The corporation makes sales to customers in your state by means of an 800 telephone order number and advertises in your state.
[8] CA: This assumes that the post office box is used for some type of selling activity such as receiving orders and that an in-state employee or representative processes the orders received in the post office box. The mere maintenance of a post office box, with no connection to any selling activity, would not create nexus.
[9] CO: Yes, if the P.O. box is advertised as receiving orders.
[10] CT: DRS has no published position.
[11] FL: Nexus is considered on a case-by-case basis.
[12] ID: The Tax Commission has made no rulings on these fact situations.
[13] ID: *Id.*
[14] ID: *Id.*
[15] ID: *Id.*
[16] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Reimbursements for in-home office[2]	Maintains bank account[3]	Maintains a P.O. box[4]	Local telephone books[5]	Local phone numbers[6]	800 phone numbers[7]
Massachusetts	No	Yes	No Response	No	No	No
Michigan	Yes[17]	No	No Response[18]	No	No	No
Minnesota	Yes	No	Depends	Depends	No	No
Missouri	Yes	No	Yes	Yes	Yes	Yes
Nebraska	Yes	No	**Yes**	No	No	No[19]
Nevada	Yes[20]	Yes[21]	Yes[22]	Yes[23]	Yes[24]	No
New Jersey	Yes	No	Yes	No	No	No
New Mexico	No Response	No Response	No Response	No Response	No Response	No Response
New York	Yes	No	Yes[25]	No	No	No
North Carolina	Yes	No	Yes	No Response[26]	No	No
North Dakota	Yes	No	Yes	No	Yes	Yes
Ohio	Yes	No	No	No	No	No
Pennsylvania	Yes	No	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	Yes[27]	Yes[28]	Yes
South Carolina[29]	No Response	No Response	No Response	No Response	No Response	No Response
South Dakota	Yes	No	Yes	Yes	Yes	Yes
Tennessee	Yes[30]	No	No[31]	No	No	No
Texas	No[32]	No	No	No	No	No[33]
Utah	Yes	No	No	No	No	No
Vermont[34]	Yes	No	No	No	No	No

[17] MI: RAB 1999-1 provides standard for determining nexus, including representational nexus; *see* Sec. I(1), (3), and (5) of ''Conclusions.''
[18] MI: RAB 1999-1 provides nexus standards; *see* Sec. I(2).
[19] NE: If the corporation utilizes a telemarketing service located in Nebraska to solicit sales through an 800 number, then nexus is established.
[20] NV: The answer is ''yes'' provided the corporation has a presence in Nevada for the purpose of creating and/or maintaining a market in Nevada and benefits from services that are paid for with tax dollars.
[21] NV: *Id.*
[22] NV: *Id.*
[23] NV: *Id.*
[24] NV: *Id.*
[25] NY: *See* Regulations Section 526.10(a)(4)(i)(''e'').
[26] NC: *See* G.S. 105-164.8(b)(3).
[27] RI: The regular or systematic solicitation of sales of tangible personal property by means of public conveyance.
[28] RI: *Id.*
[29] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[30] TN: The presence of in-state salespersons creates nexus.
[31] TN: Activities in connection with the in-state post office box may create nexus.
[32] TX: The reimbursements to a salesperson do not create nexus; however, the in-state salesperson does create nexus. Response assumes no in-state sales made by corporation at all. Having a salesperson in this state creates nexus.
[33] TX: Answer assumes that the call center handling the 1-800 calls is not located in Texas.
[34] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

State[1]	Reimbursements for in-home office[2]	Maintains bank account[3]	Maintains a P.O. box[4]	Local telephone books[5]	Local phone numbers[6]	800 phone numbers[7]
Virginia	Yes[35]	No	No	No	No	No[36]
Washington	Yes	No	No	No	No	No
West Virginia	Yes	No	No	No	No	No
Wisconsin	Yes	No	No	No	No	No
Wyoming[37]	Yes[38]	No	No	No[39]	No	No[40]

[35] VA: The fact that the company has in-state salespersons is sufficient, regardless of whether it provides reimbursement for an in-home office.

[36] VA: Advertising in newspapers or other periodicals published and printed in Virginia, on billboards or posters in Virginia, or through materials distributed in Virginia by means other than U.S. mail would confer nexus.

[37] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[38] WY: If the home office is for a salesperson(s) performing services and/or sales in this state, nexus is created.

[39] WY: If the telephone listing is only a contact listing and not an advertisement, nexus is not created.

[40] WY: Advertising alone does not establish nexus.

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Nexus-Creating Activities: Sales and Use Tax — Remote Sales

State[1]	Employees visit[2]	Agents sell property[3]	Install or deliver property[4]	Provide customer assistance[5]	Deliver merchandise[6]	Deliver in returnable containers[7]	Third-party distributor[8]	In-state phones or kiosks[9]
Alabama[10]	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**No**	**Yes**	**Yes**
Arizona	Yes[11]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes[12]	Yes	Yes[13]	Yes[14]	Yes	No[15]	No[16]	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Connecticut	No Response[17]	Yes	No Response[18]	No Response[19]	No Response[20]	No Response[21]	No Response[22]	No Response[23]
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida[24]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit your state four or more times during the year.

[3] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and authorizes an employee or third party (*e.g.*, sales representative, independent contractor, or affiliated company) to solicit sales in the state.

[4] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and authorizes an employee or third party (*e.g.*, independent contractor, affiliated company, or other representative) to install, deliver, service, or repair merchandise in your state.

[5] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and uses an employee or third party (*e.g.*, independent contractor, affiliated company, or other representative) to investigate, handle, or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in your state.

[6] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in your state in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.

[7] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in your state in returnable containers.

[8] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its products for distribution to a third-party distributor located in the state that performs functions such as labeling, packaging, and shipping.

[9] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone or Internet kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.

[10] **AL: Kiosk is physically located in state.**

[11] AZ: Depends on what the employee is doing in this state and we assume the visit is related to a business purpose.

[12] **CA: Yes, if the employee is engaged in activity significantly associated with the taxpayer's ability to establish or maintain a market in [the] state for the sales.**

[13] CA: Delivery by a common carrier and repair or warranty service by in-state representatives do not create nexus, but delivery or installation by in-state representatives does create nexus.

[14] CA: Yes, if the activity would promote sales and is not associated with repair or warranty service.

[15] CA: This assumes that the delivery is not done by company-owned vehicles or by means other than common carrier.

[16] CA: This assumes in-state distributor does not act as a distribution center by storing the retailer's products and that it does not act as a representative for the purpose of selling or delivering the property.

[17] CT: DRS has no published position.

[18] CT: *Id.*

[19] CT: *Id.*

[20] CT: *Id.*

[21] CT: *Id.*

[22] CT: *Id.*

[23] CT: *Id.*

[24] FL: Nexus is considered on a case-by-case basis.

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State[1]	Employees visit[2]	Agents sell property[3]	Install or deliver property[4]	Provide customer assistance[5]	Deliver merchandise[6]	Deliver in returnable containers[7]	Third-party distributor[8]	In-state phones or kiosks[9]
Hawaii[25]	Yes	Yes	Yes	Yes	Yes	Yes[26]	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	No Response[27]	No Response[28]	No Response[29]
Illinois[30]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Depends	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Maine	Yes[31]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	No	Yes	No Response	Yes	No Response	No	Yes	No Response
Michigan	Yes	Yes[32]	Yes	Yes	Yes	Yes[33]	No Response[34]	Yes
Minnesota	Yes	**No Response**[35]	**No Response**[36]	**No Response**[37]	**No Response**[38]	**No Response**[39]	**No Response**[40]	**No Response**[41]
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes[42]	Yes	Yes[43]	Yes[44]	Yes	Yes	Yes[45]	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	No	**Yes**[46]	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes	Depends[47]	Depends[48]	No Response[49]	**Yes**

[25] HI: All activities that were marked ''Yes'' may be subject to the State of Hawaii's General Excise/Use Tax.
[26] HI: Merchandise delivered to customers in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.
[27] ID: The Tax Commission has made no ruling on this fact situation.
[28] ID: *Id.*
[29] ID: *Id.*
[30] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[31] ME: Could be ''No'' if visits are limited to certain protected activities.
[32] MI: Assumes regular and systematic physical presence in Michigan by the employee or third party.
[33] MI: Assumes delivery by seller in vehicles seller owns, rents, leases, uses or maintains (or delivery by a related party acting as a representative of the seller).
[34] MI: Depends on the nature of the third party's activities; *see* RAB 1999-1 for nexus standards.
[35] MN: Will create nexus if more than 3 days in a 12-month period is spent doing business in the state for the corporation.
[36] MN: *Id.*
[37] MN: *Id.*
[38] MN: *Id.*
[39] MN: *Id.*
[40] MN: *Id.*
[41] MN: *Id.*
[42] NV: The answer is ''yes'' provided the corporation has a presence in this state for the purpose of creating and/or maintaining a market and benefits from services paid for with tax dollars.
[43] NV: *Id.*
[44] NV: *Id.*
[45] NV: *Id.*
[46] **NJ: Presumes that the out-of-State corporation maintains ownership of the tangible personal property when the services are performed.**
[47] NY: Depends whether in-state delivery constitutes regular or systematic delivery in accordance with Tax Law Section 1101(b)(8)(D) and Regulations Section 526.10(a)(5).
[48] NY: *Id.*
[49] NY: If this is a fulfillment service only, answer would be ''no.''

State[1]	Employees visit[2]	Agents sell property[3]	Install or deliver property[4]	Provide customer assistance[5]	Deliver merchandise[6]	Deliver in returnable containers[7]	Third-party distributor[8]	In-state phones or kiosks[9]
North Carolina	Yes	Yes	Yes	Yes	Yes	No Response[50]	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Ohio	Yes[51]	Yes	Yes	Yes	Yes	Yes[52]	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	No[53]	Yes
South Carolina[54]	Yes	Yes	Yes	Yes	Yes	No Response	No Response	No Response
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes	Yes	Yes	No[55]	No[56]	Yes
Texas	Yes	Yes	Yes	Yes	Yes	No[57]	No[58]	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont[59]	No	No	Yes	Yes	No	No	No	Yes
Virginia	**No**[60]	Yes	No[61]	No[62]	Yes[63]	No	No[64]	No
Washington	Yes	Yes	Yes	Yes	Yes[65]	**No**	**No**[66]	Yes
West Virginia	Yes	Yes[67]	Yes[68]	Yes	Yes	Yes[69]	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes	Yes[70]	Yes
Wyoming[71]	Yes	Yes	Yes	Yes	Yes	No[72]	No	Yes[73]

[50] NC: If there are any deliveries of items in returnable containers made on the vendor's own trucks in this State, then Yes. The fact that a returnable container is used is immaterial. If all deliveries of items in a returnable container are made solely and exclusively via common carriers or U.S. Postal Service, then No.

[51] OH: Nexus is created if the representative or containers are in Ohio for more than 7 days in a calendar year and the seller has more than $25,000 in Ohio sales in a calendar year.

[52] OH: *Id.*

[53] RI: If third-party distributor is located in Rhode Island, this would create nexus.

[54] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.

[55] TN: Answer assumes that delivery is by common carrier.

[56] TN: Answer assumes no inventory is maintained in Tennessee.

[57] TX: Assumes that delivery is made by third party or common carrier. Delivery made in company-owned or personal vehicle will create nexus as indicated in question [regarding delivery of merchandise to customers in state in company-owned vehicles or by means other than common carrier or U.S. Postal Service].

[58] TX: Answer assumes that items enter Texas from out of state and are not stored in Texas other than as needed during course of interstate transit. Use of a storage facility in this state causes a person to be engaged in business in Texas.

[59] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[60] **VA: Unless the employee is soliciting sales in Virginia during these visits. The visit, by itself, is not sufficient to confer nexus.**

[61] VA: P.D. No. 97-266, 99-94, 01-115.

[62] VA: P.D. No. 04-173, 99-81, 04-38.

[63] VA: Va. Code Ann. §58.1-612(C)(4).

[64] VA: Unless an agency relationship exists between the retailer and the distributor or the distributor and retailer are part of a commonly controlled group. PD 13-166.

[65] WA: Regular delivery in vehicles of the seller can establish nexus.

[66] WA: Establishes local stock of goods and therefore nexus.

[67] WV: West Virginia Legislative Rule 110CSR15-60.1.

[68] WV: *Id.*

[69] WV: West Virginia Legislative Rule 110CSR15-32.3.1.

[70] WI: Exception for certain activities by foreign publishers. *See* sec. Tax 11.97(5), Wis. Adm. Code (August 2012 Register), at http://docs.legis.wisconsin.gov/code/admin_code/tax/11.pdf.

[71] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[72] WY: Regardless to returnable containers, deliveries made in this state by common carriers do not create nexus; however, deliveries in a company vehicle do create nexus.

[73] WY: Assets of a company located in Wyoming create a physical presence/nexus.

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Nexus-Creating Activities: Sales and Use Tax — Temporary or Sporadic Presence

State[1]	Attend trade show[2]	Make sales at trade show[3]	One to five days at trade show[4]	Sales while in state temporarily[5]	Employees meet with suppliers[6]	One-day seminars[7]	Seminars and employee visits[8]
Alabama[9]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Arizona	No	Yes	Yes	Yes	Yes[10]	No	No
Arkansas	No	Yes	No	Yes	Yes	No	Yes
California	No[11]	No[12]	No[13]	Yes	No	Yes	Yes
Colorado	No	Yes	Yes	Yes	No	Yes	Yes
Connecticut	No Response[14]	No Response[15]	No Response[16]	No Response[17]	No Response[18]	No Response[19]	No Response[20]
District of Columbia[21]	No	Yes	Yes	Yes	Yes	Yes	Yes
Florida[22]	No Response	No Response	No Response	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes no sales and takes no orders at the trade show.

[3] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes sales and/or accepts orders at the trade show.

[4] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and limits trade show activities in the state to one to five days annually.

[5] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and sells tangible personal property while temporarily located in your state for up to three days.

[6] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and has employees or representatives occasionally enter the state to meet with in-state suppliers of goods or services.

[7] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to state residents and holds two or more one-day seminars in the state.

[8] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to state residents, holds two or more one-day seminars in the state, and has its employees visit the state five times during the year.

[9] **AL: There is not an established threshold for a minimum number of contacts that can be made by an out-of-state seller before the seller would have sufficient nexus to require the seller to collect tax. The determination is made on a case-by-case basis.**

[10] AZ: Depends on what the employee is doing in this state and we assume the visit is related to a business purpose.

[11] CA: Retailers at trade shows must collect and remit tax on sales they make on orders taken at trade shows. Retailers with trade show activities of 15 days or less in any 12-month period and no more than $100,000 in net income in the prior calendar year from trade show activities are not engaged in business in this state.

[12] CA: *Id.*

[13] CA: *Id.*

[14] CT: *See* Conn. Gen. Stat. §12-407(a)(15)(D).

[15] CT: DRS has no published position.

[16] CT: *Id.*

[17] CT: *Id.*

[18] CT: *Id.*

[19] CT: *Id.*

[20] CT: *Id.*

[21] DC: Pertaining to statements regarding one to five days or fewer employees or number of sales, the District has not established a de minimis amount or number.

[22] FL: Nexus is considered on a case-by-case basis.

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State[1]	Attend trade show[2]	Make sales at trade show[3]	One to five days at trade show[4]	Sales while in state temporarily[5]	Employees meet with suppliers[6]	One-day seminars[7]	Seminars and employee visits[8]
Georgia	Depends[23]	Depends[24]	Depends[25]	Yes	Yes	Yes	Yes
Hawaii[26]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No	Yes	No Response[27]	Yes	No Response[28]	No Response	Yes
Illinois[29]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	Yes	Yes	No	No	No
Iowa	Yes[30]	Yes[31]	Yes[32]	Yes[33]	Yes[34]	Yes	Yes
Kansas	No	Yes	No	Yes	Yes	Yes	Yes
Kentucky	No	Yes	Depends	Yes	No[35]	Yes[36]	Yes[37]
Louisiana	Yes	Yes	Yes	Yes	No	Yes	Yes
Maine	No	Yes	Yes[38]	Yes	Yes	Yes	Yes[39]
Massachusetts	No	Depends	Depends	Depends	No	No	Yes
Michigan	No[40]	Yes	No[41]	Yes	No	Yes[42]	Yes[43]
Minnesota[44]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Missouri	No	Yes	No	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[23] GA: Soliciting business generally constitutes nexus, but there is an exception if the only activity is ''[t]o engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer's sole physical presence in this state and the dealer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than $100,000.00 of net income from those activities in this state during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for the collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.'' O.C.G.A. 48-8-2(8)(I)(iii).

[24] GA: *Id.*

[25] GA: *Id.*

[26] HI: All activities that were marked ''Yes'' may be subject to the State of Hawaii's General Excise/Use Tax.

[27] ID: There is not enough information to answer this question. It would depend on the circumstances.

[28] ID: This depends on the nature and frequency of the visits. There is no specific answer to this question.

[29] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

[30] IA: Nexus occurs if the company regularly attends the trade show, even if the trade show is only annually.

[31] IA: *Id.*

[32] IA: *Id.*

[33] IA: If regularly sells at temporary locations, then nexus has occurred and a temporary sales tax permit is required.

[34] IA: If on a regular basis. Regular may be once per year.

[35] KY: No, as long as reps or employees entering the state are not sales agents soliciting sales, but their only contact is with supply vendors from whom they purchase materials. Also, the frequency of these visits could result in a different response.

[36] KY: The presumption is that seminars and visits are sales related.

[37] KY: *Id.*

[38] ME: See responses to previous questions regarding trade shows. The number of days is irrelevant.

[39] ME: Could be ''No'' if visits are limited to certain protected activities.

[40] MI: Attends/participates for less than 10 days cumulatively on an annual basis.

[41] MI: If no sales are made or orders taken.

[42] MI: *See* RAB 1999-1, Sec. I(1) of ''Conclusions.''

[43] MI: *Id.*

[44] MN: Will create nexus if they spend more than 3 days total within a 12-month period in the state for any combination of activities. Any sales made in Minnesota (product given to buyer) will be subject to MN tax whether or not the corporation has created nexus.

State[1]	Attend trade show[2]	Make sales at trade show[3]	One to five days at trade show[4]	Sales while in state temporarily[5]	Employees meet with suppliers[6]	One-day seminars[7]	Seminars and employee visits[8]
Nevada	Yes[45]	Yes[46]	Yes[47]	Yes[48]	Yes[49]	Yes[50]	Yes[51]
New Jersey	Yes	Yes	Yes	Yes	No	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes	Yes
New York[52]	No Response	No Response	No Response	Yes	**No Response**	No Response	**No Response**
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ohio	No[53]	Yes[54]	Yes[55]	Yes	No[56]	Yes[57]	Yes[58]
Pennsylvania	Yes[59]	Yes	Yes[60]	Yes	Yes	Yes	Yes
Rhode Island	Yes[61]	Yes	Yes	Yes	No	Yes	Yes
South Carolina[62]	No Response	No Response	No Response	No Response[63]	Depends	No Response	No Response
South Dakota	No[64]	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	Yes[65]	Yes[66]	No	No[67]	Yes[68]
Texas	Yes	Yes	Yes	Yes	No	Yes	Yes
Utah	No	Yes	Yes	Yes	Yes	Yes	Yes

[45] NV: Yes, if facts indicate that attendance at the trade show is for the purpose of creating and/or maintaining a market in Nevada.
[46] NV: *Id.*
[47] NV: *Id.*
[48] NV: Yes, sales at ''one-time events'' are monitored by the Department of Taxation through the promoters of events who are required to provide the Department with a list of participants prior to the event. The promoter is also responsible for informing the participants of their Nevada sales tax liability for sales made at the event and for reporting and payment of the taxes collected at the event.
[49] NV: The answer is ''yes'' provided the facts indicate that the presence in Nevada is for the purpose of creating and/or maintaining a market or customer base.
[50] NV: *Id.*
[51] NV: *Id.*
[52] NY: Determination in these situations is facts driven; *see* TSB-A-96(53)S and TSB-A-02(49)S.
[53] OH: The out-of-state seller must visit Ohio more than 7 times in a calendar year and have gross Ohio sales of more than $25,000 in a calendar year to create nexus. *See* Sales & Use Tax Information Release ST 2001-01, issued September 2001. However, attendance ONLY at a trade show NEVER creates nexus. Likewise, if the out-of-state seller's only activity in Ohio is meeting with suppliers of goods and service, nexus is not created.
[54] OH: *Id.*
[55] OH: *Id.*
[56] OH: *Id.*
[57] OH: *Id.* Assumes that seminars are for OTHER THAN seller's employees.
[58] OH: The out-of-state seller must visit Ohio more than 7 times in a calendar year and have gross Ohio sales of more than $25,000 in a calendar year to create nexus. *See* Sales & Use Tax Information Release ST 2001-01, issued September 2001. However, attendance ONLY at a trade show NEVER creates nexus. Likewise, if the out-of-state seller's only activity in Ohio is meeting with suppliers of goods and service, nexus is not created.
[59] PA: Participates in trade show.
[60] PA: *Id.*
[61] RI: If a person only attends a trade show as a customer, and does not participate (for example, does not set up a booth) and does not solicit orders, this would not be considered nexus in Rhode Island.
[62] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[63] SC: The answer depends on whether or not the corporation's presence or sales are *de minimis*, the business' intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the time he is in South Carolina.
[64] SD: Attending a trade show may create nexus in this State. However, because there is no tax due, there is no licensing enforced at this time.
[65] TN: Answer given assumes that the activities of the business at the trade show include making sales.
[66] TN: Answer given assumes sales made are not de minimis.
[67] TN: Answer assumes that no sales are made at the seminars.
[68] TN: Answer assumes that sales are made at the seminars or that the employees solicit sales or visit customers.

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State[1]	Attend trade show[2]	Make sales at trade show[3]	One to five days at trade show[4]	Sales while in state temporarily[5]	Employees meet with suppliers[6]	One-day seminars[7]	Seminars and employee visits[8]
Vermont[69]	No	No Response	No	No Response	No	No	No
Virginia	No[70]	No[71]	No[72]	No[73]	No	No	Depends[74]
Washington	Yes	Yes	Yes	Yes	Yes	Yes	Yes
West Virginia	No	Yes	No[75]	Yes	No	Yes	Yes
Wisconsin[76]	Yes[77]	Yes	Yes[78]	Yes	Yes	Yes	Yes
Wyoming[79]	Yes	Yes	Yes	Yes	No	No Response[80]	Yes[81]

[69] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[70] VA: Va. Code Ann. §58.1-609.10(2) exempts occasional sales, which may apply to this situation, depending on the facts and circumstances (P.D. 96-27).

[71] VA: *Id.*

[72] VA: *Id.*

[73] **VA: *Id.***

[74] **VA: Response depends upon whether the employee visits the state to solicit sales or for another reason.**

[75] WV: *Wrigley*? Post-sale activity?

[76] WI: Nexus would remain until the conclusion of the seller's tax year.

[77] WI: Merely attending a trade show as a visitor would not create nexus. However, if sellers only in-state activity is displaying merchandise at local trade shows (no orders being solicited) which results in mail order sales, nexus is created. *See* Temporary Events Publication 228 at www.revenue.wi.gov/pubs/pb228.pdf.

[78] WI: *Id.*

[79] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[80] WY: Remote sales alone do not create nexus; however, depending on the nature of the seminar, nexus could be valid as employees, engaged in activities designed to impact sales or services in our state, creates nexus. Without information surrounding the circumstances of a ''seminar,'' we are unable to provide an answer.

[81] WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Activities of Unrelated Parties

State[1]	Agent warranty services[2]	Hires unaffiliated printer[3]	Hires unrelated call center[4]	Advertises in local media[5]	Produces infomercial[6]	Hires collection agency[7]	Drop shipments to customers[8]	Ships from unrelated distribution center[9]
Alabama	**Yes**	**Yes**[10]	**No**[11]	**No**	**No**	**No**	**No**	**Yes**[12]
Arizona	Yes	Yes	No	No	No	No	Yes[13]	Yes
Arkansas	Yes	Yes	Yes	No	No	No	Yes[14]	Yes
California	No[15]	Yes	Yes	No[16]	No	No	No[17]	Yes
Colorado	Yes	No	Yes	No	Depends	No	Yes	Yes
Connecticut	No Response[18]	No	No Response[19]	No Response[20]	No Response[21]	No Response[22]	No Response[23]	No Response[24]
District of Columbia	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires independent contractors to perform warranty or repair services on tangible personal property located in your state.

[3] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires an unaffiliated printer in the state and stores raw materials or finished goods at the in-state printer's plant.

[4] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires an unrelated call center or fulfillment center located in your state to process telephone and electronic orders that primarily derive from out-of-state customers.

[5] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and enters into an advertising contract with a cable station, radio station, print publication, or electronic publication that is located in your state.

[6] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and produces an ''infomercial'' that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to in-state consumers who made purchases using the phone number or website address displayed on the ''infomercial.''

[7] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and collects delinquent accounts using a collection agency in your state or hires attorneys, or other third parties, to file collection suits in courts in your state.

[8] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and uses a company in your state to drop-ship merchandise to customers.

[9] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and stores and ships items from an unrelated distribution center located in your state.

[10] AL: **Maintains inventory of supplies in ALA.**

[11] AL: **See Section 40-23-68(a)(5), Code of Alabama 1975, amended.**

[12] AL: **Maintains inventory of supplies in ALA.**

[13] AZ: If the customers are out-of-state, no transaction privilege tax or use tax liability on the sale.

[14] AR: If aggregate sales become more than $10,000 annually.

[15] **CA: Warranty and repair services by in-state rep or independent contractor with substantially similar ownership as out-of-state corporation does create nexus (Reg. 1684).**

[16] CA: This assumes that the in-state advertiser is not engaged in solicitation in state and paid consideration based on completed sales. (Reg. 1684, subd. (c)(3)—(4)).

[17] CA: The in-state drop shipper would be deemed the retailer and be liable for the tax.

[18] CT: *See* Conn. Gen. Stat. §12-407(a)(15)(A)(ix).

[19] CT: *See* Conn. Gen. Stat. §12-407(a)(15)(C).

[20] CT: DRS has no published position.

[21] CT: *Id.*

[22] CT: *Id.*

[23] CT: *See* Conn. Gen. Stat. §12-407(a)(15)(C).

[24] CT: DRS has no published position.

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State[1]	Agent warranty services[2]	Hires unaffiliated printer[3]	Hires unrelated call center[4]	Advertises in local media[5]	Produces infomercial[6]	Hires collection agency[7]	Drop shipments to customers[8]	Ships from unrelated distribution center[9]
Florida[25]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Depends[26]	Yes	No	Yes	Yes	Depends[27]	Yes[28]
Hawaii[29]	Yes	Yes	No[30]	No	Yes	Yes	No	Yes
Idaho	Yes[31]	No	Yes[32]	No	Yes	No	No	Yes
Illinois[33]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No	No	No	Yes	Yes
Kentucky	Yes	No[34]	Yes	Depends	No	No[35]	No[36]	Yes
Louisiana	Yes	Yes[37]	Yes[38]	No	Yes	No	Yes	Yes
Maine	Yes	No[39]	Yes[40]	No[41]	Yes[42]	No[43]	Yes[44]	Yes[45]
Massachusetts	Depends	Depends	Depends	Depends	No	Yes	Depends	Depends
Michigan	Yes	Yes	Yes	No	No Response[46]	Yes	No Response[47]	Yes
Minnesota	**No Response**[48]	Yes	Yes	No	**No Response**[49]	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

[25] FL: Nexus is considered on a case-by-case basis.
[26] GA: *See* exceptions in 48-8-2(8)(N).
[27] GA: Unsure the relationship of the drop shipper to the seller.
[28] GA: Owning inventory in the state would constitute nexus.
[29] HI: All activities that were marked ''Yes'' may be subject to the State of Hawaii's General Excise/Use Tax.
[30] HI: Unless the fulfillment center has the inventory of the taxpayer.
[31] ID: The Idaho State Tax Commission has not issued any rulings on independent contractors performing warranty repairs within the state. The issue is unsettled.
[32] ID: This is also an unsettled issue.
[33] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[34] KY: If the raw materials and finished goods are not available for sale in Kentucky.
[35] KY: No, on the basis of not utilizing a rep or agent to solicit sales.
[36] KY: *Id.*
[37] LA: Answer assumes that the ''goods'' stored are product for sale and not advertising materials.
[38] LA: Assumes that the center is fulfilling orders. If mere placement of orders, the answer is no.
[39] ME: Nexus established if partnership or LLC has physical presence in the state.
[40] ME: *Id.* Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[41] ME: Nexus established if partnership or LLC has physical presence in the state.
[42] ME: *Id.* Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[43] ME: Nexus established if partnership or LLC has physical presence in the state.
[44] ME: Possibly; *see*36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[45] ME: *Id.*
[46] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[47] MI: This would be a fact-specific situation, and depend on the relationship of the three parties.
[48] MN: Will create nexus if they spend more than 3 days total within a 12-month period in the state for any combination of activities.
[49] MN: Will create nexus if more than $10,000 per year.

State[1]	Agent warranty services[2]	Hires unaffiliated printer[3]	Hires unrelated call center[4]	Advertises in local media[5]	Produces infomercial[6]	Hires collection agency[7]	Drop shipments to customers[8]	Ships from unrelated distribution center[9]
Nevada	Yes[50]	Yes[51]	Yes[52]	No	Yes[53]	Yes[54]	No	**Yes**
New Jersey[55]	Yes	Yes	Yes	No	**Yes**[56]	No	No	Yes
New Mexico	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	No	No	**No Response**[57]	No	No	No
North Carolina	Yes	Yes	Yes	No	Yes	No	No	Yes
North Dakota	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Ohio	Yes	No	Yes[58]	No	No	No	No	Yes
Pennsylvania	Yes	No	Yes	Depends[59]	Yes	No	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
South Carolina[60]	Yes	No Response[61]	Yes	Depends[62]	No Response	Yes	No[63]	No Response
South Dakota	Yes	Yes	Yes	No	Yes[64]	Yes[65]	No[66]	Yes
Tennessee	Yes[67]	No[68]	Yes[69]	No	No	No	No	Yes
Texas	Yes	Yes	Yes	No	Yes	No	No	Yes
Utah	Yes	No	No	No	No	No	No	Yes
Vermont[70]	Yes	Yes	No	No Response	No Response	No	No	No
Virginia	No	No	No	No	No	No	No	No[71]
Washington	Yes	Yes	Yes	No	No	No	No	Yes
West Virginia	Yes	No[72]	No	No	Yes	Yes	Yes	No

[50] NV: The answer is ''yes'' if presence in Nevada is related to creating and/or maintaining a market in Nevada and if the corporation benefits from services paid for by tax dollars.
[51] NV: *Id.*
[52] NV: *Id.*
[53] NV: *Id.*
[54] NV: *Id.*
[55] NJ: Answers assume none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.
[56] **NJ: Public Law 2014, c.13 amended N.J.S.A. 54:32B-2(i)(1)(C) to modify the definition of seller.**
[57] **NY: May trigger a rebuttable presumption of nexus under legislation enacted in New York in 2008. See details at TSB-M-08(3)S, Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.**
[58] OH: Seller is not required to register and collect Ohio sales tax if sellers only contact is an agency relationship with a telemarketer engaged exclusively to solicit customers in other states (ORC 5741.17(A)(3)).
[59] PA: Depends on extent and nature of advertising.
[60] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[61] SC: *See* S.C. Code §12-36-75.
[62] SC: The answer depends on the facts and circumstances (*e.g.*, nexus may exist if the advertising consists of a personal endorsement by a local personality).
[63] SC: *See* S.C. Rev. Rul. No. 98-8.
[64] SD: The state of South Dakota would need to look at this on a case-by-case basis. We would want to look at all factors involved.
[65] SD: *Id.*
[66] SD: *Id.*
[67] TN: Answer given assumes that the repairs are actually performed in Tennessee.
[68] TN: *See* Tenn. Code Ann. §67-6-329(a)(6).
[69] TN: Answer given assumes that there is an agency relationship with the call center or fulfillment center.
[70] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[71] VA: Legislation enacted in 2012 confers nexus if a commonly controlled person maintains a distribution center in Virginia that facilitates the delivery of TPP sold by the out-of-state dealer.
[72] WV: *See* TAA 93-003.

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State[1]	Agent warranty services[2]	Hires unaffiliated printer[3]	Hires unrelated call center[4]	Advertises in local media[5]	Produces infomercial[6]	Hires collection agency[7]	Drop shipments to customers[8]	Ships from unrelated distribution center[9]
Wisconsin	Yes[73]	No[74]	Yes	No	No	Yes	Yes[75]	Yes
Wyoming[76]	Yes	Yes	Yes[77]	No	No[78]	No	No	No Response[79]

[73] WI: Yes, if acting as an agent/representative of the corporation according to sec. 77.51(13g)(b), Wis. Stats. (2011-12).
[74] WI: Assumes 77.51(13h), Wis. Stats. (2011-12) applies.
[75] WI: Assumes that the company used to drop ship the merchandise is acting as the agent/representative of the corporation according to Sec. 77.51(13g)(b), Wis. Stats. (2011-12).
[76] WY: Wyoming does not have a *de minimis* threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.
[77] WY: If the fulfillment center located in our state houses the seller's inventory, nexus would be established.
[78] WY: Advertising alone is not a nexus creating activity.
[79] WY: Unable to respond, as there must be some relationship between the parties and that would bear to our answer.

Nexus-Creating Activities: Sales and Use Tax — Financial Activities

State[1]	Issues credit cards[2]	Investment partnership[3]	General partnership interest[4]	Limited partnership interest[5]	Managing LLC interest[6]	Non-managing LLC interest[7]
Alabama[8]	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**	**No Response**
Arizona	No	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	No	No	Yes	No
California	No	No[9]	No[10]	No[11]	No[12]	No[13]
Colorado	No	Yes	Yes	Depends	Yes	Depends
Connecticut[14]	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	No	Yes	Yes	Yes	Yes	Yes
Florida[15]	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No	Yes	Yes	No Response[16]	Yes	No Response[17]
Illinois[18]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	No	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State. *See* Administrative Code §11-639(c).
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and issues credit cards to customers who reside in your state.

[3] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an investment partnership or LLC that has operations in your state.

[4] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns a general interest in a partnership that is doing business in your state.

[5] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns a limited interest in a partnership that is doing business in your state.

[6] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.

[7] The corporation sells tangible personal property to residents in your state from outside the state (*e.g.*, by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.

[8] AL: ***See* Code Section 40-23-190 entitled "Conditions for remote entity nexus."**

[9] CA: Assumes the in-state entity is not engaged in any type of selling activity on behalf of the out-of-state corporation.

[10] CA: *Id.*

[11] CA: *Id.*

[12] CA: *Id.*

[13] CA: *Id.*

[14] CT: DRS has no published position.

[15] FL: Nexus is considered on a case-by-case basis.

[16] ID: The Tax Commission has made no rulings on these issues. The determination would depend on the facts and circumstances of a particular case.

[17] ID: *Id.*

[18] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Issues credit cards[2]	Investment partnership[3]	General partnership interest[4]	Limited partnership interest[5]	Managing LLC interest[6]	Non-managing LLC interest[7]
Kansas[19]	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No[20]	No[21]	No[22]	No[23]
Louisiana	No	No[24]	Yes[25]	No[26]	Yes[27]	No[28]
Maine	No	No Response[29]	No Response[30]	No Response[31]	No Response[32]	No Response[33]
Massachusetts	Yes	Depends	Yes	Depends	Yes	Depends
Michigan	No	No Response[34]	No Response[35]	No Response[36]	No Response[37]	No Response[38]
Minnesota	No	**No Response**[39]	**No Response**[40]	**No Response**[41]	Yes	**No Response**[42]
Missouri	Yes	Yes	Yes	Yes	Yes	No
Nebraska	No	**No**[43]	Yes	No[44]	Yes[45]	No[46]
Nevada	No	No[47]	No[48]	No[49]	No[50]	No[51]
New Jersey[52]	No	No	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York[53]	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	No	No	No	No	No	No

[19] KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.
[20] KY: Depends on whether the partnership or LLC helps the retailer maintain a marketplace in Kentucky.
[21] KY: *Id.*
[22] KY: *Id.*
[23] KY: *Id.*
[24] LA: If the LLC/partnership is facilitating the sales operations or assisting the seller in establishing or maintaining a market in the state, the answer is yes.
[25] LA: *Id.*
[26] LA: *Id.*
[27] LA: *Id.*
[28] LA: *Id.*
[29] ME: Nexus established if partnership or LLC has a physical presence in the state.
[30] ME: *Id.*
[31] ME: *Id.*
[32] ME: *Id.*
[33] ME: *Id.*
[34] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[35] MI: *Id.*
[36] MI: *Id.*
[37] MI: *Id.*
[38] MI: *Id.*
[39] MN: Affiliated LLC would need to advertise, promote, or facilitate on the out-of-state corporation's behalf in order for the affiliated company to create nexus.
[40] MN: *Id.*
[41] MN: *Id.*
[42] MN: *Id.*
[43] **NE: No if the out-of-state corporation owns an interest in an investment partnership or investment LLC.**
[44] **NE: Partnership/LLC must be a retailer selling taxable property or services. *See* Neb. Rev. Stat. 77-2701.13.**
[45] **NE: *Id.***
[46] **NE: *Id.***
[47] NV: The answer is ''yes'' if the presence in Nevada is related to creating and/or maintaining a market in Nevada and the corporation benefits from services paid for by tax dollars.
[48] NV: *Id.*
[49] NV: *Id.*
[50] NV: *Id.*
[51] NV: *Id.*
[52] NJ: Answers assume none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.
[53] NY: Certain affiliate nexus requirements were enacted in 2009. *See* TSB-M-09(3)S, Definition of Sales Tax Vendor is Expanded to Include Out-of-State Services With Related Businesses in New York State.

State[1]	Issues credit cards[2]	Investment partnership[3]	General partnership interest[4]	Limited partnership interest[5]	Managing LLC interest[6]	Non-managing LLC interest[7]
North Dakota	No	No	Yes	No	Yes	No
Ohio	No	Depends[54]	Depends[55]	Depends[56]	Depends[57]	Depends[58]
Pennsylvania	No	No	No	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina[59]	Depends	No Response	No Response	No Response	No Response	No Response
South Dakota	No	Yes	Yes	Yes	Yes	Yes
Tennessee	No[60]	No	No	No	No	No
Texas	No	No Response[61]	No Response[62]	No Response[63]	No Response[64]	No Response[65]
Utah	No	No	No	No	No	No
Vermont[66]	No	No	No	No	No	No
Virginia	No	No	No	No	No	No
Washington	No	No	No	No	No	No
West Virginia	No[67]	Yes	Yes	No[68]	Yes	Yes
Wisconsin	No	No	No	No	No	No
Wyoming[69]	No	No	No	No	No	No

[54] OH: Seller may have nexus if seller owns or controls the business operations of the in-state entity. *See* Sales & Use Tax Information Release ST 2001-01, issued September 2001.
[55] OH: *Id.*
[56] OH: *Id.*
[57] OH: *Id.*
[58] OH: *Id.*
[59] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[60] TN: Answer given assumes that the business does not have agents in Tennessee that solicit the credit card applications and/or facilitate use of the credit cards (*i.e.* helping fill out credit card applications or allowing the return of merchandise purchased with the credit cards to affiliated stores in Tennessee). *See J.C. Penney National Bank v. Johnson*, 19 S.W.3d 831 (Tenn. Ct. App. 1999).
[61] TX: Texas Tax Code Section 151.107 provides that a ''retailer engaged in business in this state'' includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that ''ownership'' includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines ''substantial'' to mean a 50 percent ownership interest with the type of ownership (i.e., beneficial, combined voting power, etc.) determined by the type of entity.
[62] TX: *Id.*
[63] TX: *Id.*
[64] TX: *Id.*
[65] TX: *Id.*
[66] VT: The condition described for these questions, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[67] WV: *Tax Commissioner v. MBNA America Bank, N.A.* 220 W.Va. 163, 640 SE2d 226 (2006). No physical presence in WV.
[68] WV: Mere ownership of a limited partnership interest in a partnership that conducts activity in the State is not ''doing business'' because the activity that is conducted is by the partnership, not by its limited partners who cannon participate in the management of the limited partnership. Thus, it is the partnership, not its limited partner, that is doing business in the State.
[69] WY: Only those entities who meet our definition of a vendor are required to license with our office. [W.S. 39-15-101(a)(xv) and W.S. 39-16-101(a)(x)].

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Nexus-Creating Activities: Sales and Use Tax — Activities with Affiliates (Part 1 of 2)

State[1]	In-state affiliate sells property[2]	In-state affiliate accepts returns[3]	Affiliate operates retail store[4]	Loyalty points program[5]	Sells gift cards[6]
Alabama[7]	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Arizona[8]	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes
California	No	Yes	No	Yes	Yes
Colorado	Yes	Yes	Yes[9]	Yes	Yes
Connecticut[10]	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida[11]	No Response	No Response	No Response	No Response	No Response
Georgia	Yes[12]	Yes	Depends[13]	Yes[14]	Yes
Hawaii	Yes	Yes	Depends	Yes	No
Idaho	Yes[15]	Yes[16]	Yes[17]	Yes	No
Illinois[18]	No Response	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.

MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and the in-state affiliate sells similar merchandise and uses common trade names, trademarks, or logos.

[3] The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and uses the in-state affiliate to accept returns, take orders, perform customer service, or distribute advertising materials on its behalf.

[4] The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and sells tangible personal property over the Internet or by catalog and has an affiliated company that operates a retail store in your state.

[5] The corporation sells tangible personal property over the Internet, or by catalog, to residents of your state and participates in a loyalty points program with the in-state affiliate, allowing customers to earn points for purchases from the corporation and redeem the points for merchandise at the affiliate's in-state stores.

[6] The corporation sells gift cards in affiliated in-state stores.

[7] **AL: *See* Code Section 40-23-190 entitled "Conditions for remote entity nexus."**

[8] AZ: With all responses, the key inquiry is whether the brick-and-mortar retail operation in Arizona is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax.

[9] CO: Statutory presumption of nexus.

[10] CT: DRS has no published position.

[11] FL: Nexus is considered on a case-by-case basis.

[12] GA: Please see O.C.G.A. 48-8-2(8)(J) and (K).

[13] GA: *Id.*

[14] GA: *Id.*

[15] ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate.

[16] ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate. The services listed in this question would be sufficient to create nexus.

[17] ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate.

[18] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	In-state affiliate sells property[2]	In-state affiliate accepts returns[3]	Affiliate operates retail store[4]	Loyalty points program[5]	Sells gift cards[6]
Indiana	No	Yes	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes
Kansas[19]	Yes	Yes	Yes	Yes	Yes
Kentucky[20]	No	Yes	No	Yes	No
Louisiana	Yes	Yes	Yes	Yes	Yes
Maine	Yes[21]	Yes	Yes[22]	**Yes**[23]	Yes[24]
Massachusetts	Yes	Yes	Depends	Yes	Yes
Michigan	No Response[25]	No Response[26]	No Response[27]	No Response[28]	Yes
Minnesota	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes[29]	Yes	Yes[30]	Yes[31]	Yes
Nevada	No	Yes[32]	Yes[33]	Yes[34]	Yes[35]
New Jersey[36]	No	Yes	No	No	No
New Mexico	No	Yes	Yes	Yes	Yes
New York[37]	No Response	No Response	No Response	No Response	No Response
North Carolina	No	Yes	Depends[38]	No Response[39]	Depends[40]
North Dakota	Yes	Yes	Yes	Yes	Yes
Ohio	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	Yes	No	Yes[41]	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes

[19] KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.
[20] KY: Depends on whether the affiliates' activities contribute to establishing a marketplace in Kentucky.
[21] ME: Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[22] ME: *Id.*
[23] ME: *Id.*
[24] ME: Generally.
[25] MI: Policy under review.
[26] MI: *Id.*
[27] MI: *Id.*
[28] MI: *Id.*
[29] **NE: Assumes control or common ownership.**
[30] **NE: *Id.***
[31] **NE: *Id.***
[32] NV: The answer is ''yes,'' if the presence in Nevada is related to creating and/or maintaining a market in Nevada. Pursuant to NRS 360B.360, certain sales will deemed to have taken place in Nevada.
[33] NV: *Id.*
[34] NV: *Id.*
[35] NV: *Id.*
[36] NJ: Answers assume none of the factors of N.J.S.A. 54:32B-2(i)(2) have been met.
[37] NY: Certain ''affiliate nexus'' requirements were enacted in 2009. *See* TSB-M-09(3)S, Definition of a Sales Tax Vendor is Expanded to Include Out-of-State Sellers with Related Businesses in New York State.
[38] NC: Depends upon the relationship and agreements between the parties.
[39] NC: G.S. 105-164.8 may apply.
[40] NC: Depends upon the relationship and agreements between the parties.
[41] PA: Yes, when affiliate is solely located in Pennsylvania.

State[1]	In-state affiliate sells property[2]	In-state affiliate accepts returns[3]	Affiliate operates retail store[4]	Loyalty points program[5]	Sells gift cards[6]
South Carolina[42]	Yes	Yes	Depends	No Response	No Response
South Dakota[43]	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	No[44]	Yes[45]	No[46]
Texas	Yes[47]	Yes	Yes[48]	Yes[49]	No[50]
Utah	No	Yes	No	Yes	Yes
Vermont[51]	No	No	No	No	No
Virginia	Depends	Depends	Depends	Depends	Depends
Washington	**Yes**[52]	Yes	**Yes**[53]	Yes	Depends[54]
West Virginia	No	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Depends	Yes	Yes[55]
Wyoming[56]	Yes	Yes	Yes[57]	Yes	Yes[58]

[42] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[43] SD: The state of South Dakota would need to look at all the circumstances in each situation.
[44] TN: Answer assumes that the affiliate's store in Tennessee does not take orders, perform customer service or distribute advertising materials on behalf of the Internet or catalog seller.
[45] TN: It appears that an agency relationship exists with the in-state affiliate which creates Tennessee nexus.
[46] TN: Answer assumes remote corporation has no physical presence in Tennessee or agency relationship with in-state stores.
[47] TX: Texas Tax Code Section 151.107 provides that a ''retailer engaged in business in this state'' includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that ''ownership'' includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines ''substantial'' to mean a 50 percent ownership interest with the type of ownership (i.e., beneficial, combined voting power, etc.) determined by the type of entity.
[48] TX: *Id.*
[49] TX: *Id.*
[50] TX: *Id.*
[51] VT: The condition described for these questions, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[52] **WA: Would have nexus if in-state affiliate performs services for seller.**
[53] **WA: *Id.***
[54] WA: Would establish nexus if in-state affiliate performs services for seller.
[55] WI: Assumes the corporation and the affiliate are related as provided in sec. 77.51(13g)(d)1, 2, and 3, Wis. Stats. (2011-12).
[56] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.
[57] WY: Nexus would be established provided there is a connection between the retail store and the Internet store such as using a common logo or accepting returns.
[58] WY: Nexus is created as it represents inventory in Wyoming sold by an affiliate.

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Nexus-Creating Activities: Sales and Use Tax — Activities with Affiliates (Part 2 of 2)

State[1]	Owns less than 5% of in-state affiliate[2]	Owns more than 5% of in-state affiliate[3]	Remote retailer accepts returned items purchased at in-state stores[4]	Part of controlled group[5]
Alabama[6]	No Response	No Response	**Yes**	Yes
Arizona[7]	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	No	No	**No**	Yes[8]
Colorado	No	Yes[9]	Yes	Yes
Connecticut[10]	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes
Florida[11]	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Depends[12]	No[13]
Hawaii	Yes	Yes	Yes	Depends
Idaho	Yes	Yes	Yes	Yes
Illinois[14]	No Response	No Response	No Response	No Response
Indiana	No	No	No	No
Iowa	Yes	Yes	Yes	Yes
Kansas[15]	Yes	Yes	Yes	Yes[16]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation makes remote sales to residents of your state and owns less than 5 percent of an in-state affiliate that shares the corporation's logo.

[3] The corporation makes remote sales to residents of your state and owns at least 5 percent of an in-state affiliate that shares the corporation's logo.

[4] The corporation makes remote sales to residents of your state and accepts returned items or exchanges items that were purchased from an affiliate's in-state stores.

[5] The corporation is part of a controlled group with an affiliated entity that is physically located in your state.

[6] **AL: *See* Code Section 40-23-190 entitled "Conditions for remote entity nexus."**

[7] AZ: With all responses, the key inquiry is whether the brick-and-mortar retail operation in Arizona is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax.

[8] CA: Assuming the in-state affiliate performs services in this state in connection with tangible personal property to be sold by the retailer. (Section 6203(c)(4)).

[9] CO: Statutory presumption of nexus.

[10] CT: DRS has no published position.

[11] FL: Nexus is considered on a case-by-case basis.

[12] GA: Please see O.C.G.A. 48-8-2(8)(J) and (K).

[13] GA: Being affiliated with a company in the state does not by itself create nexus.

[14] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

[15] KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.

[16] KS: Yes, if the conditions in K.S.A. 79-3702(b)(2)(A) or (B) are met.

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State[1]	Owns less than 5% of in-state affiliate[2]	Owns more than 5% of in-state affiliate[3]	Remote retailer accepts returned items purchased at in-state stores[4]	Part of controlled group[5]
Kentucky[17]	No	No	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes[18]	Yes[19]	Depends	Depends
Massachusetts	Yes	Yes	Yes	Depends
Michigan[20]	No Response	No Response	No Response	No Response
Minnesota	**No Response**[21]	**No Response**[22]	Yes	**No Response**[23]
Missouri	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada[24]	Yes	Yes	Yes	Yes
New Jersey	No[25]	No[26]	Yes	No
New Mexico	Yes	Yes	Yes	No
New York[27]	No Response	No Response	No Response	No Response
North Carolina	Depends[28]	Depends[29]	No Response[30]	No Response[31]
North Dakota	Yes	Yes	Yes	Yes
Ohio	No[32]	No[33]	Yes	Depends
Pennsylvania	No	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes
South Carolina[34]	No Response	No Response	No Response	No Response
South Dakota	Yes[35]	Yes[36]	Yes	Yes
Tennessee	No	No	Yes	No

[17] KY: Depends on whether the affiliates' activities contribute to establishing a marketplace in Kentucky.
[18] ME: Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[19] ME: *Id.*
[20] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[21] MN: Affiliated company would need to advertise, promote, or facilitate on the out-of-state corporation's behalf in order for the affiliated company to create nexus.
[22] MN: *Id.*
[23] MN: *Id.*
[24] NV: The answer is ''yes,'' if the presence in Nevada is related to creating and/or maintaining a market in Nevada. Pursuant to NRS 360B.360, certain sales will deemed to have taken place in Nevada.
[25] NJ: Answers assume none of the factors of N.J.S.A. 54:32B-2(i)(2) have been met.
[26] NJ: *Id.*
[27] NY: Certain ''affiliate nexus'' requirements were enacted in 2009. *See* TSB-M-09(3)S, Definition of a Sales Tax Vendor is Expanded to Include Out-of-State Sellers with Related Businesses in New York State.
[28] NC: Depends upon the relationship and agreements between the parties.
[29] NC: *Id.*
[30] NC: G.S. 105-164.8 may apply.
[31] NC: *Id.*
[32] OH: Seller may have nexus if seller owns or controls the business operations of the in-state entity. *See* Sales & Use Tax Information Release ST 2001-01, issued September 2001.
[33] OH: *Id.*
[34] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[35] SD: The state of South Dakota would need to look at all the circumstances in each situation.
[36] SD: *Id.*

State[1]	Owns less than 5% of in-state affiliate[2]	Owns more than 5% of in-state affiliate[3]	Remote retailer accepts returned items purchased at in-state stores[4]	Part of controlled group[5]
Texas[37]	No	Yes	Yes	Yes
Utah	No	No	Yes	Yes
Vermont[38]	No	No	No Response	No
Virginia	No	No	No	No[39]
Washington	No	No	Yes	No
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	No	Yes[40]	Yes	Yes[41]
Wyoming[42]	Yes	Yes	Yes	No

[37] TX: Texas Tax Code Section 151.107 provides that a ''retailer engaged in business in this state'' includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that ''ownership'' includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines ''substantial'' to mean a 50 percent ownership interest with the type of ownership (i.e., beneficial, combined voting power, etc.) determined by the type of entity.

[38] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[39] VA: No, unless the affiliated entity and retailer belong to a commonly controlled group and the affiliated entity maintains a distribution center, warehouse, fulfillment center, or similar location that facilitates the delivery of tangible personal property sold by the out-of-state dealer. P.D. 13-166.

[40] WI: Assumes the corporation and the affiliate are related as provided in sec. 77.51(13g)(d)1, 2, and 3, Wis. Stats. (2011-12).

[41] WI: *Id.*

[42] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

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Nexus-Creating Activities: Sales and Use Tax — Internet Activities (Part 1 of 2)

State[1]	Maintains Web link to in-state third party[2]	Web link to third party with in-state Web server[3]	In-state affiliates with less than $10,000 in sales[4]	In-state affiliates with $10,000 or more in sales[5]	Per impression agreement[6]	Per conversion agreement[7]
Alabama	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Arizona[8]	No	No	Yes[9]	Yes[10]	No	No
Arkansas	Yes	Yes	No[11]	Yes[12]	Yes[13]	Yes[14]
California	No	No	No	Yes[15]	No	No[16]
Colorado	No	No	No	No	No	Yes[17]
Connecticut	No Response[18]	No Response[19]	Yes[20]	Yes[21]	No Response[22]	No Response[23]
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida[24]	No Response	No Response	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation uses an Internet link or enters into an affiliation linking arrangement with a third party that is located in your state.

[3] The corporation uses an Internet link or enters into an affiliation linking arrangement with a third party that maintains a website on a server that is located in your state.

[4] The corporation makes remote sales of tangible personal property to residents in your state from outside the state via a website and enters into an agreement with a resident of your state in which the corporation pays commissions or fees for referrals to the corporation's website. Assume the annual gross receipts from sales attributable to the arrangements total less than $10,000.

[5] The corporation makes remote sales of tangible personal property to residents of your state outside the state via a website and enters into an agreement with a resident of your state in which the corporation pays commissions or fees for referrals to the corporation's website. Assume the corporation's annual gross receipts from the sales attributable to the arrangements total at least $10,000.

[6] The corporation is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time the ad is displayed (per impression).

[7] The corporation is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid when a consumer clicks on the ad and buys a product from the out-of-state retailer (per conversion).

[8] AZ: With all responses, the key inquiry is whether the Arizona third party is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax.

[9] AZ: The response assumes that some form of ''on-the-ground'' (not online-based) referral activity is occurring and being compensated for by the corporation.

[10] AZ: *Id.*

[11] AR: Arkansas Act 1001 of 2011, which amends Arkansas Code 26-52-117.

[12] AR: *Id.*

[13] AR: *Id.*

[14] AR: *Id.*

[15] CA: Assuming the retailer has at least $10,000 in sales referred to it by in-state persons in the preceding 12 months and the retailer's total sales to purchasers in this state exceed $1 million in the preceding 12 months. (Section 6203(c)(5)).

[16] CA: This assumes that the in-state operator/advertiser is not engaged in solicitation in state and paid consideration based on completed sales. (Reg. 1684, subd. (c)(3)— (4)).

[17] CO: If affiliate presence in state used to establish market for retailer.

[18] CT: DRS has no published position.

[19] CT: *Id.*

[20] CT: ***See* Conn. Gen. Stat. §12-407(a)(15)(A)(x); Special Notice 2011(6); Special Notice 2011(9).**

[21] CT: *Id.*

[22] CT: DRS has no published position.

[23] CT: *Id.*

[24] FL: Nexus is considered on a case-by-case basis.

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State[1]	Maintains Web link to in-state third party[2]	Web link to third party with in-state Web server[3]	In-state affiliates with less than $10,000 in sales[4]	In-state affiliates with $10,000 or more in sales[5]	Per impression agreement[6]	Per conversion agreement[7]
Georgia	Depends[25]	No	No	Depends[26]	No	Depends[27]
Hawaii	No	No	Yes	Yes	Yes	Yes
Idaho	No	No	No Response[28]	No Response[29]	No Response[30]	No Response[31]
Illinois[32]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No[33]	No[34]	No[35]	No[36]
Louisiana	Yes	No	Yes	Yes	Yes	Yes
Maine	Yes	Yes	No	Yes	No	Yes[37]
Massachusetts	No	No	Depends	Depends	No	No
Michigan	No	No[38]	No Response[39]	No Response[40]	No	No Response[41]
Minnesota	No Response[42]	Yes	No	Yes	No	**No Response**[43]
Missouri	Yes	Yes	**No**	Yes[44]	Yes	Yes
Nebraska	No	No	No	No	No	No
Nevada	Yes[45]	Yes[46]	Yes	Yes	Yes[47]	Yes[48]
New Jersey	**Yes**[49]	No[50]	No	**Yes**	No	No

[25] GA: Depends on the volume of sales generated by referrals from in-state sources.
[26] GA: If the referrals from in-state sources exceed $50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a ''dealer'' and must collect tax on all sales into the state.
[27] GA: *Id.*
[28] ID: The Tax Commission has made no rulings on this issue at this time.
[29] ID: *Id.*
[30] ID: *Id.*
[31] ID: *Id.*
[32] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[33] KY: Depends on whether the in-state resident/operator's activities contribute to establishing a marketplace in Kentucky.
[34] KY: *Id.*
[35] KY: *Id.*
[36] KY: *Id.*
[37] ME: Provided the $10,000 threshold is reached.
[38] MI: Assuming the seller does not own the server.
[39] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[40] MI: *Id.*
[41] MI: *Id.*
[42] **MN: Will create nexus if sales are more than $10,000 per year.**
[43] **MN: *Id.***
[44] **MO: In excess of $10,000.**
[45] NV: The answer is ''yes,'' if the corporation has a presence in Nevada and is benefitting from services paid for with tax dollars.
[46] NV: *Id.*
[47] NV: *Id.*
[48] NV: *Id.*
[49] NJ: Merely having one's website on a server located in NJ does not give the seller nexus. However, it would give nexus to whoever owns the server. **Public Law 2014, c.13 amended N.J.S.A. 54:32B-2(i)(1)(C) to modify the definition of ''seller'' for sales occurring on or after July 1, 2014. N.J.S.A. 54:32B-2(i)(1)(C) creates a rebuttable presumption that an out-of-State seller who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business in New Jersey through in-State representatives. See Technical Bulletin-76.**
[50] NJ: *Id.*

State[1]	Maintains Web link to in-state third party[2]	Web link to third party with in-state Web server[3]	In-state affiliates with less than $10,000 in sales[4]	In-state affiliates with $10,000 or more in sales[5]	Per impression agreement[6]	Per conversion agreement[7]
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York[51]	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes	Yes	Yes[52]	Yes	No	No Response[53]
North Dakota	Yes	Yes	Yes	Yes	No	No
Ohio	No	No	No	No	No	No
Pennsylvania	Depends[54]	Yes	Depends[55]	Depends[56]	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	No	Yes
South Carolina[57]	No Response	No Response	No Response	No Response	No Response	No Response
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	Yes	Yes	No	No
Texas	No	No	No	No	No	No
Utah	No	Yes	Yes	Yes	No	No
Vermont[58]	No	No	No	No	No	No
Virginia	No[59]	No[60]	No	No	No	No
Washington	No	No[61]	Yes[62]	Yes[63]	No	No
West Virginia	No	No	No	Yes	Yes	Yes
Wisconsin	No[64]	No[65]	No[66]	No[67]	No[68]	No[69]
Wyoming[70]	No	No	**Yes**[71]	**Yes**[72]	No	No

[51] NY: Situations similar to the facts presented in these questions would trigger a rebuttable presumption of nexus under legislation enacted in New York in 2008. See details at TSB-M-08(3)S, New Presumption Applicable to Definition of Sales Tax Vendor, TSB-M-08(3.1)S. Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.

[52] NC: Nexus created, but transactions may not be subject to tax pursuant to G.S. 105-164.8(b)(3).

[53] NC: No response without details of the agreement between the parties.

[54] PA: Depends on nature of agreement.

[55] PA: *Id.*

[56] PA: *Id.*

[57] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.

[58] VT: The condition described for these questions, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[59] VA: P.D. 05-28 and 05-128.

[60] VA: P.D. 00-53.

[61] WA: A server by itself does not necessarily establish nexus. If the corporation owns the server, then nexus is established.

[62] WA: If the referrals are made from a resident's website, nexus is not established.

[63] WA: *Id.*

[64] WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (2011-12) and Sec. 77.51(13g)(d), Wis. Stats. (2011-12).

[65] WI: Yes, if the out-of-state company owns or leases/rents space on the server.

[66] WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (2011-12) and Sec. 77.51(13g)(d), Wis. Stats. (2011-12).

[67] WI: *Id.*

[68] WI: *Id.*

[69] WI: *Id.*

[70] WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[71] **WY: Independent sales contractors located in our state and using a website commission or referral model establish nexus for the out of state corporation**.

[72] **WY: *Id.***

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Nexus-Creating Activities: Sales and Use Tax — Internet Activities (Part 2 of 2)

State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid Web-hosting provider with server[8]
Alabama	**Yes**[9]	**Yes**	**Yes**	**No**	**No**	**No**	**No**
Arizona[10]	Yes	Yes	Yes	Yes	Yes	Yes	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	No
California	Yes	Yes	Yes[11]	Yes[12]	Yes[13]	Yes[14]	No
Colorado	Yes	Yes	Yes	Yes	Yes	Yes	No Response[15]
Connecticut[16]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida[17]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Yes	Depends	Depends	Depends	No
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes	No
Illinois[18]	No Response	No Response	No Response	No Response	No Response	No Response	No Response

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation owns an Internet server located in your state.

[3] The corporation owns an Internet server located in your state and hires third-party technicians located in your state to keep the server functioning.

[4] The corporation leases a third-party's Internet server located in your state. Assume that the server is used exclusively by the corporation.

[5] The corporation leases space on a third-party's Internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.

[6] The corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server in your state for less than six months during the year.

[7] The corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server for more than six months during the year.

[8] The corporation does not own or lease property in your state, but pays a Web-hosting provider with a server located in your state to provide the corporation Web services to sell products over the Internet.

[9] **AL: Owns property in Alabama.**

[10] AZ: With all responses, the key inquiry is whether the Arizona third party is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax.

[11] **CA: This assumes that this refers to a lease as defined in Regulation 1660 of an in-state server.**

[12] **CA: *Id.***

[13] **CA: *Id.***

[14] **CA: *Id.***

[15] CO: No determination yet.

[16] CT: DRS has no published position.

[17] FL: Nexus is considered on a case-by-case basis.

[18] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid Web-hosting provider with server[8]
Indiana	Yes	Yes	Yes	Yes	Not Applicable[19]	Not Applicable[20]	Not Applicable[21]
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	**Yes**	**Yes**	**Yes**	No Response	No Response	No Response	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes	No
Maine	Depends[22]	Depends[23]	Depends[24]	Depends[25]	No	No	No
Massachusetts	Yes	Yes	Depends	Depends	Depends	Depends	No
Michigan	Yes	Yes	No Response[26]	No Response[27]	No Response[28]	No Response[29]	No
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes	**Yes**
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes[30]	Yes[31]	Yes[32]	**Yes**[33]	**Yes**[34]	**Yes**[35]	No
Nevada[36]	Yes	Yes	Yes	Yes	Yes	Yes	No
New Jersey	Yes	Yes	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes	Yes	Yes	No
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	No[37]
North Dakota	Yes	Yes	No	No	No	No	No
Ohio	Yes	Yes	Yes	Yes	Yes	Yes	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[19] IN: The Department is still in the process of determining its position.
[20] IN: *Id.*
[21] IN: *Id.*
[22] ME: Possibly; depends on the facts.
[23] ME: *Id.*
[24] ME: Depends on type of lease.
[25] ME: Probably not; depends on the facts.
[26] MI: No, unless tangible personal property is stored on servers. The specific facts of the situation would have to be assessed under RAB 1999-1.
[27] MI: *Id.*
[28] MI: *Id.*
[29] MI: *Id.*
[30] **NE: Constitutes physical presence under *Quill*.**
[31] **NE: *Id.***
[32] **NE: *Id.***
[33] **NE: *Id.***
[34] **NE: *Id.***
[35] **NE: *Id.***
[36] NV: The answer is ''yes,'' if the corporation has a presence in Nevada and is benefitting from services paid for with tax dollars.
[37] NC: Provided that G.S. 105-164.8(b)(3) does not apply.

State[1]	Owns Internet server[2]	Owns Internet server and hires third-party technicians[3]	Leases third-party's Internet server (exclusive use of server)[4]	Leases space on third-party's Internet server (shared use of server space)[5]	Leases space on third-party's network of Internet servers (data on less than 6 months)[6]	Leases space on third-party's network of Internet servers (data on more than 6 months)[7]	Paid Web-hosting provider with server[8]
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes	No
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Texas[38]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Utah	Yes	Yes	Yes	Yes	Yes	Yes	No
Vermont[39]	Yes	Yes	No	No	No	No	No
Virginia	No	No	No	No	No	No	No
Washington	Yes	Yes	**Yes**	No	No	No	No
West Virginia	Yes	Yes	Yes	Yes	No	Yes	Yes
Wisconsin	Yes	Yes	Yes	No[40]	No[41]	No[42]	No
Wyoming[43]	Yes	Yes	Yes	Yes[44]	Yes[45]	No Response[46]	No

[38] TX: We decline to provide a response to these issues at this time because these policies and topics are currently under review.
[39] VT: All questions with a ''No'' response: The condition described for this question, by itself is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[40] WI: Assumes that physical possession of the servers and control of the servers remains with the lessor, rather than the lessee.
[41] WI: *Id.*
[42] WI: *Id.*
[43] WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.
[44] WY: Remote sales in conjunction with data stored on a server in Wyoming represent inventory in Wyoming and thus nexus.
[45] WY: *Id.*
[46] WY: *Id.*

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Nexus-Creating Activities: Sales and Use Tax — Activities Related to Digital Property (Part 1 of 2)

State[1]	Sells music video downloads[2]	Free canned software for downloads[3]	Sells canned software then visits[4]	Sells custom software[5]	Sells software licenses[6]
Alabama	**No**	**No**	**Yes**	**No**	**No**
Arizona[7]	Yes	Yes	Yes	No	Yes
Arkansas	No	No	Yes	No	No
California	No	No	Yes[8]	No	No
Colorado	No Response[9]	No Response[10]	Yes[11]	No	No
Connecticut[12]	No Response	No Response	No Response	No Response	No Response
District of Columbia	**Yes**	Yes	Yes	Yes	Yes
Florida[13]	No Response	No Response	No Response	No Response	No Response
Georgia	No	No	Yes	No	No
Hawaii	Yes[14]	Yes[15]	Yes	Yes	Yes
Idaho	No	**No**	Yes	**No**	**No**
Illinois[16]	No Response	No Response	No Response	No Response	No Response
Indiana	**No**[17]	**No**[18]	Yes[19]	**No**	**No**
Iowa	No	No	Yes	No	No
Kansas	No	Yes	Yes	No	No
Kentucky	No	No[20]	Yes	No	Yes
Louisiana	No	No	Yes	No	No
Maine	No	No	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation makes remote sales of digital content, such as music, that is downloaded by residents of your state.

[3] The corporation electronically provides ''canned software'' to residents in your state and then makes remote sales of digital content, such as music and videos, that is downloaded by residents of your state.

[4] The corporation makes remote sales of ''canned software'' to residents in your state and then sends a representative to customize it to meet the customer's specific needs.

[5] The corporation makes remote sales of customized software in your state.

[6] The corporation owns software licenses that are purchased by residents of your state.

[7] AZ: All responses assume that the sales include leases of the digital property at issue.

[8] CA: If the software is downloaded electronically and no tangible personal property is transferred, the sale would not be taxable but the activity creates nexus.

[9] CO: The transaction is taxable, but the activity does not create nexus.

[10] CO: *Id.*

[11] CO: The transaction is taxable and the activity creates nexus.

[12] CT: DRS has no published position.

[13] FL: Nexus is considered on a case-by-case basis.

[14] HI: It has always been our position that these are taxable.

[15] HI: *Id.*

[16] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

[17] **IN: Answer changes from 2014 to 2015 are based on the assumption that the corporation has no other presence in Indiana.**

[18] **IN: *Id.***

[19] IN: Taxability based on sale of canned software, not customization.

[20] KY: Remote sales of videos may create liability for the gross revenues and excise taxes for multichannel video programming services in KRS Chapter 136.

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State[1]	Sells music video downloads[2]	Free canned software for downloads[3]	Sells canned software then visits[4]	Sells custom software[5]	Sells software licenses[6]
Massachusetts	No[21]	No Response[22]	Yes[23]	No Response[24]	Yes[25]
Michigan	No	No	Yes[26]	No	No
Minnesota	No	**No**	Yes	**No**	Yes
Missouri	**No**	**No**	Yes	**No**	Yes
Nebraska	No	No	Yes	No	No
Nevada	No	No	Yes	No	No
New Jersey[27]	No	No	Yes	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes
New York	No	No	Yes	No	No
North Carolina	No	No	Yes	No	No
North Dakota	No	Yes	Yes	No	Yes
Ohio	No	No	Yes	No	No[28]
Pennsylvania	No	No	Yes	No	No
Rhode Island	No	No	Yes	No	Yes
South Carolina[29]	No Response	No Response	No Response	No Response	No Response
South Dakota	No	No	Yes	No	No
Tennessee	No[30]	No[31]	Yes	No	Yes[32]
Texas	No	Yes[33]	Yes[34]	Yes[35]	Yes[36]
Utah	No	No	Yes	No	No
Vermont[37]	No	No	No	No	No
Virginia	No[38]	No[39]	No[40]	No	No
Washington	No	No	Yes	No	No
West Virginia	No	No	Yes	No	No
Wisconsin	No	Yes	Yes	No	Yes
Wyoming[41]	No	No	Yes	No	No

[21] MA: *See* 830 CMR 64H.1.3 and TIR 06-15.
[22] MA: *Id.*
[23] MA: *Id.*
[24] MA: *Id.*
[25] MA: *Id.*
[26] MI: *See* RAB 1999-1.
[27] NJ: Answers assume none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.
[28] OH: Nexus is created if the corporation owns the server that is used and it is located in Ohio.
[29] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[30] TN: The sale itself would be taxable, but the activity described would not create nexus.
[31] TN: *Id.*
[32] TN: The answer assumes that the software is prewritten.
[33] TX: A seller who licenses software, canned or custom, for use in Texas (whether for own use or by others, in tangible, electronic or digital form, or via remote access) is engaged in business in this state.
[34] TX: *Id.*
[35] TX: *Id.*
[36] TX: *Id.*
[37] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[38] VA: P.D. 04-38.
[39] VA: P.D. 04-38 and 04-173.
[40] VA: P.D. 96-339 and 04-173.
[41] WY: Remote sales within itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

Nexus-Creating Activities: Sales and Use Tax — Activities Related to Digital Property (Part 2 of 2)

State[1]	Licenses website for webinar[2]	Sells data[3]	Sells remote access to canned software[4]	Sells digital magazine or newspaper subscriptions[5]	Sells appliances with control devices[6]
Alabama	**No**	**Yes**	**No**	**No**	**No**
Arizona[7]	Yes	Yes	Yes	**Yes**	**Yes**
Arkansas	No	Yes	No	**No**	**No**
California	No	No	No	**No**	**No**
Colorado	No Response[8]	Yes[9]	No Response[10]	**Yes**[11]	**No Response**
Connecticut[12]	No Response	No Response	No Response	**No Response**	**No Response**
District of Columbia	Yes	Yes	Yes	**Yes**	**Yes**
Florida[13]	No Response	No Response	No Response	**No Response**	**No Response**
Georgia	No	Depends	No	**No**	**Depends**
Hawaii	Yes	Yes	Yes	**Yes**	**Yes**
Idaho	**No**	**No**	**No**	**No**	**No Response**[14]
Illinois[15]	No Response	No Response	No Response	**No Response**	**No Response**
Indiana	**No**	Yes	No	**No**	**No**
Iowa	No	No	No	**No**	**No**[16]
Kansas	No	No	No	**No Response**	**No Response**
Kentucky	No	Yes	No	**No**	**No**
Louisiana	No	No	No	**Yes**	**Yes**
Maine	No	No	No	**No**	**No**
Massachusetts	No	No	Yes	**Depends**	**Depends**
Michigan	No	No	No	**No**	**No**

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation licenses to an in-state consumer permission to use its website for a webinar.

[3] The corporation sells data, such as music files, to residents in your state and the data is stored on a server located in your state.

[4] The corporation sells remote access to canned software to customers located in your state.

[5] The corporation sells digital magazine or newspaper subscriptions from a remote Internet platform to an in-state user who downloads the material in your state.

[6] The corporation makes remote sales of appliances equipped with control devices from which an in-state use can control the appliance via remote Internet platform.

[7] AZ: All responses assume that the sales include leases of the digital property at issue.

[8] CO: Not yet determined.

[9] CO: Yes, if retailer owns server.

[10] CO: No determination yet.

[11] **CO: Yes- transaction is taxable and the activity creates nexus.**

[12] CT: DRS has no published position.

[13] FL: Nexus is considered on a case-by-case basis.

[14] **ID: The Tax Commission has made no ruling on this issue.**

[15] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

[16] **IA: No nexus assuming the in-state user is not related to the out-of-state corporation.**

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State[1]	Licenses website for webinar[2]	Sells data[3]	Sells remote access to canned software[4]	Sells digital magazine or newspaper subscriptions[5]	Sells appliances with control devices[6]
Minnesota	No	Yes	No	**No**	**Depends**
Missouri	Yes	Yes	No	**No**	**No**[17]
Nebraska	No	No[18]	No	**No**	**No**
Nevada	No[19]	No	No	**No**	**No**
New Jersey	No	Yes[20]	No	**No**	**No**
New Mexico	Yes	Yes	Yes	**Yes**	**Yes**
New York	No	No	No	**No**	**No**
North Carolina	No	Yes	No	**No**	**No**
North Dakota	Yes	No	Yes	**No**	**No**
Ohio	Depends[21]	Depends[22]	Depends[23]	**No**	**No**
Pennsylvania	Yes[24]	Yes	No	**No**	**No**
Rhode Island	No	No	No[25]	**No**	**No**
South Carolina[26]	No Response	No Response	No Response	**No Response**	**No Response**
South Dakota	No	Yes	No	**No**	**No**
Tennessee	No	Yes	No	**No**	**No**
Texas	Yes[27]	Yes	No Response[28]	**No**	**No**
Utah	No	Yes	No	**No**	**No**
Vermont[29]	No	Yes	No	**No Response**	**No Response**
Virginia	No	No	No	**No**	**No**
Washington	No	No[30]	No	**No**	**No**
West Virginia	Yes	Yes	No	**No Response**	**No Response**
Wisconsin	No	Yes[31]	No	**No**	**Depends**
Wyoming[32]	No	Yes[33]	Yes	**No**	**No**

[17] **MO: Assuming the sale of the appliance is not subject to tax.**
[18] NE: Unless the company owns or leases the server.
[19] NV: This question needs clarification.
[20] NJ: Answer assumes server is owned by out-of-state corporation.
[21] OH: Nexus is created if the corporation owns the server that is used and it is located in Ohio.
[22] OH: *Id.*
[23] OH: *Id.*
[24] PA: Website is on a server in Pennsylvania.
[25] RI: Would be subject to tax if the customer downloaded the software.
[26] SC: *See* S.C. Rev. Rul. No. 07-3 for the department's official position.
[27] TX: A seller who licenses software, canned or custom, for use in Texas (whether for own use or by others, in tangible, electronic or digital form, or via remote access) is engaged in business in this state.
[28] TX: We decline to provide a response to this question at this time because this policy and topic are currently under review.
[29] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[30] WA: If the corporation owns the server, then nexus is established.
[31] WI: Yes, if the out-of-state company owns or leases/rents space on the server.
[32] WY: Remote sales within itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.
[33] WY: Nexus is created as the data stored on a server in Wyoming represent inventory in Wyoming.

Nexus-Creating Activities: Sales and Use Tax — Distribution and Delivery

State[1]	Picks up defective products[2]	Picks up raw materials[3]	Travels in state one to 6 times[4]	Travels in state 6-12 times[5]	Travels in state more than 12 times[6]	Back hauls[7]	Holds title to electricity[8]	Holds title to natural gas[9]
Alabama	**Yes**	**Yes**	**No**	**No**	**No**	**No Response**	**No**	**No**
Arizona	Yes[10]	Yes[11]	No[12]	No[13]	No[14]	Yes[15]	No[16]	No[17]
Arkansas	Yes	Yes	No	No	No	Yes	No	No
California	Yes	No	No	No	No	Yes	No	No
Colorado	Yes	Yes	No Response[18]	No Response[19]	No Response[20]	Yes[21]	No [22]	Yes
Connecticut[23]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida[24]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Depends	Depends	Depends	Yes	No	No
Hawaii	Yes	No	No	No	No	Yes	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation makes remote sales into your state and picks up defective products or scrap materials in your state in taxpayer-owned vehicles.

[3] The corporation makes remote sales into your state and picks up raw materials in your state in taxpayer-owned vehicles.

[4] The corporation makes remote sales into your state and travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[5] The corporation makes remote sales into your state and travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[6] The corporation makes remote sales into your state and travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

[7] The corporation makes remote sales into your state and ''back hauls'' (i.e., picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.

[8] The corporation makes remote sales into your state and holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).

[9] The corporation makes remote sales into your state and holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).

[10] AZ: Arizona imposes TPT under the transporting classification on gross receipts derived from transporting for hire persons, freight, or property by motor vehicle, railroads, or aircraft from one point to another in this state. All responses regarding remote sales presume that the corporation has sufficient nexus for TPT on its transporting receipts, except where the question explicitly provides that the corporation does not engage in taxable transportation activity within the state.

[11] AZ: *Id.*

[12] AZ: *Id.*

[13] AZ: *Id.*

[14] AZ: *Id.*

[15] AZ: *Id.*

[16] AZ: The answers presume that the corporation does not own the actual wires or pipelines in Arizona.

[17] AZ: *Id.*

[18] CO: Not determined yet.

[19] CO: *Id.*

[20] CO: *Id.*

[21] CO: Back hauls implies retailer delivered into state.

[22] CO: Electricity not tpp.

[23] CT: DRS has no published position.

[24] FL: Nexus is considered on a case-by-case basis.

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State[1]	Picks up defective products[2]	Picks up raw materials[3]	Travels in state one to 6 times[4]	Travels in state 6-12 times[5]	Travels in state more than 12 times[6]	Back hauls[7]	Holds title to electricity[8]	Holds title to natural gas[9]
Idaho	Yes	Yes	No Response[25]	No Response[26]	No Response[27]	Yes	No Response[28]	No Response[29]
Illinois[30]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Yes	No	No	No	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No	No	No	Yes	No	No
Kentucky	Yes	Yes	No	No	Depends	Depends	Depends	Depends
Louisiana	Yes	No	No	No	No	No	No	No
Maine	Yes	Yes	No	No[31]	No[32]	Yes	No	No
Massachusetts	Yes	Yes	No	No	No	Yes	No	No
Michigan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	**No Response**[33]	**No Response**[34]	**No Response**[35]	**No Response**[36]	**No Response**[37]	**No Response**[38]	No	No
Missouri	Yes	Yes	No	No	No	Yes	No	No
Nebraska	Yes	Yes	No	No	No	Yes[39]	Yes[40]	Yes[41]
Nevada	Yes	No	No[42]	No[43]	No[44]	Yes	No	No
New Jersey	Yes	No	No	No	No	Yes	No	No
New Mexico	Yes	Yes	No	No	No	No	No	No
New York	No	No	No	No	No	No Response[45]	No	No
North Carolina	No	No	No	No	No	Yes	Yes	**Yes**
North Dakota	Yes	Yes	No[46]	No[47]	No[48]	Yes	No	No
Ohio	Yes	Yes	No	No	No	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	No	No

[25] **ID: This is not a fact scenario that the Commission has considered.**
[26] **ID: *Id.***
[27] **ID: *Id.***
[28] ID: The sale of utilities is not taxable in Idaho, thus it is unlikely that the company is making a taxable sale into this state from a remote location.
[29] ID: *Id.*
[30] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[31] ME: Answer may change depending on exactly what the corporation's employees are doing in Maine.
[32] ME: *Id.*
[33] **MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.**
[34] **MN: *Id.***
[35] MN: *Id.*
[36] MN: *Id.*
[37] MN: *Id.*
[38] **MN: *Id.***
[39] NE: Assuming one of the locations is in the state.
[40] NE: May not be within the definition of ''engaged in business'' under section 77-2701.13, but constitutes physical presence under Quill.
[41] NE: *Id.*
[42] NV: The answer is ''no,'' unless the travel through the state is for the purpose of creating and/or maintaining a market in Nevada.
[43] NV: *Id.*
[44] NV: *Id.*
[45] NY: Depends on whether delivery constitutes regular or systematic delivery in accordance with Tax Law Section 1101(b)(8)(D) and Regulations Section 526.10(a)(5).
[46] ND: Must be delivering or servicing accounts/customers in North Dakota.
[47] ND: *Id.*
[48] ND: *Id.*

State[1]	Picks up defective products[2]	Picks up raw materials[3]	Travels in state one to 6 times[4]	Travels in state 6-12 times[5]	Travels in state more than 12 times[6]	Back hauls[7]	Holds title to electricity[8]	Holds title to natural gas[9]
Rhode Island	Yes	Yes	No	No	No	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes[49]	Yes[50]	Yes[51]	No	No	No
Tennessee	Yes[52]	No	No	No	No	Yes[53]	No	No
Texas	Yes[54]	No	No	No[55]	No	Yes	No	No
Utah	Yes	Yes	No	No	No	Yes	No	No
Vermont[56]	Yes	Yes	No	No	No	No	No Response	No Response
Virginia	No	No	No	No	No	No	No	No
Washington	Yes[57]	No	No[58]	No[59]	No[60]	No[61]	No	No
West Virginia	Yes	Yes	No	No	No	No	Yes	Yes
Wisconsin	Yes	Yes	Depends[62]	Depends[63]	Depends[64]	Yes	No	No
Wyoming[65]	Yes	No	No	No	No	No	No	No

[49] SD: Traveling through the state, with no business contacts in the state, does not constitute nexus. Traveling to the state with any business contact, even if they do not pickup or deliver goods, establishes nexus.
[50] SD: *Id.*
[51] SD: *Id.*
[52] TN: Answer assumes that pick-up is made for the consumer.
[53] TN: Answer assumes that the delivery made prior to the backhaul was made to a Tennessee customer.
[54] TX: The collection and/or removal of waste products is a taxable real property service in Texas.
[55] TX: Answer assumes travel is not connected to creating or establishing a market in Texas.
[56] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[57] WA: Picking up defective products from customers provides customer service and establishes nexus.
[58] WA: If they provide customer service, then nexus established.
[59] WA: *Id.*
[60] WA: *Id.*
[61] WA: If delivery takes place in Washington, nexus established.
[62] WI: Traveling through, does not create nexus. Traveling to, depends on purpose.
[63] WI: *Id.*
[64] WI: *Id.*
[65] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

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Nexus-Creating Activities: Sales and Use Tax — Third-Party Solicitation Activities and Attributional Nexus (Part 1 of 2)

State[1]	Distribute promotional materials[2]	Electronic promotional materials[3]	Solicit sales in-person[4]	Solicit sales by telephone[5]	Demonstrate product in person[6]	Negotiate prices to buy[7]	Negotiate prices to sell[8]
Alabama	**Yes**	**No**	**Yes**	**No**	**Yes**	**No Response**	**No Response**
Arizona[9]	Yes	No	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	No	Yes	Yes	Yes
California	Yes	No[10]	Yes	No[11]	Yes	No	Yes[12]
Colorado	Yes	Yes	Yes	No	Yes	Yes	Yes
Connecticut	No Response[13]	No Response[14]	Yes	No Response[15]	Yes	No Response[16]	No Response[17]
District of Columbia	Yes	No	Yes	No	Yes	Depends[18]	Depends[19]
Florida[20]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Depends	Yes	Depends[21]	Yes	No	Yes
Hawaii	Yes	No	Yes	Depends	No	Yes	Yes
Idaho	No	No	Yes	Yes[22]	Yes	Yes[23]	Yes[24]
Illinois[25]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in the sales tax portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation makes remote sales into your state and hires a third party to distribute flyers, coupons, and other printed promotional materials.

[3] The corporation makes remote sales into your state and hires a third party to electronically distribute via e-mail or other means electronic equivalents of flyers, coupons, and other printed promotional materials.

[4] The corporation makes remote sales into your state and hires a third party to solicit sales in person.

[5] The corporation makes remote sales into your state and hires a third party to solicit sales by telephone.

[6] The corporation makes remote sales into your state and hires a third party to demonstrate a product in person.

[7] The corporation makes remote sales into your state and hires a third party to negotiate prices to buy.

[8] The corporation makes remote sales into your state and hires a third party to negotiate prices to sell.

[9] AZ: With all responses, the key inquiry is whether the Arizona third party is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax. The responses assume that the third party is engaged in the described activities within the state.

[10] CA: This assumes that the third party is not located in this state.

[11] CA: *Id.*

[12] **CA: This assumes the third party is performing the services in-state.**

[13] CT: DRS has no published position.

[14] CT: *Id.*

[15] CT: *Id.*

[16] CT: *Id.*

[17] CT: *Id.*

[18] DC: Depends on whether negotiation takes place in DC.

[19] DC: *Id.*

[20] FL: Nexus is considered on a case-by-case basis.

[21] GA: If the referrals from in-state sources exceed $50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a ''dealer'' and must collect tax on all sales into the state.

[22] ID: Telephone calls from in-state, Yes.

[23] ID: From in-state, Yes.

[24] ID: *Id.*

[25] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Distribute promotional materials[2]	Electronic promotional materials[3]	Solicit sales in-person[4]	Solicit sales by telephone[5]	Demonstrate product in person[6]	Negotiate prices to buy[7]	Negotiate prices to sell[8]
Iowa	No	No	Yes	No	Yes	Yes	Yes
Kansas	Yes	No	Yes	Yes[26]	Yes	Yes[27]	Yes[28]
Kentucky	Depends	Depends	Yes	Depends	Yes	Depends	Depends
Louisiana	No	No	Yes	Yes	Yes	No	Yes
Maine	No[29]	No	Yes	Yes	Yes	Yes	Yes
Massachusetts	No	No	No	No	Yes	No	No
Michigan	No	No	Yes	No[30]	Yes	No[31]	No[32]
Minnesota	No	No	**No Response**[33]	**No Response**[34]	**No Response**[35]	**No Response**[36]	**No Response**[37]
Missouri	Yes	Yes	Yes	**Yes**[38]	Yes	Yes	Yes
Nebraska	Yes	No	Yes	No[39]	Yes	Yes	Yes
Nevada	Yes[40]	No	Yes	No[41]	Yes[42]	No[43]	Yes[44]
New Jersey	No	No	Yes	No	Yes	No	Yes
New Mexico	Yes	Yes	Yes	No	Yes	Yes	Yes
New York	No	No	Yes	No	Yes	No Response[45]	No Response[46]
North Carolina	No	No	Yes	No Response[47]	Yes	No	Yes
North Dakota	Yes	No	Yes	Yes	Yes	Yes	Yes
Ohio	No	No	Yes	No	Yes	Yes	Yes
Pennsylvania	Yes	No	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	No	Yes	Yes	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	No	No	Yes	No[48]	Yes	No	Yes[49]

[26] KS: Yes, if the third party is located in Kansas.
[27] KS: *Id.*
[28] KS: *Id.*
[29] ME: Provided the third party is an interstate common carrier.
[30] MI: Assumes the third party is not physically present in Michigan.
[31] MI: *Id.*
[32] MI: *Id.*
[33] **MN: If they are doing business in the state on more than 3 days per 12-month period nexus is created.**
[34] **MN: *Id.***
[35] **MN: *Id.***
[36] **MN: *Id.***
[37] **MN: *Id.***
[38] **MO: All responses assume third party is in Missouri.**
[39] NE: If the corporation utilizes a telemarketing service location in Nebraska to solicit sales, then nexus is established.
[40] NV: Provided the third party has a physical presence in Nevada.
[41] NV: Unless the third party has a physical presence in Nevada.
[42] NV: Provided the third party has a physical presence in Nevada.
[43] NV: Assuming the corporation is purchasing for resale.
[44] NV: Provided the third party has a physical presence in Nevada.
[45] NY: Depends if third party is present in NYS when conducting these activities.
[46] NY: *Id.*
[47] NC: If third party located in North Carolina, then Yes.
[48] TN: Answer assumes that solicitation by telephone is not done in Tennessee.
[49] TN: Answer assumes that the price negotiation takes place in Tennessee.

State[1]	Distribute promotional materials[2]	Electronic promotional materials[3]	Solicit sales in-person[4]	Solicit sales by telephone[5]	Demonstrate product in person[6]	Negotiate prices to buy[7]	Negotiate prices to sell[8]
Texas	No	No	Yes	No[50]	Yes	No	Yes[51]
Utah	No	No	Yes	No	Yes[52]	No	No
Vermont[53]	No	No	No Response	No Response	No Response	No Response	No Response
Virginia	No	No	Yes	No[54]	Depends	No	No
Washington	**Yes**[55]	No[56]	Yes	No[57]	Yes	No[58]	**Yes**[59]
West Virginia	No	No	Yes	No	No	Yes	Yes
Wisconsin	Yes[60]	Depends[61]	Yes	Yes[62]	Yes	Yes[63]	Yes[64]
Wyoming[65]	No[66]	No[67]	Yes	Yes[68]	Yes	No	Yes[69]

[50] TX: Answer assumes that telephone solicitation is performed from location outside of Texas and that solicitor and client perform no other activities in Texas.
[51] TX: Yes, if in person.
[52] UT: Must be demonstrating products on a systematic basis.
[53] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[54] VA: P.D. 92-136.
[55] WA: Assumes the third party solicitor is not located in or conducting such activities in this state.
[56] WA: *Id.*
[57] WA: *Id.*
[58] WA: *Id.*
[59] WA: *Id.*
[60] WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (2011-12) and sec. 77.51(13g)(d), Wis. Stats. (2011-12).
[61] WI: *Id.*
[62] WI: *Id.* Yes, if the third party is located in Wisconsin.
[63] WI: Id.
[64] WI: *Id.*
[65] WY: Wyoming does not have de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.
[66] WY: Advertising alone is not sufficient to establish nexus.
[67] WY: *Id.*
[68] WY: Yes, if the call center is in our state.
[69] WY: Yes, if the solicitor is located in our state, either permanently or temporarily.

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Nexus-Creating Activities: Sales and Use Tax — Third-Party Solicitation Activities and Attributional Nexus (Part 2 of 2)

State[1]	Refer via Internet click through[2]	Advertise product on in-state website[3]	Post info. on in-state website [4]	Search engine optimization techniques[5]
Alabama	**Yes**	**No**	**No**	**No**
Arizona[6]	No	No	No	No
Arkansas	No	No	No	No
California	No[7]	No	No[8]	No
Colorado	Yes	No	No	No
Connecticut[9]	No Response	No Response	No Response	No Response
District of Columbia	No	No	**No**	No
Florida[10]	No Response	No Response	No Response	No Response
Georgia	Depends[11]	No	No	No
Hawaii	No	No	No	No
Idaho[12]	No	No	No	No
Illinois[13]	No Response	No Response	No Response	No Response
Indiana	No	No	No	No
Iowa	Yes	No	No	No
Kansas	Yes	No	No	No
Kentucky	No	No	No	No
Louisiana	Yes	No	No	No

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation makes remote sales into your state and hires a third party to refer a customer via website or blog click through in exchange for a percentage of the sale.

[3] The corporation makes remote sales into your state and hires a third party to advertise a product on an in-state website or blog, but with no click through to buy.

[4] The corporation makes remote sales into your state and hires a third party to post informational content on in-state websites or blogs.

[5] The corporation makes remote sales into your state and hires a third party to employ ''search engine optimization'' techniques, such as generating targeted advertisements based on specific searches.

[6] AZ: With all responses, the key inquiry is whether the Arizona third party is creating or expanding a market in this state for the remote vendor. The more indicia, the more likely the remote vendor will have nexus for transaction privilege tax. The responses assume that the third party is engaged in the described activities within the state.

[7] CA: This assumes the retailer does not derive at least $10,000 in sales clicked to in by in-state persons in the preceding 12 months or that the retailer does not have at least $1 million in total sales to purchasers in this state for the preceding 12 months. (Section 6203(c)(5)).

[8] CA: This assumes that the third party is not located in this state.

[9] CT: DRS has no published position.

[10] FL: Nexus is considered on a case-by-case basis.

[11] GA: If the referrals from in-state sources exceed $50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a ''dealer'' and must collect tax on all sales into the state.

[12] ID: Thus far, we have not challenged taxpayers whose sole connection to the state is from a remote Web server or site.

[13] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Refer via Internet click through[2]	Advertise product on in-state website[3]	Post info. on in-state website [4]	Search engine optimization techniques[5]
Maine	Yes[14]	No	No	No
Massachusetts	No	No	No	No
Michigan	No Response[15]	No	No[16]	No[17]
Minnesota	**No Response**[18]	No	No	No
Missouri	Yes	Yes	Yes	No
Nebraska	No	No	No	No
Nevada	No[19]	No	No	No
New Jersey	No	No	No	No
New Mexico	No	No	No	No
New York	No Response[20]	No	No	No
North Carolina	Yes	No	No	No
North Dakota	Yes[21]	Yes	Yes	Yes[22]
Ohio	No	No[23]	No[24]	No[25]
Pennsylvania	Yes	No	No	No
Rhode Island	Yes	No	No	No
South Dakota	Yes[26]	No	No	No
Tennessee	No	No	No	No
Texas	No	No	No	No
Utah	No	No	No	No
Vermont[27]	No Response	No	No	No
Virginia	No	No	No	No
Washington[28]	**Yes**	No	No	No
West Virginia	No	No	No	No
Wisconsin	No	No	No	No
Wyoming[29]	No	No	No	No

[14] ME: Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, Paragraph C.
[15] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[16] MI: Assumes the third party is not physically present in Michigan.
[17] MI: *Id.*
[18] **MN: If sales are more than $10,000 per year.**
[19] NV: Unless the third party has a physical presence in Nevada.
[20] NY: For information on this, *see* TSB-M-08(3)S, New Presumption Applicable to the Definition of Sales Tax Vendor, and TSB-M-08(3.1)S, Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.
[21] ND: Server must be in North Dakota.
[22] ND: *Id.*
[23] OH: Nexus is created if corporation owns the server used and it is located in Ohio.
[24] OH: *Id.*
[25] OH: *Id.*
[26] SD: Is an area that South Dakota will push for nexus.
[27] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[28] WA: Assumes the third party solicitor is not located in or conducting such activities in this state.
[29] WY: Wyoming does not have de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

Nexus-Creating Activities: Sales and Use Tax—Transactions Involving Franchise Agreements

State[1]	Owns only intangible property[2]	One inspection visit[3]	2 to 6 inspection visits[4]	More than 6 inspection visits[5]	Leases equipment worth $20,000[6]	Leases equipment worth $100,000[7]	Repairs equipment in state[8]
Alabama	**No**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Arizona[9]	No[10]	No[11]	No[12]	No[13]	Yes[14]	Yes[15]	Yes[16]
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California[17]	No	No	No	No	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut[18]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida[19]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The corporation licenses intangible property to an in-state franchisee and the corporation owns only intangible property such as trademarks in your state.

[3] The corporation licenses intangible property to an in-state franchisee and the corporation makes one inspection visit to the franchisee's location per year.

[4] The corporation licenses intangible property to an in-state franchisee and the corporation makes two to six inspection visits to the franchisee's location per year.

[5] The corporation licenses intangible property to an in-state franchisee and the corporation makes more than six inspection visits to the franchisee's location per year.

[6] The corporation licenses intangible property to an in-state franchisee and the corporation leases machinery and equipment worth $20,000 to the franchisee.

[7] The corporation licenses intangible property to an in-state franchisee and the corporation leases machinery and equipment worth $100,000 to the franchisee.

[8] The corporation licenses intangible property to an in-state franchisee and the corporation maintains and repairs the franchisee's equipment in your state.

[9] AZ: All responses assume that ''intangible property'' refers to such property as trademarks, brand names business processes, and goodwill, and not to prewritten software and other similar digital goods that Arizona considers tangible personal property.

[10] AZ: This response assumes the corporation (e.g., parent, holding company for intangibles) is not otherwise making retail sales, leases or rentals of tangible personal property, or otherwise engaged in a taxable business activity.

[11] AZ: *Id.*

[12] AZ: *Id.*

[13] AZ: *Id.*

[14] AZ: Corporation's gross receipts derived from the leasing activity and related activities (e.g., installation, training, repair, etc.) would be subject to TPT under the personal property rental classification.

[15] AZ: *Id.*

[16] AZ: *Id.*

[17] CA: The answers assume the in-state franchisee does not engage in any selling activity on behalf of the corporation.

[18] CT: DRS has no published position.

[19] FL: Nexus is considered on a case-by-case basis.

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State[1]	Owns only intangible property[2]	One inspection visit[3]	2 to 6 inspection visits[4]	More than 6 inspection visits[5]	Leases equipment worth $20,000[6]	Leases equipment worth $100,000[7]	Repairs equipment in state[8]
Idaho	No Response[20]	No Response[21]	No Response[22]	No Response[23]	Yes	Yes	Yes
Illinois[24]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas[25]	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No[26]	Depends	Depends	Depends	Yes	Yes	Yes
Louisiana	No	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes[27]	Yes[28]	Yes[29]	Yes[30]	Yes	Yes	Yes
Massachusetts	No	Depends	Yes	Yes	Yes	Yes	Yes
Michigan	No	**No Response**[31]	Yes	Yes	Yes	Yes	Yes
Minnesota	No	**No Response**[32]	**No Response**[33]	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes	Yes[34]	Yes[35]	Yes[36]	Yes	Yes	Yes[37]
New Jersey	No	No	No	No	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	No	No	No	No	Yes[38]	Yes[39]	Yes[40]
North Carolina	No	No	No	No	Yes	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes	Yes	Yes

[20] ID: The Tax Commission has made no ruling on this fact situation.
[21] ID: *Id.*
[22] ID: *Id.*
[23] ID: *Id.*
[24] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[25] KS: K.S.A. 79-3702(h)(1)(E).
[26] KY: May change depending upon type or meaning of intangible property.
[27] ME: Possibly; *see* 36 MRSA section 1754-B, subsection 1-A, paragraph (B).
[28] ME: *Id.*
[29] ME: *Id.*
[30] ME: *Id.*
[31] **MI: The specific facts of the situation would have to be assessed under RAB 1999-1.**
[32] **MN: If they are doing business in the state on more than 3 days per 12-month period, nexus is created.**
[33] MN: Id.
[34] NV: Provided the corporation has a presence in Nevada for the purpose of creating and/or maintaining a market and benefits from services paid for with tax dollars.
[35] NV: *Id.*
[36] NV: *Id.*
[37] NV: *Id.*
[38] NY: *See* Tax Law Section 1101(b)(8)(F) and Regulations Section 526.10(a)(7).
[39] NY: *Id.*
[40] NY: *Id.*

State[1]	Owns only intangible property[2]	One inspection visit[3]	2 to 6 inspection visits[4]	More than 6 inspection visits[5]	Leases equipment worth $20,000[6]	Leases equipment worth $100,000[7]	Repairs equipment in state[8]
Ohio	No	Yes[41]	Yes[42]	Yes[43]	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes	Yes[44]	Yes[45]	Yes
Tennessee	No	No[46]	No[47]	No[48]	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Utah	No	No	No	No	Yes	Yes	Yes
Vermont[49]	No	No	No	No	No Response	No Response	No Response
Virginia[50]	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**	**Depends**
Washington	No	Yes	Yes	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	Yes	Yes	Yes	Yes	Yes	Yes
Wyoming[51]	No	No	No	No	Yes	Yes	Yes

[41] OH: Nexus is created if corporation has more than 7 visits to Ohio and $25,000 in Ohio sales in a calendar year.
[42] OH: *Id.*
[43] OH: *Id.*
[44] SD: If the franchisee retains any ownership in the product, then nexus would be created.
[45] SD: *Id.*
[46] TN: It is likely that the franchisor will have other transactions with the franchisee that will create Tennessee sales tax nexus for the franchisor.
[47] TN: *Id.*
[48] TN: *Id.*
[49] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.
[50] **VA: Depends on the facts and circumstances. If the franchise or licensee is operating under the same trade name in Virginia as the franchisor or licensor and the parties have an agency relationship, this may be sufficient to confer nexus on the out-of-state franchisor/licensor pursuant to Va. Code §58.1-612(c)(8).**
[51] WY: Wyoming does not have de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

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Nexus-Creating Activities: Sales and Use Tax — Service Providers

State[1]	Repairs tangible personal property and delivers it by common carrier[2]	Provides taxable service in which no part is physically transferred[3]	Provides taxable service in which tangible personal property is physically transferred[4]	Transfers documents by electronic means[5]	Employees regularly enter state to deliver tangible personal property[6]	Employees occasionally enter state to deliver tangible personal property[7]	Stores tangible personal property with third party in state[8]
Alabama	**Not Applicable**[9]	**No Response**[10]	**No Response**[11]	**No Response**[12]	**No Response**[13]	**No Response**[14]	**No Response**[15]

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the question for the first time. Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The out-of-state corporation repairs tangible personal property in another state and delivers it by common carrier to an in-state customer (assume the repair services are taxable in your state).

[3] The out-of-state corporation provides a taxable service to an in-state customer in which no part of the service, including the tangible personal property that is incidental to the performance of the taxable service, is physically transferred to the in-state customer.

[4] The out-of-state corporation provides a taxable service to an in-state customer in which tangible personal property that is incidental to the performance of the service is physically transferred (i.e., by common carrier) to the in-state customer.

[5] The out-of-state corporation transfers to an in-state customer, only by electronic means, documents that are incidental to the performance of a taxable service.

[6] The out-of-state corporation has employees that regularly (e.g., 12 or more times per year) enter the state to deliver to in-state customers tangible personal property that is incidental to the performance of a taxable service.

[7] The out-of-state corporation has employees occasionally (e.g., less than 12 times per year) enter the state to deliver to an in-state customer tangible personal property that is incidental to the performance of a taxable service.

[8] The out-of-state corporation stores tangible personal property with a third party in the state that is transferred to in-state customers as an incidental part of the performance of a taxable service.

[9] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Delivery by a common carrier into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama). *See* Departmental Rule 810-6-5-.04.02(5)(a), Example 2.

Please note that the scenario as stated in (1) assumes that repair services are taxable in Alabama. Labor or service charges *are taxable* if the labor or service is incidental to making, producing, or fabricating a new or different item of tangible personal property or otherwise preparing the tangible personal property for sale and is performed prior to transfer of title to the purchaser. It does not matter whether the labor or service charge is included in the total charge for the product or is billed as a separate item (Departmental Rule 810-6-1-.84).

Repair charges *are not subject* to sales or use tax per Departmental Rule 810-6-1-.84 **as follows: "Labor or service charges are not taxable when billed for labor or services expended in repairing or altering existing tangible personal property belonging to another in order to restore the property to its original condition or usefulness without producing new parts. When repair work includes the sale of repair parts in conjunction with repairs to existing tangible personal property belonging to another, only the sales price of the repair parts is taxable provided the charges for the repair parts and the charges for the repair labor or repair services are billed separately on the invoice to the customer. If the repairman fabricates repair parts which are used in conjunction with repairs to existing tangible personal property belonging to another, the total charge for the parts, including any labor or service charges incurred in making, producing, or fabricating the parts, is taxable even if the fabrication labor or service charges are billed to the customer as a separate item."**

[10] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes. Scenario 2 would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama).

Also, please note that sales tax is levied on the retail sale of tangible personal property (Code of Alabama 1975, Section 40-23-2). Services in general are not subject to sales tax.

[11] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Delivery by a common carrier into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama).

[12] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Electronic means of delivery into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama).

[13] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including employing or retaining under contract any representative, agent, salesman, canvasser, solicitor or installer operating in Alabama for the purpose of selling, delivering, taking orders, etc.

A seller who employs agents in Alabama for the purpose of selling, delivering, or the taking of orders has established contact with this state that would allow this state to require the seller to collect sales tax on retail sales of tangible personal property.

[14] AL: *Id.*

[15] AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including maintaining directly or indirectly a storage place or warehouse.

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State[1]	Repairs tangible personal property and delivers it by common carrier[2]	Provides taxable service in which no part is physically transferred[3]	Provides taxable service in which tangible personal property is physically transferred[4]	Transfers documents by electronic means[5]	Employees regularly enter state to deliver tangible personal property[6]	Employees occasionally enter state to deliver tangible personal property[7]	Stores tangible personal property with third party in state[8]
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas[16]	No	No[17]	No[18]	No	No	No	Yes
California	No	No	No	No	Yes[19]	Yes[20]	Yes
Colorado	No	Yes[21]	Yes[22]	Yes[23]	Yes[24]	Yes[25]	Yes[26]
Connecticut	No Response[27]	No Response[28]	No Response[29]	No Response[30]	No Response[31]	No Response[32]	No Response[33]
District of Columbia	No	No	**Yes**[34]	Yes	Yes	Yes	Yes
Florida[35]	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	No	No[36]	No	Yes	Depends	Yes
Hawaii	No	No	No	No	Yes	Yes	Yes
Idaho	**No**	**No Response**[37]	**No Response**[38]	**No**	**Yes**	**Yes**	**No Response**[39]
Illinois[40]	No Response	No Response	No Response	No Response	No Response	No Response	No Response

Inventory stored with a third party would create substantial nexus for an out-of-state company to collect sales tax on retail sales of tangible personal property.

[16] AR: Ark. Code Ann. §§26-5-101; 26-53-106; 26-53-107; 26-53-131, Arkansas UT-12.

[17] AR: The answer assumes the repair is provided solely outside the state.

[18] AR: *Id.*

[19] **CA: This assumes that the in-state activity helps the corporation establish or maintain a California market for sales of tangible personal property.**

[20] **CA: *Id.***

[21] CO: Because all taxable services have a nexus with the state. If part of the transaction were unbundled and provided by another corporation, (e.g., utilities billing were performed and charged for by another), the other service providing entities would establish nexus on behalf of the non-nexus provider.

[22] CO: *Id.*

[23] CO: *Id.*

[24] CO: *Id.*

[25] CO: *Id.*

[26] CO: *Id.*

[27] CT: DRS has no published position.

[28] CT: *Id.*

[29] CT: *Id.*

[30] CT: *Id.*

[31] CT: *Id.*

[32] CT: *Id.*

[33] CT: *See* Conn. Gen. Stat. §12-407(a)(15)(C) regarding nexus in connection with fulfillment services.

[34] DC: If tangible property has been delivered via common carrier service to the District of Columbia and the company's service is related to the product that is being delivered, then it would be a taxable service as well as tax on the tpp delivered.

[35] FL: Nexus is considered on a case-by-case basis.

[36] GA: As long as the property is shipped from out of state by common carrier to customer in state, no nexus.

[37] **ID: Does not have sufficient facts to provide an answer.**

[38] **ID: *Id.***

[39] **ID: *Id.***

[40] IL: The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *See* 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. *See* 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as ''sales'' tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information, *see* 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. *See* 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

State[1]	Repairs tangible personal property and delivers it by common carrier[2]	Provides taxable service in which no part is physically transferred[3]	Provides taxable service in which tangible personal property is physically transferred[4]	Transfers documents by electronic means[5]	Employees regularly enter state to deliver tangible personal property[6]	Employees occasionally enter state to deliver tangible personal property[7]	Stores tangible personal property with third party in state[8]
Indiana	No	Not Applicable[41]	Not Applicable[42]	Not Applicable[43]	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	No	No	No	No	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	No	No	No	No	Yes	Yes	No
Maine	No	No	No	No	Yes	Depends[44]	Depends[45]
Massachusetts	No	Yes	Yes	No	Yes	Yes	Yes
Michigan	No	No	No	No	Yes	Yes	Yes
Minnesota	No	No	No	No	Yes	**No Response**[46]	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	No	No	No	No	Yes	Yes	Yes
Nevada	No	No	No	No	Yes	Yes	Yes
New Jersey	No	No	No[47]	No[48]	Yes	Yes	Yes
New Mexico	No	No	No	Yes	Yes	Yes	Yes
New York	No	No	No	No	Yes	Yes	Yes
North Carolina	No	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	No	No	No	No	Yes	Yes	Yes
Ohio	No	Yes	Yes	No	Yes	Yes	Yes
Pennsylvania	No	No	No	No	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	**Yes**	Yes	Yes	Yes
South Dakota	No	No	No	No	Yes	Yes	Yes
Tennessee	No	No[49]	No	No	Yes	Yes	Yes
Texas	No[50]	No[51]	No[52]	No[53]	Yes	Yes	Yes
Utah	No	No	No	No	Yes	Yes	Yes
Vermont[54]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia[55]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Washington	No	No[56]	No[57]	No[58]	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	No	Yes	Yes	Yes

[41] IN: Questions are ambiguous. We are not comfortable giving an answer when we aren't sure what kind of situations are contemplated by the questions.
[42] IN: *Id.*
[43] IN: *Id.*
[44] ME: Possibly; depends on the facts.
[45] ME: *Id.*
[46] **MN: If they are doing business in the state on more than 3 days per 12-month period, nexus is created.**
[47] NJ: The answers presume a taxable service is performed out of state.
[48] NJ: *Id.*
[49] TN: It is unclear from the question how a service can be "physically transferred."
[50] TX: Assumes nexus has not been established by any means codified in Texas Tax Code 151.107.
[51] TX: *Id.*
[52] TX: *Id.*
[53] TX: *Id.*
[54] VT: Services are not subject to Vermont's sales and use tax. Tangible personal property that is merely incidental to a personal service is not taxable. 32 V.S.A. §9741(35).
[55] VA: Generally, services are not subject to tax in Virginia.
[56] WA: Assumes taxable services is performed outside WA.
[57] WA: *Id.*
[58] WA: *Id.*

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State[1]	Repairs tangible personal property and delivers it by common carrier[2]	Provides taxable service in which no part is physically transferred[3]	Provides taxable service in which tangible personal property is physically transferred[4]	Transfers documents by electronic means[5]	Employees regularly enter state to deliver tangible personal property[6]	Employees occasionally enter state to deliver tangible personal property[7]	Stores tangible personal property with third party in state[8]
Wisconsin	No	Depends	Depends	No	Yes	Yes	Yes
Wyoming[59]	No[60]	No	No	No	Yes[61]	Yes[62]	Yes[63]

[59] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

[60] WY: As adopted from SSTA's terms ''receive'' and ''receipt'' and ''making first use of services.'' **With regard to services the location where the customer receives the serviced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax. [W.S. 39-15-104(f)(i)]**

[61] WY: Employees providing taxable service in this state creates nexus.

[62] WY: *Id.*

[63] WY: Storing inventory in the state is a nexus-creating activity.

Nexus-Creating Activities: Sales and Use Tax — Cloud Computing (Part 1 of 2)

State[1]	Fees charged for right to access software hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Alabama	No Response[8]	No Response[9]	No Response[10]	No Response[11]	No Response[12]	No Response[13]
Arizona	Yes	Yes	Yes	Yes	Yes	Yes

[1] Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

[3] The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and remotely performs a taxable service in your state.

[4] The out-of-state corporation sends an employee to your state to perform an initial setup and then charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

[5] The out-of-state corporation hires an independent contractor in your state to provide training to in-state customers and charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

[6] The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and occasionally (e.g., one to 11 times per year) has employees meet with customers in your state.

[7] The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.

[8] AL: Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term ''canned computer software'' in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

If, in the scenario presented, customers would simply access software on remotely located servers, rather than installing or downloading the software to computer hardware and would not have the ability to manipulate the software code, access to the software would be considered a web-based service and does not fall within the definition of a taxable sale of ''canned'' computer software as described in Sales and Use Tax Rule 810-6-1-.37.

[9] AL: *Id.* Also, please remember that sales tax is levied on the retail sale of tangible personal property (Code of Alabama 1975, Section 40-23-2). Services in general are not subject to sales tax. The situation in [question] (2) does not involve a sale of tangible personal property.

[10] AL: Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term ''canned computer software'' in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

A fee for customers to simply access software on remotely located servers (software is not installed or downloaded to computer hardware) is considered a web-based service and does not fall within the definition of a taxable sale of ''canned'' computer software as described in Sales and Use Tax Rule 810-6-1-.37.

Please note that in this scenario, the fee charged for the service is not a sale of tangible personal property subject to sales tax. Departmental Rule 810-6-2-.90.01, states that employing or retaining under contract any representative, agent, salesman, canvasser, solicitor or installer operating in Alabama for the purpose of selling, delivering, taking orders, etc. creates substantial nexus requiring the seller to remit state and local sales or use taxes on sales of tangible personal property.

[11] AL: *Id.*

[12] AL: *Id.*

[13] AL: *Id.*

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State[1]	Fees charged for right to access software hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Arkansas[14]	Not Applicable[15]	No	Not Applicable[16]	Not Applicable[17]	Not Applicable[18]	Not Applicable[19]
California[20]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Colorado	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Connecticut[21]	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Not Applicable	No	Yes	Yes	Yes	Yes
Florida[22]	No Response	No Response	No Response	No Response	No Response	No Response
Georgia[23]	Not Applicable	Depends	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho[24]	**No**	**No**	**Yes**	**Yes**	**Yes**	**Yes**
Illinois[25]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana[26]	No	No	Yes	No	Yes	Yes
Iowa[27]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	No	No	Yes	Yes	Yes	Yes
Kentucky[28]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana[29]	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Not Applicable[30]	Not Applicable	Depends[31]	Depends[32]	Depends[33]	Not Applicable

[14] AR: Ark. Code Ann. §§26-52-301; 26-52-304, Arkansas GR-25(H).
[15] AR: Not applicable.
[16] AR: *Id.*
[17] AR: *Id.*
[18] AR: *Id.*
[19] AR: *Id.*
[20] CA: Charges to access remote software or information on a website are not subject to tax.
[21] CT: DRS has no published position.
[22] FL: Nexus is considered on a case-by-case basis.
[23] GA: We have not opined on nexus because the inquiries instruct us to answer ''N/A'' if the charges are not taxable in our state.
[24] **ID: Though agents or employees in the state may create nexus, note that sales of remotely accessed software or charges for access to online information are not taxable in Idaho. Thus, if the business only makes these types of sales into Idaho, the nexus question is irrelevant as it pertains to sales tax.**
[25] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[26] **IN: The Department is still in the process of developing its position on these questions. Accordingly, these answers are tentative.**
[27] IA: Iowa Code §423.3(67) transactions delivered electronically are exempt.
[28] KY: Access to nondownloadable prewritten software and access to information on a website are not taxable.
[29] LA: The Department has no position on this issue at this time.
[30] ME: The fees are not taxable in Maine.
[31] ME: The fees are not taxable in Maine; however, the out-of-state corporation may have nexus in Maine, depending on the facts and the number of occurrences.
[32] ME: *Id.*
[33] ME: *Id.*

State[1]	Fees charged for right to access software hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Massachusetts	Depends[34]	Depends[35]	Yes	Depends[36]	Depends[37]	Depends[38]
Michigan	No	No	No Response[39]	No Response[40]	Yes[41]	Yes[42]
Minnesota	No	No	**No Response**[43]	**No Response**[44]	**No Response**[45]	Yes
Missouri	No	No	Yes	Yes	Yes	Yes
Nebraska[46]	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	Not Applicable
Nevada	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Jersey	Not Applicable[47]	No[48]	Not Applicable[49]	Not Applicable[50]	Not Applicable[51]	Not Applicable[52]
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York	No	No	Yes	Yes	Yes	Yes
North Carolina[53]	Not Applicable	Not Applicable	Not Applicable[54]	Not Applicable[55]	Not Applicable[56]	Not Applicable[57]
North Dakota[58]	**Not Applicable**	**Not Applicable**	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Ohio[59]	No	No	Yes	Yes	Yes	Yes
Pennsylvania	No	No	Yes	Yes	Yes	Yes

[34] MA: Depends on the facts.
[35] MA: Depends on the service.
[36] MA: Depends on the facts.
[37] MA: *Id.*
[38] MA: *Id.*
[39] MI: The specific facts of the situation would have to be assessed under RAB 1999-1.
[40] MI: *Id.*
[41] MI: *Id.*
[42] MI: *Id.*
[43] **MN: If they are doing business in the state on more than 3 days per 12-month period.**
[44] **MN: *Id.***
[45] MN: If more than 3 times in a 12-month period.
[46] NE: These fees are not taxable in Nebraska. Some of these activities may nevertheless be nexus creating.
[47] NJ: Fees to access software and training are not taxable. Nexus is created if taxpayer has a place of business in New Jersey, has employees working in this State (e.g., technicians, instructors, delivery persons, independent representatives, solicitors), or owns any business property here. Charges for installation and maintenance of tangible personal property are subject to tax. N.J.S.A. 54:32B-3(b)(2).
[48] NJ: *Id.*
[49] NJ: *Id.*
[50] NJ: *Id.*
[51] NJ: *Id.*
[52] NJ: *Id.*
[53] NC: Charges for ''cloud computing'' involving a person using online/web-hosted versions of prewritten software located on servers where the prewritten software is not downloaded, but is instead accessed electronically via the internet website, is not subject to NC sales & use tax.
[54] NC: Activities performed in the State by employees or by a third party on behalf of the out-of-state corporation create nexus in the State, although many of the transactions are not subject to sales tax.
[55] NC: *Id.*
[56] NC: *Id.*
[57] NC: *Id.*
[58] **ND: These fees are not taxable in our state**.
[59] OH: Ohio Rev. Code 5739.01(B)(3)(e) imposes tax on automatic data processing services and electronic information services. These services are defined in Ohio Rev. Code 5739.01(Y). *See also* Sales & Use Tax Information Release ST 2001-01, issued September 2001.

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State[1]	Fees charged for right to access software hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Rhode Island[60]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
South Dakota	No	No	Yes	Yes	Yes	Yes
Tennessee[61]	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**	**Not Applicable**
Texas	No	No	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont[62]	No	Not Applicable[63]	No	No	No	No Response
Virginia[64]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Washington	No	No	Yes	Yes	Yes	Yes
West Virginia	No	No	No	Yes	No	No
Wisconsin	Not Applicable[65]	No	Not Applicable[66]	Not Applicable[67]	Not Applicable[68]	Not Applicable[69]
Wyoming[70]	Not Applicable[71]	Not Applicable[72]	Yes[73]	Not Applicable[74]	Not Applicable[75]	Not Applicable[76]

[60] RI: When a vendor charges a fee to access information on its website or hosts software from their server which may be accessed by a customer, the transaction is not considered prewritten software delivered electronically and is not subject to tax. Tax is due if the prewritten computer software is downloaded.

[61] **TN: The fees are not taxable, assuming the out-of-state corporation is not providing taxable telecommunication or ancillary services.**

[62] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[63] VT: Services are not taxable. Otherwise, the answer is ''No.''

[64] VA: The Department of Taxation has ruled cloud computing services are not taxable. (P.D. 12-215; P.D. 12-191).

[65] WI: This assumes the charges are for accessing prewritten computer software located on the vendor's server, and the customer does not operate the vendor's server, or control its operation and does not have physical access to the vendor's server. This also assumes the service provider is not providing a taxable service (for example, a telecommunications message service) in the transaction.

[66] WI: *Id.*

[67] WI: *Id.*

[68] WI: *Id.*

[69] WI: *Id.*

[70] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[71] WY: Wyoming does not impose sales tax on charges to web-hosted sites as the web-hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

[72] WY: *Id.*

[73] WY: Wyoming imposes sales tax on services which repair, alter, or improve computer hardware, computer software, or canned software; therefore, employees in our state that are involved in taxable services create nexus.

[74] WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property. Wyoming has no statutory provisions to impose sales tax on the professional services of a trainer/instructor. However, if course materials, manuals, etc., are separately sold from any training activities, they are subject to sales tax. Employees in our state making taxable sales create nexus.

[75] WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

[76] WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Cloud Computing (Part 2 of 2)

State[1]	Fees charged for right to access information on website hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., less than 12 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Alabama	No Response[8]	No Response[9]	No Response[10]	No Response[11]	No Response[12]	No Response[13]
Arizona[14]	No	No	No	No	No	No
Arkansas[15]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[1] Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

[3] The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and remotely performs a taxable service in your state.

[4] The out-of-state corporation sends an employee in your state to perform an initial set up and then charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

[5] The out-of-state corporation hires an independent contractor in your state to provide training to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

[6] The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and occasionally (e.g., less than 12 times per year) has employees meet with customers in your state.

[7] The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.

[8] AL: The response to this question depends on whether this transaction of ''accessing information'' involves a web-based service (for example, accessing prewritten software that is not downloaded, licensed, or stored by the user) or a sale of tangible personal property delivered by electronic means (for example, a sale of a downloadable magazine). Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term ''canned computer software'' in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

A fee for customers to simply access software on remotely located servers (nothing is installed or downloaded to computer hardware) is considered a web-based service and does not fall within the definition of a taxable sale of ''canned'' computer software as described in Sales and Use Tax Rule 810-6-1-.37.

If this is a sale of tangible personal property, the out-of-state corporation has not established sufficient nexus for sales tax purposes, as it does not have a physical presence as described in Departmental Rule 810-6-2-.90.01.

[9] AL: *Id.*

[10] AL: The response to this question depends on whether this transaction of ''accessing information'' involves a web-based service (for example, accessing prewritten software that is not downloaded, licensed, or stored by the user) or a sale of tangible personal property delivered by electronic means (for example, a sale of a downloadable magazine). Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term ''canned computer software'' in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

A fee for customers to simply access software on remotely located servers (nothing is installed or downloaded to computer hardware) is considered a web-based service and does not fall within the definition of a taxable sale of ''canned'' computer software as described in Sales and Use Tax Rule 810-6-1-.37.

If this is a sale of tangible personal property, the out-of-state corporation has established sufficient nexus for sales tax purposes by employing under contract an agent in this state per described in Departmental Rule 810-6-2-.90.01.

[11] AL: *Id.*

[12] AL: *Id.*

[13] AL: *Id.*

[14] AZ: All ''No'' answers are conditioned on the presumptions that: (a) there is no conveyance of a user license to any software involved as part of the transaction and (b) there is no retail sale of digital tangible personal property involved as part of the transaction.

[15] AR: Not applicable. Ark. Code Ann. §§26-52-301; 26-52-304, Arkansas GR-25(H).

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State[1]	Fees charged for right to access information on website hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., less than 12 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
California[16]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Colorado	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Connecticut[17]	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes
Florida[18]	No Response	No Response	No Response	No Response	No Response	No Response
Georgia[19]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho[20]	**No**	**No**	**Yes**	**Yes**	**Yes**	**Yes**
Illinois[21]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana[22]	No	No	Yes	No	Yes	Yes
Iowa[23]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	No	No	Yes	Yes	Yes	Yes
Kentucky[24]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana[25]	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Not Applicable[26]	Not Applicable[27]	Depends[28]	Depends[29]	Depends[30]	Depends[31]
Massachusetts	No	Depends[32]	Depends[33]	No Response	Depends[34]	Depends[35]
Michigan	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[16] CA: Charges to access remote software or information on a website are not subject to tax.
[17] CT: DRS has no published position.
[18] FL: Nexus is considered on a case-by-case basis.
[19] GA: We have not opined on nexus because the inquiries instruct us to answer ''N/A'' if the charges are not taxable in our state.
[20] **ID: Though agents or employees in the state may create nexus, note that sales of remotely accessed software or charges for access to online information are not taxable in Idaho. Thus, if the business only makes these types of sales into Idaho, the nexus question is irrelevant as it pertains to sales tax.**
[21] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).
[22] **IN: The Department is still in the process of developing its position on these questions. Accordingly, these answers are tentative.**
[23] IA: Iowa Code §423.3(67) transactions delivered electronically are exempt.
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[25] LA: The Department has no position on this issue at this time.
[26] ME: The fees are not taxable in Maine.
[27] ME: *Id.*
[28] ME: The fees are not taxable in Maine; however, the out-of-state corporation may have nexus in Maine, depending on the facts and the number of occurrences.
[29] ME: *Id.*
[30] ME: *Id.*
[31] ME: *Id.*
[32] MA: Depends on the facts.
[33] MA: Depends on the service.
[34] MA: Depends on the facts.
[35] MA: *Id.*

State[1]	Fees charged for right to access information on website hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., less than 12 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Minnesota	No	No	**No Response**[36]	**No Response**[37]	**No Response**[38]	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes
Nebraska[39]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Nevada	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Jersey[40]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	Yes	Yes	**Yes**	Yes
New York	No	No	Yes	Yes	Yes	Yes
North Carolina[41]	Not Applicable	Not Applicable	Not Applicable[42]	Not Applicable	Not Applicable[43]	Not Applicable[44]
North Dakota[45]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Ohio[46]	No	No	Yes	Yes	Yes	Yes
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island[47]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
South Dakota	No	No	Yes	Yes	Yes	Yes
Tennessee	**Not Applicable**[48]	**Not Applicable**[49]	**Not Applicable**[50]	**Not Applicable**[51]	**Not Applicable**[52]	**Not Applicable**[53]
Texas	No	No	Yes	Yes	Yes	Yes

[36] **MN: If they are doing business in the state on more than 3 days per 12-month period.**
[37] **MN: *Id.***
[38] MN: If more than 3 times in a 12-month period.
[39] NE: These fees are not taxable in Nebraska. Some of these activities may nevertheless be nexus creating.
[40] NJ: Fees to access software and training are not taxable. Nexus is created if taxpayer has a place of business in New Jersey, has employees working in this State (e.g., technicians, instructors, delivery persons, independent representatives, solicitors), or owns any business property here. Charges for installation and maintenance of tangible personal property are subject to tax. N.J.S.A. 54:32B-3(b)(2).
[41] NC: Charges for ''cloud computing'' involving a person using online/web-hosted versions of prewritten software located on servers where the prewritten software is not downloaded, but is instead accessed electronically via the internet website, is not subject to NC sales & use tax.
[42] NC: Activities performed in the State by employees or by a third party on behalf of the out-of-state corporation create nexus in the State, although many of the transactions are not subject to sales tax.
[43] NC: *Id.*
[44] NC: *Id.*
[45] **ND: These fees are not taxable in our state.**
[46] OH: Ohio Rev. Code 5739.01(B)(3)(e) imposes tax on automatic data processing services and electronic information services. These services are defined in Ohio Rev. Code 5739.01(Y). *See also* Sales & Use Tax Information Release ST 2001-01, issued September 2001.
[47] RI: When a vendor charges a fee to access information on its website or hosts software from their server which may be accessed by a customer, the transaction is not considered prewritten software delivered electronically and is not subject to tax. Tax is due if the prewritten computer software is downloaded.
[48] **TN: The fees are not taxable.**
[49] **TN: *Id.***
[50] **TN: The fees are not taxable, assuming the employees or independent contractors are not performing taxable repair or installation services.**
[51] **TN: *Id.***
[52] **TN: *Id.***
[53] **TN: *Id.***

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State[1]	Fees charged for right to access information on website hosted on out-of-state server[2]	Remotely performs taxable service in the state and fees charged[3]	Employee performs setup and fees charged[4]	Independent contractor provides training and fees charged[5]	Employees occasionally (e.g., less than 12 times per year) meet with customers and fees charged[6]	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged[7]
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont[54]	No	Not Applicable[55]	No	No	No	Not Applicable
Virginia[56]	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Washington	No	No	Yes[57]	Yes[58]	Yes[59]	Yes[60]
West Virginia	No	No	No	No	No	No
Wisconsin	No	No	Depends[61]	Depends[62]	Depends[63]	Depends[64]
Wyoming[65]	Not Applicable[66]	Not Applicable[67]	Yes[68]	Not Applicable[69]	Not Applicable[70]	Not Applicable[71]

[54] VT: All questions with a ''No'' response: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

[55] VT: Services are not taxable. Otherwise, the answer is ''No.''

[56] VA: The Department of Taxation has ruled cloud computing services are not taxable. (P.D. 12-215; P.D. 12-191).

[57] WA: Assumes ''access to information on its website'' is a digital automated service or searchable database defined under RCW 82.04.192.

[58] WA: *Id.*

[59] WA: *Id.*

[60] WA: *Id.*

[61] WI: Nexus — Yes; Taxability — Depends on Facts.

[62] WI: *Id.*

[63] WI: *Id.*

[64] WI: *Id.*

[65] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus, or a physical connection, is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

[66] WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

[67] WY: *Id.*

[68] WY: Wyoming imposes sales tax on services which repair, alter, or improve computer hardware, computer software, or canned software; therefore, employees in our state that are involved in taxable services create nexus.

[69] WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property. Wyoming has no statutory provisions to impose sales tax on the professional services of a trainer/instructor. However, if course materials, manuals, etc., are separately sold from any training activities, they are subject to sales tax. Employees in our state making taxable sales create nexus.

[70] WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

[71] WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax— Registration With State Agencies/Departments

State[1]	Is registered with the Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Is registered for payroll[5]	Is registered for workers' comp[6]	Is registered as a gov't vendor/contractor[7]
Alabama	No Response	No Response	No Response	Yes	Yes	Yes[8]
Arizona	No	Yes	Yes	Yes[9]	Yes[10]	Not Applicable
Arkansas[11]	No	No	No	No	No	No
California	No	No	No	No	No	No
Colorado	No	No	Yes	Yes	Yes	No
Connecticut[12]	Depends	Depends	Depends	Depends	Depends	No Response[13]
District of Columbia	Yes	Yes	No	No	No	Yes
Florida[14]	Yes	No Response	No Response	No Response	No Response	No Response
Georgia[15]	No	No	No	No	No	No
Hawaii	No	No	No	No	No	No
Idaho[16]	No	No	No	No	No	No
Illinois[17]	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Depends	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No	No	No	Yes

[1] This chart is appearing for the first time in 2015. As a result, none of the responses are in bold.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
AK, DE, MT, NH and OR do not impose a sales or use tax.

[2] The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.

[3] The out-of-state corporation holds a general business license issued by your state.

[4] The out-of-state corporation holds a specialty license issued by your state, such as a specialty insurance license.

[5] The out-of-state corporation is registered with the state tax department for payroll tax purposes.

[6] The out-of state corporation is registered with the state agency or department that regulates or administers workers' compensation.

[7] The out-of state corporation is registered with the state as a government vendor or contractor.

[8] AL: *See* Code Section 41-4-116 entitled ''Taxation on sales and leases of tangible personal property to state agency.''

[9] AZ: Depends on activity of employee and if reporting.

[10] AZ: *Id.*

[11] AR: Answers to these questions only apply when the sole factor is the mere registration with the above entities.

[12] CT: There may be nexus depending on the facts and circumstances.

[13] CT: Conn. Gen. Stat. §12-411b requires any contractors who provide tangible personal property to the state to collect use tax as if it had nexus.

[14] FL: Nexus is considered on a case-by-case basis.

[15] GA: Mere registration does not create nexus, but a taxpayer must be able to demonstrate that its only connection with the state is the registration and that the taxpayer is not conducting the business or activity for which it is registered. However, a taxpayer that registers for sales and use tax purposes must collect and remit the tax.

[16] ID: While none of these factor alone create nexus, all of them (particularly registration with the state tax department for payroll purposes and registration with a state agency or department that regulates or administers workers' compensation) are indicators of a physical connection to Idaho and may, in combination with other factors, create nexus in the state.

[17] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

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State[1]	Is registered with the Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Is registered for payroll[5]	Is registered for workers' comp[6]	Is registered as a gov't vendor/contractor[7]
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	No	No	No	No	No	Yes[18]
Massachusetts[19]	Yes	Depends	Depends	Yes	Depends	Depends
Michigan	No	Yes[20]	No	Yes[21]	Yes[22]	No
Minnesota	No	No	No	No Response[23]	No Response[24]	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska[25]	No Response	No Response	No Response	No Response	No Response	No Response
Nevada	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	No	Yes	No	Yes[26]	Yes[27]	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York	No	No	No	No	No	Yes[28]
North Carolina[29]	No	No	No	No	No	No
North Dakota	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Ohio	Yes	Yes	Yes	Yes	Yes	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	No	No[30]	No	No	No	Yes
South Dakota[31]	No	No	No	No	No	No
Tennessee	No	No	No	No	No	No
Texas	No	No	No	No	No	Yes
Utah	No	No	No	Yes	Yes	Yes
Vermont	No Response	No Response	No Response	No Response	No Response	No Response

[18] ME: Possibly; a corporation must register as a seller if it is required to do so as a condition of doing business with the State of Maine by 5 MRSA section 1825-B(14) (sales of $100,000 or more of tangible personal property to the State). *See* 36 MRSA section 1754-B(1)(I).

[19] MA: A company that is ''qualified to do business in Massachusetts'' will be found to have nexus as per 830 CMR 63.39.1(4)(a). The ''employment of labor'' also confers nexus. 830 CMR 63.39.1(4)(b)5.

[20] MI: Assumes corporation has property located in Michigan.

[21] MI: Answer assumes corporation has employees present in Michigan.

[22] MI: *Id.*

[23] MN: If the company has employees working on the company's behalf for more than 3 days in a 12-month period, nexus is created.

[24] MN: *Id.*

[25] NE: Not enough facts to make a nexus determination.

[26] NJ: Assumes physical presence in New Jersey.

[27] NJ: Assumes physical presence in New Jersey. Refers to N.J.S.A. 52:32-44.

[28] NY: A certification that the corporation is a registered sales tax vendor is generally required for a business that contracts with the State. *See* Tax Law Section 5-a.

[29] NC: G.S. 143-59.1 provides, in part, "The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following: (1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina."

[30] RI: If this business license is a sales tax permit or relates to sales, this would constitute nexus for sales tax.

[31] SD: Nexus is not created just by holding various licenses/registrations with other SD agencies. SD would review for other activities that create nexus.

State[1]	Is registered with the Secretary of State[2]	Holds business license[3]	Holds specialty license[4]	Is registered for payroll[5]	Is registered for workers' comp[6]	Is registered as a gov't vendor/contractor[7]
Virginia	No	No[32]	No[33]	No	No	No
Washington	No	No	No	No	No	No
West Virginia	No	No	No	No	No	No
Wisconsin	No	No	No	No[34]	No[35]	No
Wyoming[36]	No	No	No	No	No	No

[32] VA: The corporation would only have nexus with Virginia if it maintains a place of business in Virginia to utilize either of these business licenses. *See,* e.g., PD 94-205.

[33] VA: *Id.*

[34] WI: Merely registering for payroll tax purposes does not create nexus in Wisconsin. However, if employes are working in Wisconsin, nexus for sales and use tax is created.

[35] WI: Merely registering for workers' compensation tax does not create nexus in Wisconsin. However, if employees are working in Wisconsin, nexus for sales and use tax is created.

[36] WY: Wyoming only requires licensure of those persons who meet our definition of a vendor. Registering an entity in our state is required of those acting as vendors but does not create nexus by itself [W.S. 39-15-101(a)(xv); W.S. 39-16-101(a)(x)].

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Nexus-Creating Activities: Sales and use Tax— Drop Shipment Transactions

State[1]	Mfg. ships from distributor with nexus[2]	Mfg. ships orders from distributor with no nexus[3]	Distributor ships from in-state mfg. with title to inventory[4]	Distributor ships from in-state mfg. with no title to inventory[5]	Distributor uses in-state mfg. for fulfillment service with title to inventory[6]	Distributor uses in-state mfg. for fulfillment service with no title to inventory[7]	Distributor charges back returns to mfg. with title[8]	Distributor retains ownership of returns[9]
Alabama	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	No	No	Yes	Yes	No	No
California	No[10]	No[11]	No[12]	Yes	Yes	Yes	Yes	Yes
Colorado	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut[13]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No response
District of Columbia	Yes	No	Yes	Yes	No	No	Yes	Yes
Florida[14]	Yes	No Response	Yes	Yes	Yes	Yes	No Response	No Response
Georgia	No	No	No	Yes	Yes	Yes	Yes	Yes
Hawaii	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No	No	No	Yes	Yes	Yes	Yes	Yes

[1] This chart is appearing for the first time in 2015. As a result, none of the responses are in bold.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS, OK and SC did not participate in this portion of the survey.
AK, DE, MT, NH and OR do not impose a sales or use tax.

[2] The out-of state corporation is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and (a) the distributor has nexus with your state.

[3] The out-of-state corporation is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and (b) the distributor does not have nexus with your state.

[4] The out-of-state corporation is a distributor that uses an in-state manufacturer, who acts as a fulfilment agency in your state to pack and ship orders via common carrier to in-state customers, and (a) the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order.

[5] The out-of-state corporation is a distributor that uses an in-state manufacturer, who acts as a fulfilment agency in your state to pack and ship orders via common carrier to in-state customers, and (b) the corporation holds title to the inventory until the corporation directs the manufacturer to ship the order.

[6] The out-of state corporation is a distributor that contracts with an in-state manufacturer to perform an order fulfilment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and (a) the manufacturer holds title to the inventory prior to shipment.

[7] The out-of state corporation is a distributor that contracts with an in-state manufacturer to perform an order fulfilment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and (b) the corporation holds title to the inventory prior to shipment.

[8] The out-of state corporation is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and (a) the corporation charges product return inventory back to the manufacturer such that the manufacturer owns the returned inventory.

[9] The out-of state corporation is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and (b) the corporation retains ownership of the product return inventory.

[10] CA: This assumes, as instructed, that the manufacturer has no other contacts with the state and would therefore not be a retailer engaged in business in the state.

[11] CA: *Id.*

[12] CA: This assumes that the transactions collectively meet the definition of a drop shipment, and therefore the in-state drop shipper would be deemed the retailer and be liable for the tax (Reg. 1706).

[13] CT: *See* Conn. Gen. Stat. §§12-407(a)(3)(A) & 12-407(a)(15)(C); Policy Statement 2013(3), Sales and Use Tax Rules for Drop Shipments.

[14] FL: Nexus is considered on a case-by-case basis.

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State[1]	Mfg. ships from distributor with nexus[2]	Mfg. ships orders from distributor with no nexus[3]	Distributor ships from in-state mfg. with title to inventory[4]	Distributor ships from in-state mfg. with no title to inventory[5]	Distributor uses in-state mfg. for fulfillment service with title to inventory[6]	Distributor uses in-state mfg. for fulfillment service with no title to inventory[7]	Distributor charges back returns to mfg. with title[8]	Distributor retains ownership of returns[9]
Illinois[15]	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana[16]	No	No	No	No	No	No	No	No
Iowa	No	No	No	Yes	No	Yes	No	Yes
Kansas[17]	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	No	Yes	Yes	Yes	Yes	Yes	No
Maine	Yes[18]	No[19]	Yes	Yes	Yes	Yes	Yes[20]	Yes
Massachusetts[21]	Yes	Depends	Yes	Yes	Depends	Depends	Depends	Depends
Michigan	No[22]	No[23]	No[24]	Yes	Yes	Yes	Yes	Yes
Minnesota	Yes	No	No	Depends	Yes	Yes	Yes	Yes
Missouri	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes[25]	No	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	No	No	No	Yes	No	Yes	Yes	Yes
New Mexico	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes

[15] IL: *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

The Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225. A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405 for the requirements of a Certificate of Resale.

[16] IN: All answers assume the only potential contact with Indiana is the activity specified.

[17] KS: *See* K.S.A. 79-3702(h).

[18] ME: Probably; there is a rebuttable presumption of nexus if an ''affiliated person'' has nexus and in certain other circumstances; *see* 36 MRSA section 1754-B(1-A).

[19] ME: Probably not, but a presumption of nexus could exist under certain circumstances; *see* 36 MRSA section 1754-B(1-A)(C)

[20] ME: Probably; *see* especially 36 MRSA section 1754-B(1-A)(B)(6).

[21] MA: When tangible personal property is physically delivered by an owner, a former owner thereof, a factor, or an agent or representative of the owner, former owner or factor, to the ultimate purchaser residing in or doing business in the commonwealth, or to any person for redelivery to the purchaser, pursuant to a retail sale made by a vendor not engaged in business in the commonwealth, the person making or effectuating the delivery shall be considered the vendor of that property, the transaction shall be a retail sale in the commonwealth by the person and that person, if engaged in business in the commonwealth, shall include the retail selling price in its gross receipts, regardless of any contrary statutory or contractual terms concerning the passage of title or risk of loss which may be expressly or impliedly applicable to any contract or other agreement or arrangement for the sale, transportation, shipment or delivery of that property.'' G.L. c. 64H, §1.

[22] MI: The specific facts of the situation would have to be assessed under RAB 2002-10. *See* example 4.

[23] MI: *See* RAB 2002-10, example 3.

[24] MI: Answer assumes manufacturer is not acting as an agent on behalf of corporation.

[25] NE: Assuming the distributor is acting as an agent of the manufacturer.

State[1]	Mfg. ships from distributor with nexus[2]	Mfg. ships orders from distributor with no nexus[3]	Distributor ships from in-state mfg. with title to inventory[4]	Distributor ships from in-state mfg. with no title to inventory[5]	Distributor uses in-state mfg. for fulfillment service with title to inventory[6]	Distributor uses in-state mfg. for fulfillment service with no title to inventory[7]	Distributor charges back returns to mfg. with title[8]	Distributor retains ownership of returns[9]
New York	No	No	No[26]	No[27]	No[28]	No[29]	No[30]	No[31]
North Carolina	No	No	No	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Ohio	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island[32]	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota	No[33]	No[34]	Yes[35]	Yes[36]	Yes[37]	Yes[38]	Yes	Yes
Tennessee	No	No	No[39]	Yes[40]	Yes	Yes	Yes	Yes
Texas	No[41]	No[42]	No	Yes	Yes	Yes	Yes	Yes
Utah	Yes	No	No	Yes	No	Yes	No	Yes
Vermont	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Virginia[43]	No	No	No	No	No	No	No	No
Washington	No	No	No	Yes[44]	Yes	Yes[45]	Yes	Yes[46]
West Virginia	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Wisconsin	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Wyoming[47]	No	No	No	Yes[48]	Yes[49]	Yes[50]	Yes[51]	Yes[52]

[26] NY: Use of an unaffiliated service provider in the State does not create nexus. *See* Tax Law Section 1101(b)(8)(v).
[27] NY: *Id.*
[28] NY: *Id.*
[29] NY: *Id.*
[30] NY: *Id.*
[31] NY: *Id.*
[32] RI: RIGL 44-18-23(1).
[33] SD: SD would ask more questions. Nexus may apply.
[34] SD: *Id.*
[35] SD: *Id.*
[36] SD: *Id.*
[37] SD: *Id.*
[38] SD: *Id.*
[39] TN: The answers assume the described activities create an agency relationship with the manufacturer.
[40] TN: *Id.*
[41] TX: This answer assumes that the distributor purchases items from the manufacturer for resale to the end user. If the distributor takes orders on behalf of the manufacturer, the manufacturer is engaged in business in Texas pursuant to Rule 3.286(a)(2)(B). Direct sales companies that use independent salespersons, sometimes referred to as distributors has nexus in Texas. Rule 3.286(a)(2)(D).
[42] TX: *Id.*
[43] VA: These responses may change if the distribution center or manufacturer and out-of-state corporation are commonly controlled.
[44] WA: Could be considered a "stock of goods" in state - which would be sufficient to create nexus.
[45] WA: *Id.*
[46] WA: *Id.*
[47] WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in or state is enough to establish nexus.
[48] WY: Storing inventory in the state is a nexus creating activity.
[49] WY: Storing inventory in the state is a nexus creating activity. By performing services on behalf of the distributor, the manufacturer has established himself as acting as an in-state agent for the distributor, giving the distributor nexus.
[50] WY: *Id.*
[51] WY: *Id.*
[52] WY: *Id.*

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Conformity to Streamlined Sales and Use Tax Agreement (SSUTA) – Jan. 1, 2015

State[1]	Fully compliant with SSUTA[2]	In compliance with SSUTA except for sourcing[3]	Adopted some SSUTA provisions[4]	Not adopted any SSUTA provisions[5]	One rate on all sales everywhere[6]
Alabama	No	No	Yes[7]	No Response	No
Arizona	No	No	No	Yes	No
Arkansas	Yes	Not Applicable	Not Applicable	Not Applicable	No
California	No	No	No	Yes	No
Colorado	No	No	No	No Response	No
Connecticut	No	No	No	Yes	No[8]
District of Columbia	No	No	No	Yes	No[9]
Florida[10]	No	No	Yes	No	No
Georgia	Yes[11]	No	Yes	No	No
Hawaii	No	No	No	Yes	No
Idaho	No	No	No	Yes	No Response[12]
Illinois[13]	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	No	Yes	No	Yes[14]
Iowa	Yes	Not Applicable	Yes	Not Applicable	Yes

[1] Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time.
Depends indicates that the respondent's answer would depend on the facts and circumstances.
MD, MS and OK did not participate in this portion of the survey.
NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.
SC's responses are from 2010.
AK, DE, MT, NH and OR do not impose a sales and use tax.

[2] Your state is a full member (fully compliant) with the SSUTA.

[3] Your state is in compliance with the SSUTA except for sourcing.

[4] Your state has adopted some SSUTA provisions.

[5] Your state has not adopted any SSUTA provisions.

[6] Your state has one sales tax rate that applies to all taxable sales everywhere.

[7] AL: Ala. Code §40-23-212.

[8] CT: Connecticut does not authorize its municipalities to impose sales and use taxes.

[9] DC: D.C. has not adopted any SSUTA provisions. The District is not like other states where more than one return is required with different rate schedules for local taxes.

[10] FL: Florida participates in the Streamlined Sales and Use Tax Agreement as a member of the State and Local Advisory Committee. Florida is neither a Governing Board State nor an Associate Member State, but it does participate as a member in the Streamlined Sales and Use Tax Agreement.

[11] GA: Georgia is a full member state, but we have been found to be out of compliance regarding provisions unrelated to sourcing.

[12] ID: There is only one state sales tax rate. Local taxes are limited to several **small** resort cities. Tax rates and tax bases in the resort cities vary.

[13] IL: Illinois is not a member of the SSUTA. Public Act 92-221, effective August 2, 2001, created the Simplified Sales and Use Tax Administration Act, which authorized Illinois to enter into multistate discussions to review and/or amend the Streamlined Sales and Use Tax Agreement and which authorized the Illinois Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement. Illinois has not enacted the conforming legislation required to be in compliance with the Agreement. However, beginning on September 1, 2009, Illinois began taxing candy, soft drinks, and grooming and hygiene products using definitions similar to SSUTA definitions. *See* Ill. Dept. of Rev., Illinois General Information Letter ST 15-0019-GIL (March 31, 2015).

[14] **IN: If an automobile purchase is subject to sales tax at the time of purchase and the purchaser transports the vehicle and titles the vehicle outside Indiana within 30 days of purchase, the purchase is subject to Indiana sales tax at the rate of the other states.**

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State[1]	Fully compliant with SSUTA[2]	In compliance with SSUTA except for sourcing[3]	Adopted some SSUTA provisions[4]	Not adopted any SSUTA provisions[5]	One rate on all sales everywhere[6]
Kansas	Yes	No Response[15]	No Response[16]	No Response[17]	No Response[18]
Kentucky	Yes	Not Applicable	Yes	Not Applicable	Yes
Louisiana	No	No	Yes[19]	No	No
Maine	No	No	Yes[20]	No	No
Massachusetts	No	No	Yes	No Response	Yes
Michigan	**Yes**[21]	**Not Applicable**	Not Applicable	Not Applicable	Yes[22]
Minnesota	Yes	Yes	Yes	No	Yes
Missouri	No	No	No	Yes	No
Nebraska	Yes[23]	No Response	No Response	No Response	Yes[24]
Nevada	Yes[25]	Not Applicable[26]	Yes	Not Applicable	No
New Jersey	Yes	Not Applicable	Not Applicable	Not Applicable	No Response[27]
New Mexico	No[28]	No[29]	No[30]	Yes	No[31]
New York	No	No	Yes	No	No[32]
North Carolina	Yes	No	Yes	No	No Response[33]

[15] KS: KDOR has not adopted a position on any of these issues.
[16] KS: *Id.*
[17] KS: *Id.*
[18] KS: *Id.*
[19] LA: Louisiana has adopted the SSUTA provisions dealing with telecommunications.
[20] ME: Our definition of ''telecommunications services'' (in the Maine service provider tax statute, not the sales/use tax statute) is the SSUTA definition.
[21] MI: Michigan is a full member of the SSUTA, but was found out of compliance in **2014** due to direct mail **sourcing** provisions.
[22] MI: One state rate of 6%; **except** home heating fuels, natural/artificial gas and electricity for residential use are taxed at 4%.
[23] NE: Nebraska is in compliance with the SSUTA.
[24] NE: Nebraska has one state sales tax rate of 5.5%. Various cities impose local sales and use taxes at rates of either 0.5%, 1.0%, 1.5%, 1.75% or 2%.
[25] NV: Nevada was voted in a full member, effective April 1, 2008. Nevada has promulgated permanent administrative regulations involving certain streamlined issues.
[26] NV: *Id.*
[27] NJ: There is a reduced rate of tax available in certain geographic areas and under certain conditions.
[28] NM: New Mexico participates as an advisor state, whereby we can't vote but express concerns; still exploring the possibility of being a fully compliant member and adopting some provisions.
[29] NM: *Id.*
[30] NM: *Id.*
[31] NM: *Id.*
[32] NY: An additional ⅜% state rate is imposed in the Metropolitan Commuter Transportation District. Additional state sales tax rates are also imposed on certain information and entertainment services, passenger car rentals, and hotel occupancies in New York City. Also, the state sales tax on motor fuel and diesel motor fuel is computed on a cents-per-gallon basis.
[33] NC: Yes, except for allowed carve-outs provided by the Agreement. *See* G.S. 105-164.4.

State[1]	Fully compliant with SSUTA[2]	In compliance with SSUTA except for sourcing[3]	Adopted some SSUTA provisions[4]	Not adopted any SSUTA provisions[5]	One rate on all sales everywhere[6]
North Dakota	Yes[34]	No[35]	No[36]	No[37]	Yes[38]
Ohio	Yes	Yes	Yes	No	Yes[39]
Pennsylvania	No	No	No	Yes	No
Rhode Island	Yes	No	No	No	Yes
South Carolina	No	No	No Response[40]	No Response[41]	No
South Dakota	Yes	Not Applicable[42]	Yes[43]	Not Applicable[44]	Yes
Tennessee	No	No	Yes	No	No
Texas	No	No	Yes	No	No
Utah[45]	Yes	Yes	Yes	No	No
Vermont	Yes	No Response	No Response	No Response	No[46]
Virginia	No	No	Yes[47]	No[48]	No[49]
Washington	Yes[50]	Not Applicable[51]	Not Applicable[52]	Not Applicable[53]	No
West Virginia	Yes	No	Yes	No	Yes
Wisconsin	Yes	Not Applicable	Not Applicable	Not Applicable	Yes[54]
Wyoming	Yes	No Response	No Response	No Response	No

[34] ND: North Dakota is fully compliant with the provisions of the SSUTA and is a destination-based sourcing state.
[35] ND: *Id.*
[36] ND: *Id.*
[37] ND: *Id.*
[38] ND: One sales tax rate applies only to the state rate of 5%. Otherwise, the local option rates range from ½ to 3%. Currently, **140** locals impose a local sales tax.
[39] OH: One state rate but varying local rates.
[40] SC: South Carolina has not significantly amended its sales tax code in light of streamlined sales tax.
[41] SC: *Id.*
[42] SD: SD is full member, in full compliance, and has adopted all SSUTA provisions.
[43] SD: *Id.*
[44] SD: *Id.*
[45] UT: Utah is a full member as of October 1, 2012.
[46] VT: One state sales tax rate and a ''Local Option Tax'' currently exercised by 9 municipalities.
[47] VA: Some provisions of Virginia law comply with SSUTA, but Virginia has not expressly adopted SSUTA. Lower rate on sale of food for home consumption. 1½% state sales tax rate on food for home consumption; 4.3% state sales tax rate on all other taxable tangible personal property. An additional 0.7% sales tax is imposed in the Hampton Roads and Northern Virginia regions, pursuant to legislation enacted in 2013.
[48] VA: *Id.*
[49] VA: *Id.*
[50] WA: As of July 1, 2008, Washington became a full member of SSUTA.
[51] WA: *Id.*
[52] WA: *Id.*
[53] WA: *Id.*
[54] WI: Wisconsin has one state sales tax rate (5%). However, in addition to the state sales tax rate, each county can adopt a 0.5% county sales and use tax (to date 62 of Wisconsin's 72 counties have adopted the county sales and use tax). Wisconsin also has a football stadium district located in Brown County that has a 0.5% sales and use tax, a baseball stadium district that has a 0.1% sales and use tax and is in effect in Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties, a 0.5% or 1% premier resort area sales tax in certain cities and villages and various local exposition district taxes in Milwaukee County.

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Questionnaire

Section I. State Nexus Policies

A. State Statutes, Regulations, or Administrative Pronouncements Specifically Addressing Income Tax Nexus
Please identify any statute, regulation, or administrative pronouncement that sets forth your state's income tax nexus policy.
Statute(s) addressing income tax nexus:
Regulation(s) addressing income tax nexus:
Administrative pronouncement(s) addressing income tax nexus:

B. Adherence to *Quill* for Income Tax Nexus	2014 Response	2015 Response
Your state:		
1. applies *Quill* (*i.e.* , requires that a corporation have a physical presence in the state in order to create nexus) in making income tax nexus determinations.		
2. If the answer to question 1, above, is "No," please indicate if your state had ever adhered to *Quill* in making income tax nexus determinations.		
If the answer to question 2, above, is "Yes," please indicate when your state ceased adhering to *Quill* in making income tax nexus determinations.		
Comments: (Please indicate the question to which you are referring.)		

C. Adherence to the Physical Presence and/or Economic Presence Standards	2014 Response	2015 Response
Your state's income tax nexus policy is based on:		
1. physical presence (*i.e.* , requires that a corporation have a physical presence in the state in order to create nexus).		
2. physical presence as a result of an agency relationship (*i.e.,* nexus may result from an out-of-state corporation's agency relationship with an in-state entity that has the right to bind the corporation to a contract).	**NEW**	
3. economic presence (*i.e.* , nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders).		
Comments: (Please indicate the question to which you are referring.)		

D. Adherence to Factor Presence Nexus Standard	2014 Response	2015 Response
The Multistate Tax Commission's (MTC) model statute, *Factor Presence Nexus Standard for Business Activity Taxes,* uses both economic and physical presence to determine nexus. However, the model statute sets forth minimum thresholds for each. It states that substantial nexus is established if any of the following limits are exceeded during the tax period: • $50,000 of property, • $50,000 of payroll, • $500,000 of sales, or • 25 percent of total property, total payroll, or total sales.		
Please answer "Yes" or "No" to the questions below.		
Your state:		
1. generally conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes.* If so, please cite the applicable statute and/or regulation in the Comments section below.		
2. partially conforms to the MTC's model statute, Factor Presence Nexus Standard for Business Activity Taxes. Please describe how your state's law differs in the Comments section below. (DO NOT ANSWER IF YOU SAID "YES" TO QUESTION 1, ABOVE.)		
3. If you answered "Yes" to questions one or two, above, has your state's reliance on the MTC's model statute been tested in court? If so, please provide the relevant citations in the Comments section below.		
4. does not conform to any aspects of the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes.*		
5. has adopted an annual dollar threshold for sales made into the state that will trigger nexus, which is not based on the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes.*	**NEW**	
6. has adopted an annual dollar threshold or activity threshold applicable to specific industry groups, which is not based on the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes.* In the Comments section below, please set forth the standard(s) and applicable industry group(s).	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

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E. Nexus Enforcement Policies	**2014 Response**	**2015 Response**
Please answer "Yes" or "No" to the questions below.		
Your state:		
1. sends a nexus questionnaire to corporations that it believes might be doing business within its borders. If "Yes," please indicate the form number in the Comments section below.		
2. imposes tax on a corporation that triggers nexus for the entire year (*i.e.* , including amounts in the sales factor that occurred before nexus was established).		
3. requires a tax return to be filed even if the corporation's activities are protected by Pub. L. No. 86-272.		
4. requires a tax return to be filed by a corporation that has registered in the state, but has not yet commenced doing business.		
5. would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.* , trailing nexus).		
6. would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.* , trailing nexus).		
7. would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (*i.e.* , trailing nexus).		
Comments: (Please indicate the question to which you are referring.)		
For questions 5-7 on "trailing nexus," please explain below whether your answer depends on the magnitude of the nexus-creating activity (*e.g.* , three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum super tanker).		

Section II. Nexus-Creating Activities

Please indicate "Yes" or "No" to show whether each of the following activities or relationships would, by itself, create sufficient nexus to subject an out-of-state corporation to an income-based tax. When determining whether the listed activity/relationship would create nexus in your state for a corporation, assume that each item is the only activity/relationship the corporation has in your state (other than activities protected by Pub. L. No. 86-272).

A. General Activities	2014 Response	2015 Response
THIS QUESTION HAS BEEN DELETED FOR 2015.	X	X
1. The out-of-state corporation is doing business in your state.	**NEW**	
2. The out-of-state corporation makes sales to customers in your state by means of an 1-800 telephone order number advertised in your state.		
3. The out-of-state corporation is listed in the local telephone books of cities in your state.		
4. The out-of-state corporation uses local phone numbers in your state, calls to which are forwarded to the out-of-state corporation's headquarters located in another state.		
5. The out-of-state corporation maintains a bank account at a bank located in your state.		
6. The out-of-state corporation provides one to six days of consulting services in your state during the year.		
7. The out-of-state corporation, through a third party, provides warranty services on goods sold in your state.		
8. The out-of-state corporation sends catalogs to residents in your state.		
9. Does your state have a de minimis standard? If "Yes," please explain, including whether the standard is based on the number of activities performed or the number of days that an activity is performed in your state.		
10. Does your state conform to the Multistate Tax Commission's Nexus Bulletin 95-1 "Computer Company's Provision of In-State Repair Services Creates Nexus"?		
11. Does your state apply the definition of "transacting business" or "doing business" used to determine whether an out-of-state corporation must register with the Secretary of State, or other similar agency, when determining whether the out-of-state corporation has nexus with your state?	**NEW**	
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

B. Registration with State Agencies/Departments (New for 2015)	2014 Response	2015 Response
The out-of-state corporation:		
1. is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.	**NEW**	
2. holds a general business license issued by your state.	**NEW**	
3. holds a specialty license issued by your state, such as a specialty insurance license.	**NEW**	
4. is registered with the state tax department for payroll tax purposes.	**NEW**	
5. is registered with the state agency or department that regulates or administers workers' compensation.	**NEW**	
6. is registered with the state as a government vendor or contractor.	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

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C. Ownership/Leasing of In-State Property	2014 Response	2015 Response
The out-of-state corporation:		
1. owns raw land.		
2. stores inventory or other goods in a public warehouse for fewer than 30 days per year.		
3. ships in-process inventory to an unrelated party in your state solely for processing.		
4. consigns goods to vendors, independent contractors, or other parties.		
5. owns display racks.		
6. owns tooling, molds, dies, etc., located at a manufacturing facility in your state.		
7. leases (as lessor) real estate in the state to an unrelated third party.		
8. leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in your state five or fewer times per year.		
9. owns or leases automobiles provided to salespersons.		
10. owns or leases trucks or automobiles used by non-salespersons.		
11. owns or leases other machinery or equipment.		
12. holds title to property located in your state until the contract price has been paid.		
13. files a security interest on inventory sold until the contract price has been paid.		
14. owns or leases a place for company employees, directors, and officers.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

D. Ownership Interest of In-State Pass-Through Entities	2014 Response	2015 Response
The out-of-state corporation:		
1. owns an interest in an investment partnership or LLC that has operations in your state.		
2. owns a general interest in a partnership that is doing business in your state.		
3. owns a limited interest in a partnership that is doing business in your state.		
4. owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.		
5. owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.		
6. owns an interest in an entity located in your state that is disregarded for federal income tax purposes.		
Comments: (Please indicate the question to which you are referring.)		

E. Licensing Intangibles	2014 Response	2015 Response
The out-of-state corporation:		
1. licenses trademarks or trade names to related entities with locations in your state.		
2. licenses trademarks or trade names to unrelated entities with locations in your state.		
3. sells/licenses franchises (such as fast-food franchises) to residents of your state.		
4. licenses canned software to consumers in your state.		
5. receives a management fee from a related entity with a location in your state.		
6. receives a management fee from an unrelated entity with a location in your state.		
7. licenses to an in-state consumer permission to use its website for a webinar.		
8. sells/licenses the right to use a patent or copyright to related entities with locations in your state.		
9. sells/licenses the right to use a patent or copyright to unrelated entities with locations in your state.		
10. sells/rents customer lists to unrelated entities in your state.		
Comments: (Please indicate the question to which you are referring.)		

F. Employee Activities -- Sales Related	2014 Response	2015 Response
Employees, while in your state:		
1. accept and approve customer orders.		
2. negotiate prices, subject to approval outside your state.		
3. investigate credit-worthiness of customers.		
4. secure or accept deposits on sales.		
5. handle credit disputes.		
6. attend trade shows or maintain sample/display rooms for one to 14 days per year.		
7. maintain a two-month supply of free samples.		
8. check customers' inventories for reorder.		
9. make a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was de minimis).		
10. make a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was not de minimis).		
11. solicit sales of services in your state one to six days per year.		
12. perform a sales-related function and are reimbursed for the costs of maintaining an in-home office.		
13. operate mobile stores.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

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G. Employee Activities -- Non-Sales Related	2014 Response	2015 Response
Employees, while in your state:		
1. collect delinquent accounts.		
2. repossess property.		
3. regularly perform installation, repair, maintenance, or warranty services.		
4. perform installation, repair, or warranty services one to four times per year.		
5. set up promotional display of products (e.g., end caps, etc.) and inspect inventory.		
6. supervise or inspect installation.		
7. conduct training courses, seminars, or lectures two times per year.		
8. provide engineering or design functions related to customized products.		
9. handle customer complaints.		
10. pick up defective merchandise.		
11. pick up or replace damaged or returned property.		
12. provide shipping information and coordinate deliveries.		
13. telecommute from their homes located in your state (assume that there are one to six such employees in your state and all of these employees perform non-solicitation activities). (In the Comments section below, please indicate if you would reach a different answer if the out-of-state corporation made no sales in your state, or if the employees telecommute for only part of their total work time.)		
13.(a) one employee telecommutes from a home located in your state and performs back-office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.		
13.(b) one employee telecommutes from a home located in your state and performs product development functions such as computer coding.		
14. assist the out-of-state corporation in defending a lawsuit (e.g., legal staff and witnesses) while in your state for one to 30 days.		
15. purchase raw materials and inventory while in your state for 20 or fewer days.		
16. attend seminars.		
17. attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for one to 14 consecutive days each year (assume that, during their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone or fax machines in your state).		
18. fly into your state on a company plane to attend a seminar.		
19. fly into your state on a company plane to attend sports events at least four times, but fewer than 10 times per year.		
20. attend seminars or social functions while staying on a company yacht docked in waters in your state for one to 14 days.		
21. hold job fairs, hiring events, or other recruiting activities.		
22. hire, supervise, or train other employees.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF ANY OF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

H. Activities of Unrelated Parties	2014 Response	2015 Response
Unrelated third parties located in your state:		
1. provide fulfillment services (*i.e.* , fill product orders from corporate-owned inventory).		
2. collect regular or delinquent accounts.		
3. investigate credit-worthiness of new customers.		
4. repossess property one to six times a year.		
5. repair or provide maintenance, including warranty services, one to six times per year.		
6. assist with the "set-up" or installation of the company's products.		
7. perform repairs under standard or extended warranty.		
8. close mortgage loans for an out-of-state financial organization.		
9. service mortgage and/or consumer loans for an out-of-state financial organization.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF ANY OF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

I. Distribution and Delivery	2014 Response	2015 Response
The out-of-state corporation:		
1. ships products into your state in returnable containers.		
2. delivers goods into your state (from a point outside your state) to customers in the out-of-state corporation's owned or leased vehicles.		
3. picks up defective products or scrap materials in your state in taxpayer-owned vehicles.		
4. picks up raw materials in your state in taxpayer-owned vehicles.		
5. travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
6. travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
7. travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
8. "back hauls" (*i.e.* , picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.		
9. holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).		
10. holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF ANY OF YOUR ANSWERS WOULD CHANGE IF THE CORPORATION WAS OTHERWISE PROTECTED UNDER PUB. L. NO. 86-272.		

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J. Financial Activities/Transactions	2014 Response	2015 Response
The out-of-state corporation:		
1. negotiates and obtains bank loans from a bank located in your state (assume officers of the out-of-state corporation visit the bank at least twice a year to discuss business).		
2. makes loans secured by real estate located in your state.		
3. makes personal loans secured by tangible property located in your state.		
4. issues credit cards to residents of your state.		
5. purchases, via the secondary market, loans secured by real estate located in your state.		
6. purchases, via the secondary market, credit account balances of residents of your state.		
7. makes personal loans to 20 or more residents of your state who traveled across the state border to obtain the loans.		
8. makes personal loans to 20 or more out-of-state residents who, over a number of years, subsequently move to your state.		
9. makes automobile loans to 20 or more out-of-state residents who, over a number of years, subsequently move to your state.		
10. is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States (assume a few of the debtors and some of the property securing the loans are located in your state).		
11. forecloses on one parcel of real estate located in your state.		
12. forecloses on several parcels of real estate located in your state.		
Comments: (Please indicate the question to which you are referring.)		

K. Transactions With In-State Printers	2014 Response	2015 Response
The out-of-state corporation:		
1. leases tangible personal property located at a printer in your state for use in connection with a printing contract (assume that, once the work is complete, the printer ships the printed material out of your state for addressing and mailing).		
2. owns raw materials at an in-state printer.		
3. visits in-state printers for quality control purposes one to six times per year.		
Comments: (Please indicate the question to which you are referring.)		

L. Cloud Computing or Software as a Service (SaaS) Transactions	2014 Response	2015 Response
Assume an out-of-state corporation provides access to software to customers in your state via a third party's cloud infrastructure. Customers pay a fee in return for a license to use the software. Please indicate whether nexus would result under the following scenarios. The out-of-state corporation:		
1. provides access to its software to in-state customers and pays independent contractors to perform configuration/set-up services in the state.		
2. provides access to its software to in-state customers and has employees solicit business in the state, and the sale is **NOT** one of tangible property protected under Pub. L. No. 86-272.		
3. provides access to its software to in-state customers and lacks a physical presence in the state, but has a substantial number of customers with billing addresses in the state.		
4. provides access to its software to in-state customers and lacks a physical presence in the state, but earns a substantial amount of revenue from customers in the state.		
5. rents space on a third-party server located in the state and lacks a physical presence in the state.		
6. provides access to its software to in-state customers and has employees solicit business in the state, and the sale **IS** one of tangible property protected under Pub. L. No. 86-272.		
Comments: (Please indicate the question to which you are referring.)		

M. Internet-Based Activities	2014 Response	2015 Response
The out-of-state corporation:		
1. owns an internet server located in your state.		
2. owns an internet server located in your state and hires third-party technicians located in your state to keep the server functioning.		
3. leases a third-party's internet server located in your state. Assume that the server is used exclusively by the out-of-state corporation.		
4. leases space on a third-party's internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.		
5. leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server in your state for less than six months during the year.		
6. leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server for more than six months during the year.		
7. does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the out-of-state corporation web services to sell products over the internet.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF YOUR ANSWER DEPENDS ON WHETHER THE OUT-OF-STATE CORPORATION MADE SALES INTO YOUR STATE.		

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Section III. State Tax Add-Backs

A. State Policy	2014 Response	2015 Response
Please indicate whether the following taxes are allowed or disallowed as deductions in arriving at your state's corporate income-based tax:		
1. State income-based taxes imposed by your state.		
2. State income-based taxes imposed by other states.		
3. Local income-based taxes imposed by in-state local governments.		
4. Local income-based taxes imposed by out-of-state local governments.		
5. Foreign taxes (other countries).		
6. State franchise taxes based on capital stock or net worth.		
7. State gross receipts taxes.		
8. District of Columbia Unincorporated Business Tax.		
9. Kentucky License Tax.		
10. New Hampshire Business Profits Tax.		
11. Washington Business and Occupation Tax.		
12. West Virginia Business and Occupation Tax.		
13. New York City Unincorporated Business Tax.	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

B. Michigan Business Tax (the Successor to the Single Business Tax)	2014 Response	2015 Response
THIS QUESTION HAS BEEN DELETED FOR 2015.	X	X
Comments:		

C. Ohio Commercial Activity Tax (the Successor to the Franchise Tax)	2014 Response	2015 Response
Your state requires the add-back *(i.e.* , disallows the deduction) of amounts representing the payment of the Ohio CAT in arriving at your state's corporate-based income tax.		
Comments:		

D. Texas Margin Tax (the Successor to the Franchise Tax)	2014 Response	2015 Response
Your state requires the add-back *(i.e.* , disallows the deduction) of amounts representing the payment of the revised Texas Franchise Tax in arriving at your state's corporate-based income tax.		
Comments:		

Section IV. I.R.C. §338(h)(10) Elections

For federal tax purposes, sellers and purchasers may jointly elect under I.R.C. §338(h)(10) to treat a qualifying stock purchase as a sale of assets by a target subsidiary followed by a tax-free liquidation of the subsidiary under I.R.C. §332. Shareholders of a federal S corporation also may make such elections. The following questions concern your state's treatment of such transactions.

A. Conformity to the Election and Treatment	2014 Response	2015 Response
1. Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for regular (Subchapter C) corporations?		
2. Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for S corporations?		
3. Must a separate state election be made?		
4. If an election is made for federal tax purposes, can a taxpayer elect NOT to make the election for state tax purposes?		
5. If an election is NOT made for federal tax purposes, can a taxpayer elect to make the election for state tax purposes?		
Comments: (Please indicate the question to which you are referring.)		

B. Treatment of Gain	2014 Response	2015 Response
Assuming your state permits I.R.C. §338(h)(10) elections, is the gain from the deemed sale of assets recognized by the target subsidiary, treated as: (1) apportionable business income, (2) allocable nonbusiness income, or (3) depends on facts or circumstances?		
Comments:		

C. Apportionment Factors	2014 Response	2015 Response
1. Are the gross proceeds from the deemed sale of assets included in the target subsidiary's sales factor?		
2. If "No," is the net gain from the deemed sale included in the sales factor?		
3. Does your state require the gain and short-period income to be apportioned?		
If you answered "Yes" to Question 3, above, please indicate below if the gain and short-period income is apportioned based on: (1) the apportionment factors for the short period, (2) the prior year's apportionment factors, (3) other method (please specify below).		
If you selected other method, please specify:		
Comments: (Please indicate the question to which you are referring.)		

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D. Filing Obligations	2014 Response	2015 Response
With respect to taxpayers filing consolidated federal returns, the short-period return for the target subsidiary is not due until the extended due date of the selling parent's return (in many cases, this is more than one year from the close of the target's short period).		
1. Do your state's filing requirements follow the federal rules?		
2. If "No," please indicate in the Comments section below when the target's short-period return is due.		
Comments: (Please indicate the question to which you are referring.)		

Section V. Bankruptcy Issues	2014 Response	2015 Response
For federal tax purposes, I.R.C. §108 excludes from income the discharge of indebtedness if the discharge occurs in limited circumstances, such as bankruptcy or insolvency. If an exclusion is provided to the taxpayer by I.R.C. §108, the amount of debt discharge must be applied to reduce tax attributes (*i.e.* , NOLs, business credits, capital loss carryovers, the basis of assets, etc.). However, in lieu of reducing those tax attributes, the taxpayer may elect to reduce the basis of appreciable assets.		
1. Does your state conform to the federal exclusion of debt discharge income under I.R.C. §108?		
2. Does your state conform to the federal reduction of tax attributes where debt discharge income is excluded under I.R.C. §108?		
3. Does your state conform to the federal provisions allowing the taxpayer to elect to reduce the basis of depreciable property?		
4. Is the taxpayer's federal treatment regarding tax attributes or election to reduce property basis binding for state purposes (*e.g.* , if the taxpayer has elected to reduce the basis of depreciable property for federal purposes, is the taxpayer prohibited from electing to reduce tax attributes for state tax purposes)?		
Comments: (Please indicate the question to which you are referring.)		

Section VI. Treatment of Intangible Holding Companies	2014 Response	2015 Response
Assume that an in-state corporation transfers ownership of an intangible asset (such as a patent or a trademark) to an out-of-state subsidiary whose only purpose is to hold the intangible asset. The in-state corporation deducts costs (such as royalties or management fees) relating to the right to use the subsidiary's patent or trademark. Check all of the following that would apply to your state in this situation:		
1. The in-state corporation would be required to add back the deduction for costs arising from the payments made to the subsidiary.		
2. If "yes" to question 1, the add back requirement would only apply only to U.S. subsidiaries.	**NEW**	
.3. If "yes" to question 1, the add back requirement would apply to both U.S. and non-U.S. subsidiaries	**NEW**	
4. The in-state corporation and the out-of-state subsidiary would be required to report income to your state as a unitary group.		
5. The out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state by licensing intangible property to an in-state corporation.		
6. The out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state based on its parent's activities.		
Comments: (Please indicate the question to which you are referring.)		

Section VII. Throwback/Throwout Rules	2014 Response	2015 Response
1. Does your state have a throwback rule (*i.e.* , does your state require corporations to include in the numerator of the sales factor sales attributable to a state in which the corporation is not subject to tax)?		
2. If your state has a throwback rule, does your state determine if the corporation is subject to tax based on:		
(a) your state's own nexus law.	**NEW**	
(b) the nexus law of the destination state.	**NEW**	
3. To be considered taxable in the destination state, must the corporation be able to prove that it filed a return and paid a tax to that state?		
4. For this purpose, does your state consider a corporation to be subject to tax in the other state if one of the members of the corporation's affiliated group is subject to tax in the other state?		
5. Does your state's throwback rule apply to sales made in foreign countries?		
6. Does your state have a throwout rule (*i.e.* , does your state require corporations to exclude from the denominator of the sales factor sales attributable to states in which the corporation lacks sufficient nexus to subject it to the state's income-based tax)?		
Comments: (Please indicate the question to which you are referring.)		

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Section VIII. Sourcing Receipts

A. Receipts from Sales of Tangible Personal Property	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing receipts from sales of tangible personal property by an out-of-state corporation. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
1. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is delivered or shipped to a purchaser within your state (destination-based sourcing).		
2. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory or other place of storage in your state (origin-based sourcing).		
3. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor using a method other than destination-based sourcing or origin-based sourcing.		
If the response to question 3 is "Yes," please explain below:		
4. If this answer to question 1 is "Yes," is tangible personal property delivered or shipped to a purchaser in your state when:		
(a) the property is delivered or shipped to a purchaser in your state and subsequently transferred by the purchaser to another state.	NEW	
(b) the property is delivered or shipped to the ultimate recipient in your state at the purchaser's direction.	NEW	
(c) the property is shipped from the state of origin to a consignee in another state and, while en route to the consignee, is diverted to a purchaser in your state.	NEW	
5. Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation IS taxable?	NEW	
6. Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation IS NOT taxable?	NEW	
7. Does your state provide special rules for sourcing sales of tangible personal property to the U.S. government?		
8. If "yes" to question 4, above, are sales to the U.S. government sourced to your state based on:		
(a) destination.		
(b) origin.		
(c) other.		
If you selected other, please specify:		
Comments: (Please indicate the question to which you are referring.)		

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B. Receipts from Leases, Licenses, or Rentals of Tangible Personal Property	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing receipts from the lease, license or rental of tangible personal property by an out-of-state corporation. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 6.)		
1. All of the receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if more income-producing activity is performed in your state than any other state, based on cost of performance (cost of performance sourcing, plurality method).		
2. A proportionate share of the corporation's receipts from the lease, license or rental of tangible personal property is added to the numerator of the corporation's sales factor on a *pro rata* basis, in which the receipts are divided among the states in which the income-producing activity is performed, depending on the performance level in each state as measured by the costs of performance (cost of performance sourcing, proportionate method).		
3. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the benefit of the income-producing activity was received in your state (market-based sourcing).		
4. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state.		
5. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state.		
6. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor based on something other than cost of performance, market, place of use, or location.		
If the response to question 6 is "Yes," please explain below:		
Comments: (Please indicate the question to which you are referring.)		

C. Receipts from Real Property	2014 Response	2015 Response
1. For purposes of sourcing an out-of-state corporation's receipts from real property, does your state source receipts from real property based on the location of the property? (IF THE RESPONSE IS "NO," PLEASE INDICATE BELOW THE METHOD YOUR STATE USES FOR SOURCING AN OUT-OF-STATE CORPORATION'S RECEIPTS FROM REAL PROPERTY.)		
Comments: (Please indicate the question to which you are referring.)		

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D. Receipts from Services	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing receipts from sales of services by an out-of-state corporation. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
1. All of the service receipts are added to the numerator of the service company's sales factor if more income-producing activity based on cost of performance is performed in your state than any other state (plurality method).		
2. A proportionate share of the service company's income is apportioned to the state on a *pro rata* basis, in which the company's sales are divided among the states in which it does business, depending on the performance level in each state as measured by costs of performance (proportionate method).		
3. A market-based sourcing approach is used in which sales receipts are sourced based upon where the benefit was received to determine the location of the market (market-based sourcing).		
4. Receipts from the provision of services are added to the numerator of the company's sales factor using a method other than costs of performance or market-based sourcing.	**NEW**	
If the response to question 4 is "Yes," please explain below:		
Receipts from the provision of services are added to the numerator of the company's sales factor when: [NOTE: Last year, the questions below applied when determining whether the benefit of the service is received in your state under the market-based sourcing approach. The scope of these questions has been expanded for 2015.]		
5. services are performed wholly in your state.	**NEW**	
6. services are performed both in your state and outside your state.	**NEW**	
7. services are performed wholly in your state by an agent or independent contractor on the company's behalf.	**NEW**	
8. services are performed in more than one state by an agent or independent contractor on the corporation's behalf and:	**NEW**	
(a) the company's contract with the contractor/agent indicates that the service will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.	**NEW**	
(b) the company's contract with the contractor/agent indicates where the service will be performed, but the company's contract with the customer indicates that the services will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.	**NEW**	
(c) the company's contracts with the contractor/agent and the customer do not indicate where the service will be performed or the portion of the company's payment to the contractor/agent associated with the service, but the customer is domiciled in	**NEW**	
9. services are performed by an agent or independent contractor on the company's behalf, and the location where the service will be performed by the agent/contractor, the portion of the company's payment to the contractor/agent associated with the service and the customer's domicile cannot be determined.	**NEW**	
10. direct personal services are performed wholly in your state.	**NEW**	
11. direct personal services are performed both in your state and outside your state.	**NEW**	
12. direct personal services are received by an individual in the state.		
13. services, other than direct personal services, are received by an individual with an in-state billing address.		
14. services, other than direct personal services, are received by an individual with an out-of-state billing address.		
15. services with a substantial connection to a geographic location in your state are received by a business entity.		
16. services with a substantial connection to a geographic location both in your state and outside your state are received by a business entity.	**NEW**	

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17. services with no substantial connection to a geographic location are received by a business entity and the business entity is commercially domiciled in your state.		
18. services are received by a business entity and:		
(a) the company's contract with the customer or the company's books and records kept in the normal course of business indicate that the benefit of the service is received in your state.		
(b) the company's contract with the customer or the company's books and records kept in the normal course of business indicate that the benefit of the service is received both in your state and outside your state.	**NEW**	
(c) the business entity placed the order for the service from a location in your state.		
(d) the business entity has an in-state billing address.		
Comments: (Please indicate the question to which you are referring.)		

E. Receipts From Intangibles	**2014 Response**	**2015 Response**
Indicate which of the methods below best describes your state's approach to sourcing the receipts from intangible personal property by an out-of-state corporation. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.) An out-of-state corporation must source receipts from sales of intangible personal property to your state based on:		
1. costs of performance.		
2. the market (*i.e.* , the location of the customer).		
3. other.		
If you selected other, please specify:		
4. For purposes of sourcing an out-of-state corporation's receipts from intangibles, does your state use the same rule that it uses for sourcing receipts from services?		
5. If "No," please indicate below the rule your state uses for sourcing an out-of-state corporation's receipts from intangibles.		
Are receipts from intangible personal property added to the numerator of the corporation's sales factor when: [NOTE: Last year, the questions below asked whether receipts from certain intangibles are allocated to your state under the market-based sourcing approach. The scope of these questions has been expanded for 2015.]		
6. the intangible is used in your state at the time of sale.		
7. the intangible is used both in your state and outside your state at the time of sale.	**NEW**	
8. the corporation licenses, leases, rents or otherwise grants the use of an intangible that is used in your state.		
9. the intangible is used in your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.		
10. the intangible is used both in your state and outside your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.	**NEW**	
11. the intangible is used in marketing a good or service, and the good or service being marketed is purchased by an in-state consumer.		
12. the intangible is a contract right, government license or similar intangible authorizing the holder to conduct a business activity in a specific geographic area that is used in, or otherwise associated with, your state.		
Comments: (Please indicate the question to which you are referring.)		

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F. Cloud Computing or Software as a Service (SaaS) Transactions	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing receipts from in-state customers that access an out-of-state corporation's software via a third party's cloud infrastructure. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 4.)		
1. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property?	**NEW**	
(IF THE ANSWER TO QUESTION 1 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 2(a) - (f).) 2. If the response is "Yes" to question 1, above, are receipts from cloud computing or SaaS transactions sourced to your state when: [Note non-substantive edit: Last year's question began "Receipts from cloud computing or SaaS transactions are characterized as receipts from the sale of tangible personal property and are sourced to your state when:"]		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.	**NEW**	
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.	**NEW**	
(c) the software is used in your state. [Renumbered for 2015]		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.	**NEW**	
(f) other.		
If you selected other, please specify:		
3. Are receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property?	**NEW**	
(IF THE ANSWER TO QUESTION 3 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 4(a) - (f).) 4. If the response is "Yes" to question 3, above, are receipts from cloud computing or SaaS transactions sourced to your state when: [Note non-substantive edit: Last year's question began "Receipts from cloud computing or SaaS transactions are characterized as receipts from the lease, license or rental of tangible personal property and sourced to your state when:"]		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.	**NEW**	
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.	**NEW**	
(c) the software is used in your state. [Renumbered for 2015]		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.	**NEW**	
(f) other.		
If you selected other, please specify:		

5. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale, lease, license or rental of intangible personal property?	**New**	
(IF THE ANSWER TO QUESTION 5 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 6(a) - (f).) 6. If the response is "Yes" to question 5, above, are receipts from cloud computing or SaaS transactions sourced to your state when: [Note non-substantive edit: Last year's question began "Receipts from cloud computing or SaaS transactions are characterized as receipts from the sale, lease, license or rental of intangible personal property and sourced to your state when:"]		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.	**NEW**	
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.	**NEW**	
(c) the software is used in your state. [Renumbered for 2015]		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is in your state.	**NEW**	
(f) other.		
If you selected other, please specify:		
7. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services?	**NEW**	
(IF THE ANSWER TO QUESTION 7 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 8(a) - (f).) 8. If the response is "Yes" to question 7, above, are receipts from cloud computing or SaaS transactions sourced to your state when: [Note non-substantive edit: Last year's question began "Receipts from cloud computing or SaaS transactions are characterized as receipts from the sale of services and sourced to your state when:"]		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.	**NEW**	
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.	**NEW**	
(c) the software is used in your state. [Renumbered for 2015]		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.	**NEW**	
(f) other.		
If you selected other, please specify:		
THIS QUESTION HAS BEEN DELETED FOR 2015.	**X**	**X**
9. Does your state consider whether the software accessed is prewritten or custom computer software when characterizing its receipts?		
Comments: (Please indicate the question to which you are referring.)		

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G. Banks and Financial Services Companies	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing the receipts of an out-of-state bank or financial services company. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 - 3.) An out-of-state bank or financial services company must source receipts to your state based on:		
1. costs of performance.		
2. the market (*i.e.* , the location of the customer or debtor).		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a bank or financial services company? (If your answer is "yes," please explain in the comments below.)		
5. Does your state follow the Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions, or a substantially similar statute or regulation?		
6. Does your state impose a financial institutions tax on banks and financial services companies instead of the corporate income tax?	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

H. Construction Contractors	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing the receipts of a long-term construction contractor with income from both in-state and out-of-state sources. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.) A long-term construction contractor must source receipts to your state based on:		
1. costs of performance.		
2. the market (*i.e.* , the location of the customer).		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a long-term construction contractor? (If your answer is "yes," please explain in the comments below.)		
5. Does your state follow the Multistate Tax Compact Special Industry Rules for Construction Contractors in Reg. IV.18.(d), or a substantially similar statute or regulation?		
6. Are receipts from long-term construction projects sourced to your state when the project is located in your state?	**NEW**	
7. Are receipts from long-term construction projects sourced to your state when the project is located both in your state and outside your state?	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

I. Telecommunications and Ancillary Service Providers	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing the receipts of a telecommunications and ancillary service provider that is taxable both in your state and in one or more other states. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.) A telecommunications and ancillary service provider must source receipts to your state based on:		
1. costs of performance.		
2. the market (*i.e.* , the location of the customer).		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a telecommunications and ancillary service provider? (If your answer is "yes," please explain in the comments below.)		
5. Does your state follow the Multistate Tax Compact Special Industry Rules for Telecommunications and Ancillary Services in Reg. IV.18.(i), or a substantially similar statute or regulation?		
6. Are receipts from sales of ancillary services sourced to your state when the ancillary services are primarily used by the customer in your state?	**NEW**	
7. Are receipts from sales of telecommunications or ancillary services sourced to your state when the services are sold as part of a bundled transaction?	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

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J. Trucking Companies	2014 Response	2015 Response
Indicate which of the methods below best describes your state's approach to sourcing the receipts of a trucking company with income from both in-state and out-of-state sources. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.) A trucking company must source receipts to your state based on:		
1. costs of performance.		
2. the market (*i.e.* , the location of the customer).		
3. mileage.	**NEW**	
4. other.		
If you selected other, please specify:		
5. Does your state provide special rules for sourcing the receipts of a trucking company? (If your answer is "yes," please explain in the comments below.)		
6. Does your state follow the Multistate Tax Compact Special Industry Rules for Trucking Companies in Reg. IV.18.(g), or a substantially similar statute or regulation?		
7. Are receipts from hauling freight, mail and express shipments sourced to your state when:		
(a) the shipment originates and terminates in your state.	**NEW**	
(b) the shipment passes through, into or out of your state.	**NEW**	
(c) the trucking company does not own or rent any real or personal property in your state, other than mobile property; make any pick-ups or deliveries in your state; or exceed a certain threshold of mobile property miles traveled in your state. (If your answer is "yes," please identify the threshold in the comments below.)	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

K. Alternative Apportionment	2014 Response	2015 Response
1. If your state's alternative apportionment regime has been invoked, does the state have written regulations or guidelines on when the state or the taxpayer can use it? If so, please cite to the guidance in the Comments section below.		
2. Does your state place the burden of proof on the party seeking to apply an alternative apportionment method?	**NEW**	
3. Does your state place the burden of proof on the taxpayer, without consideration as to which party is seeking to apply an alternative apportionment method?	**NEW**	
THIS QUESTION HAS BEEN DELETED FOR 2015.	**X**	**X**
4. To invoke your state's alternative apportionment method, the taxpayer's burden of proof is clear and convincing evidence.		
5. To invoke your state's alternative apportionment method, the taxpayer's burden of proof is preponderance of the evidence.		
THIS QUESTION HAS BEEN DELETED FOR 2015.	**X**	**X**
6. The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is clear and convincing evidence.		
7. The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is preponderance of the evidence.		
Comments: (Please indicate the question to which you are referring.)		

L. State Conformity to the Multistate Tax Compact and Regulations	**2014 Response**	**2015 Response**
Please answer "Yes" or "No" to the questions below.		
1. Your state is a party to the Multistate Tax Compact (*i.e.,* the Compact is currently a part of your state's enacted tax statutes). MTC MEMBER STATES ARE: AL, AK, AR, CO, DC, HI, ID, KS, MO, MT, NM, ND, OR, TX, UT, and WA.		
If "Yes" or "No" to question 1, above, does your state conform to:		
2. all effective provisions of the material provisions of the Multistate Tax Commission's (MTC) Multistate Tax Compact (Articles I through XII), except for Article IX, Arbitration, which has never been implemented.		
3. Article III(1) of the Multistate Tax Compact (allowing taxpayer to elect to apportion and allocate income according to state law or according to Multistate Tax Compact Article IV).		
4. Article IV of the Multistate Tax Compact (UDITPA).		
5. the definition of "business income" in Article IV(1)(a) of the Multistate Tax Compact.		
6. the definition of "sales" in Article IV(1)(g) of the Multistate Tax Compact.		
7. the three-factor apportionment formula in Article IV(9) of the Multistate Tax Compact.		
8. the definition of "compensation paid in this State" in Article IV(14) of the Multistate Tax Compact.		
9. the definition of "sales of tangible personal property in this State" in Article IV(16) of the Multistate Tax Compact.		
10. the definition of "sales of other than tangible personal property in this State" in Article IV(17) of the Multistate Tax Compact.		
11. Article IV(18) of the Multistate Tax Compact regarding alternative apportionment.		
Adoption of MTC Multistate Tax Compact Article IV (UDITPA) Recommended Amendments, passed July 30, 2014		
12. Article IV.1(a) changing "business income" to "apportionable income" and expanding the definition and scope of what was formerly "business income" to all income that is apportionable under the U.S. Constitution	**NEW**	
13. Article IV.1(g) changing "sales" to "receipts" and narrowing the definition of what was formerly "sales" to exclude hedging transactions and treasury receipts from the	**NEW**	
14. Article IV 17(a) moving from cost-of-performance to market-based sourcing for services and intangibles;	**NEW**	
Adoption of MTC Regulations for Multistate Tax Compact Article IV (UDITPA)		
15. MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5), and (6) (i.e., "Trade or Business," "Transactional Test," and "Functional Test").		
16. MTC Allocation and Apportionment Regulation IV.1.(b) "Principles for Determining the Existence of a Unitary Business."		
17. the 2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) that expanded the definition of "business activity" to include "income producing activity performed on behalf of a taxpayer by an agent or independent contractor..."		
Comments: (Please indicate the question to which you are referring.)		

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Section IX. Combined Reporting

A. Composition of the Combined Reporting Group	2014 Response	2015 Response
Your state:		
1. uses a "unitary business" definition to determine which entities must be included within a combined group.		
2. looks to an "ownership threshold" to determine which entities must be included within a combined group.		
3. uses some other standard in addition to, or instead of, the "unitary business" definition or "ownership threshold." IF YOUR RESPONSE IS "YES," PLEASE SET FORTH THE STANDARD(S) IN THE COMMENTS SECTION BELOW.		
4. uses water's-edge reporting (nexus only, all unitary members) as the default method for determining the composition of a combined group.		
5. uses worldwide reporting (all unitary members) as the default method for determining composition of a combined group.		
6. requires the exclusion from the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.		
7. requires the inclusion in the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.		
8. requires an entity doing business in a tax haven, as defined by your state, to be included within a water's-edge group.		
9. requires an entity that is foreign, but derives income from intangibles, to be included within a water's-edge group.		
10. prohibits including within the combined group related entities that use an industry-specific apportionment formula.		
11. requires including within the combined group related entities that use an industry-specific apportionment formula.		
12. offers elective provisions to a combined group such as allowing the group to determine whether to be comprised on a water's-edge or worldwide basis. IF YOUR RESPONSE IS "YES," PLEASE SET FORTH THE ELECTION(S) IN THE COMMENTS SECTION BELOW.		
Comments: (Please indicate the question to which you are referring.)		

B. Combined Reporting: Tax Base	2014 Response	2015 Response
Your state:		
1. computes the income tax liability of the group on an aggregate basis and allows members to share tax credits between one another.		
2. computes the income tax liability of the group on an aggregate basis and allows members to offset losses between one another.		
3. conforms to the "matching rule" under U.S. Treas. Regs. §1.1502-13 (*i.e*., intercompany transactions shall be taken into account as if the seller and buyer were divisions of a single corporation).		
4. conforms to the "acceleration rule" under U.S. Treas. Regs. §1.1502-13 (*i.e*., intercompany items shall be taken into account when the effect of treating the seller and buyer as divisions of a single corporation cannot be achieved, such as when either the seller or buyer leaves the combined reporting group).		
Comments: (Please indicate the question to which you are referring.)		

C. Combined Reporting: Apportionment	2014 Response	2015 Response
Your state:		
1. includes in the numerator of the combined group's sales factor the in-state sales of a no nexus combined group member, notwithstanding Pub. L. No. 86-272 *(i.e.* , *Finnigan* approach).		
2. does not include in the sales factor numerator sales by a no nexus combined group member for purposes of determining taxable income in your state for the other group members *(i.e.* , *Joyce* approach).		
3. eliminates intercompany transactions (receipts, rents, etc.) from the apportionment factors.		
Comments: (Please indicate the question to which you are referring.)		

Section X. Tax Treatment of Non-U.S. Entities	2014 Response	2015 Response
1. Does your state extend the protections under Pub. L. No. 86-272 to business entities that are not organized under the law of a state or local taxing jurisdiction in the U.S. (*i.e.* , a foreign corporation not eligible for Pub. L. No. 86-272 protections)?		
2. Does your state, when determining the state taxable income of a non-U.S. entity, permit federal income tax treaty exemptions or other limits to control liability for state income taxation (*i.e.* , the non-U.S. entity will only have state taxable income if it has a "permanent establishment" in the U.S. and reports income on Federal Form 1120-F)? (If your response is "No" please describe your state's method for computing tax in the Comments section below.)		
3. Does your state require a non-U.S. entity that is not subject to federal income tax, but subject to your state's income-based tax, to compute your state's tax by first completing a "pro forma" federal tax return or computation of federal income?		
4. Does your state require a non-U.S. entity that is not subject to federal tax, but subject to your state's income-based tax, to use a starting point in determining state taxable income other than federal taxable income (*i.e.* , $0)?		
5. Does your state impose tax on a non-U.S. entity's apportioned worldwide taxable income?		
6. Does your state determine the source of income for purposes of determining taxability of nonbusiness income by using the federal source rules under I.R.C. § 861 *et seq.* (If not, please indicate your state's rule in the Comments section below.)		
7. Does your state use federal source rules to determine the non-US income of an 80-20 corporation for water's edge or other purposes?		
8. Does your state impose tax only on the income of the U.S. branch of a non-U.S. entity?		
9. Does your state impose income tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?		
10. If a foreign business does not file a federal return within a specified period of time after its due date (usually 18 months after the original due date), federal deductions are denied. Does your state follow a similar rule? (Please indicate in the Comments section below if the higher federal income starting point serves as the equivalent of the state's penalty.)		
11. Does your state impose franchise tax or other non-income based tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?		
Comments: (Please indicate the question to which you are referring.)		

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Section XI. Sales Tax Nexus Policies

A. Please identify any statute, regulation, or administrative pronouncement that sets forth your state's sales tax nexus policy.

Statute(s) addressing sales tax nexus:

Regulation(s) addressing sales tax nexus:

Administrative pronouncement(s) addressing sales tax nexus:

B. Nexus Enforcement Policies (New for 2015)	2014 Response	2015 Response
Please answer "Yes" or "No" to the questions below.		
Your state:		
1. would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).	NEW	
2. would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).	NEW	
3. would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).	NEW	
4. Do your answers to questions 1 - 3 on "trailing nexus," depend on the magnitude of the nexus-creating activity (e.g., three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum super tanker)?	NEW	
If your answer to question 4 is "yes," please explain:		
Comments: (Please indicate the question to which you are referring.)		

C. Sourcing and Method of Delivery	2014 Response	2015 Response
In transactions that take place across more than one jurisdiction, sourcing rules are used to determine the place of the sale and what jurisdiction is entitled to the tax generated from a particular transaction. The following questions are aimed at determining your state's sourcing rules for transactions in which either a buyer or seller is located in a different state or local jurisdiction within your state.		
1. For interstate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?		
2. For intra-state transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
3. For intra-state transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
4. For interstate transactions, does your state source services such as repairs to the location where the repairs were made?		
5. For intrastate transactions, does your state source services such as repairs to the location where the repairs were made? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
6. For interstate transactions, does your state source services such as repairs to the location where the buyer regains possession of the repaired item?		
7. For intrastate transactions, does your state source services such as repairs to the location where the buyer regains possession of the repaired item?		
8. Does the method by which an item is delivered from a remote seller to a purchaser in your state affect whether the item is taxed as tangible personal property (*e.g.,* canned software delivered on a DVD or CD ROM versus electronic download)?		
9. Are amounts paid by in-state customers to remotely access canned or prewritten software that is hosted on a server subject to sales or use tax in your state?		
10. In the space below, please indicate which method your state uses to source amounts paid for canned or prewritten software that is accessed, but not delivered to a customer in your state: (a) by the location of the server; (b) by the customer's billing address; (c) by where the software is used; (d) other.		
If you selected other, please specify:		
Comments: (Please indicate the question number to which you are referring.)		

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D. Social Media Coupons	**2014 Response**	**2015 Response**
Assume an out-of-state third-party social media coupon company (*e.g.,* Groupon or LivingSocial) issues coupons that allow consumers to purchase items at a retail store or restaurant in your state at a discount. For example, a coupon for a restaurant meal valued at $100 can be purchased for $50. Sales tax on the transaction is to be collected by the retailer or restaurant when the coupon is redeemed. At the time the item is purchased and the coupon is redeemed, your state requires:		
1. the retailer or restaurant to collect and remit tax on the full value of the item purchased (*e.g.,* tax would be imposed on $100 even though the customer actually paid $50 as a result of the certificate).		
2. the retailer or restaurant to collect and remit tax on the discounted value of the item purchased (*e.g.,* tax would be imposed on $50 even though the full value of the meal was $100).		
3. the retailer or restaurant to collect and remit tax on the full value of the item purchased if the certificate only indicates the full value of the item purchased and the discounted price is not disclosed on the certificate.		
4. the out-of-state third-party social media company (*e.g.,* Groupon or LivingSocial) to collect and remit tax on the amount it received for issuing the certificate because it achieved substantial nexus with your state by allowing coupons to be redeemed at in-state retailers and restaurants.		
Comments: (Please indicate the question to which you are referring.)		

Section XII. Sales Tax Nexus Creating Activities

Please indicate "Yes" or "No" to show whether each of the following activities or relationships performed by an out-of-state corporation would, by itself, create substantial nexus with your state for purposes of triggering the imposition of sales tax collection requirements on the out-of-state corporation.

When determining whether the listed activity/relationship would create substantial nexus, assume that each item is the only activity/relationship the out-of-state corporation has in your state. Also assume that the out-of-state corporation has no property or employees located in your state.

A "Yes" response means that an out-of-state corporation's performance of the listed activity/relationship would, by itself, create substantial nexus and trigger the imposition of sales tax collection requirements on the out-of-state corporation. A "No" response means that an out-of-state corporation's performance of the listed activity/relationship would not, by itself, trigger nexus for purposes of your state's sales tax.

For the questions that you believe require more than a "Yes" or "No" answer, please set forth in the comments section the factors that your state would consider in making a nexus determination.

A. General Activities	**2014 Response**	**2015 Response**
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
THIS QUESTION HAS BEEN DELETED FOR 2015.	**X**	**X**
1. reimburses its in-state salespersons for the costs of maintaining an in-home office.		
2. maintains a bank account in your state.		
3. maintains a post office box in your state.		
4. is listed in the local telephone books of cities in your state.		
5. uses local phone numbers in your state, which are forwarded to its headquarters in another state.		
6. makes sales to customers in your state by means of an 800 telephone order number and advertises in your state.		
Comments: (Please indicate the question number to which you are referring.)		

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B. Remote Sales	**2014 Response**	**2015 Response**
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. has an employee visit your state four or more times during the year.		
2. authorizes an employee or third party (*e.g.,* sales representative, independent contractor, or affiliated company) to solicit sales in the state.		
3. authorizes an employee or third party (*e.g.,* independent contractor, affiliated company, or other representative) to install, deliver, service, or repair merchandise in your state.		
4. uses an employee or third party (*e.g.,* independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in your state.		
5. delivers merchandise to customers in your state in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.		
6. delivers merchandise to customers in your state in returnable containers.		
7. ships its products for distribution to a third-party distributor located in the state that performs functions such as labeling, packaging, and shipping.		
8. provides in-state telephone or internet kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.		
Comments: (Please indicate the question number to which you are referring.)		

C. Temporary or Sporadic Presence	**2014 Response**	**2015 Response**
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. attends or participates in trade shows held in your state, and:		
(a) makes no sales and takes no orders at the trade show.		
(b) makes sales and/or accepts orders at the trade show.		
(c) limits trade show activities in the state to one to five days annually.		
2. sells tangible personal property while temporarily located in your state for up to three days.		
3. has employees or representatives occasionally enter the state to meet with in-state suppliers of goods or services.		
4. makes remote sales of tangible personal property to state residents and holds two or more one-day seminars in the state.		
5. makes remote sales of tangible personal property to state residents, holds two or more one-day seminars in the state, and has its employees visit the state five times during the year.		
Comments: (Please indicate the question number to which you are referring.)		

D. Activities of Unrelated Parties	2014 Response	2015 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. hires independent contractors to perform warranty or repair services on tangible personal property located in your state.		
2. hires an unaffiliated printer in the state and stores raw materials or finished goods at the in-state printer's plant.		
3. hires an unrelated call center or fulfillment center located in your state to process telephone and electronic orders that primarily derive from out-of-state customers.		
4. enters into an advertising contract with a cable station, radio station, print publication or electronic publication that is located in your state.		
5. produces an infomercial that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to in-state consumers who made purchases using the phone number or website address displayed on the “infomercial.”		
6. collects delinquent accounts using a collection agency in your state or hires attorneys or other third parties to file collection suits in courts in your state.		
7. uses a company in your state to drop ship merchandise to customers.		
8. stores and ships items from an unrelated distribution center located in your state.		
Comments: (Please indicate the question number to which you are referring.)		

E. Financial Activities	2014 Response	2015 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. issues credit cards to customers who reside in your state.		
2. owns an interest in an investment partnership or LLC that has operations in your state.		
3. owns a general interest in a partnership that is doing business in your state.		
4. owns a limited interest in a partnership that is doing business in your state.		
5. owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.		
6. owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.		
Comments: (Please indicate the question number to which you are referring.)		

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F. Activities with Affiliates	2014 Response	2015 Response
The out-of-state corporation:		
1. is affiliated with an entity that sells tangible personal property or services to customers in your state, and:		
(a) the in-state affiliate sells similar merchandise and uses common trade names, trademarks or logos.		
(b) uses the in-state affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf.		
(c) sells tangible personal property over the internet or by catalog and has an affiliated company that operates a retail store in your state.		
(d) sells tangible personal property over the internet or by catalog to residents of your state and participates in a loyalty points program with the in-state affiliate, allowing customers to earn points for purchases from the out-of-state corporation and redeem the points for merchandise at the affiliate's in-state stores.		
2. sells gift cards in affiliated in-state stores.		
3. makes remote sales to residents of your state and owns less than 5 percent of an in-state affiliate that shares the out-of-state corporation's logo.		
4. makes remote sales to residents of your state and owns at least 5 percent of an in-state affiliate that shares the out-of-state corporation's logo.		
5. makes remote sales to residents of your state and accepts returned items or exchanges items that were purchased from an affiliate's in-state stores.		
6. makes remote sales to residents of your state and is part of a controlled group with an affiliated entity that is physically located in your state.		
Comments: (Please indicate the question number to which you are referring.)		

G. Internet Activities	2014 Response	2015 Response
The out-of-state corporation:		
1. Uses an internet link or enters into an affiliation linking arrangement with a third party that:		
(a) is located in your state.		
(b) maintains a website on a server that is located in your state.		
2. makes remote sales of tangible personal property to residents in your state from outside the state via a website and enters into an agreement with residents of your state in which the out-of-state corporation pays commissions or fees for referrals to the out-of-state corporation's web site. Assume the annual gross receipts from sales attributable to the arrangements total LESS THAN $10,000.		
3. makes remote sales of tangible personal property to residents of your state outside the state via a website and enters into an agreement with residents of your state in which the out-of-state corporation pays commissions or fees for referrals to the out-of-state corporation's website. Assume the out-of-state corporation's annual gross receipts from the sales attributable to the arrangements total AT LEAST $10,000.		
4. is an internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time the advertisement is displayed (per impression).		
5. is an internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid when a consumer clicks on the advertisement and buys a product from the out-of-state retailer (per conversion).		
6. makes remote sales of tangible personal property in your state and:		
(a) owns an internet server located in your state.		
(b) owns an internet server located in your state and hires third-party technicians located in your state to keep the server functioning.		
(c) leases a third-party's internet server located in your state. Assume that the server is used exclusively by the out-of-state corporation.		
(d) leases space on a third-party's internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.		
(e) leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server in your state for less than six months during the year.		
(f) leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server for more than six months during the year.		
(g) does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the out-of-state corporation web services to sell products over the internet.		
Comments: (Please indicate the question number to which you are referring.)		

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H. Activities Related to Digital Property	**2014 Response**	**2015 Response**
The out-of-state corporation:		
1. makes remote sales of digital content, such as e-books, music, TV shows and movies, that are downloaded by residents of your state.		
2. electronically provides "canned software" to residents in your state and then makes remote sales of digital content, such as music and videos, that are downloaded by residents of your state.		
3. makes remote sales of "canned software" to residents in your state and then sends a representative to customize it to meet the customer's specific needs.		
4. makes remote sales of customized software in your state.		
5. owns licenses to canned software that are purchased by residents of your state.		
6. licenses to an in-state consumer permission to use its website for a webinar.		
7. sells data, such as music files, to residents in your state, and the data is stored on a server located in your state.		
8. sells remote access to canned software to customers located in your state.		
9. sells digital magazine or newspaper subscriptions from a remote Internet platform to an in-state user who downloads the material in your state.	**NEW**	
10. makes remote sales of appliances equipped with control devices from which an in-state user can control the appliance via a remote Internet platform.	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

I. Distribution and Delivery	**2014 Response**	**2015 Response**
The out-of-state corporation makes remote sales into your state and:		
1. picks up defective products or scrap materials in your state in company-owned vehicles.		
2. picks up raw materials in your state in company-owned vehicles.		
3. travels to or through your state one to six times per year in company-owned trucks, but does not pick up or deliver goods in your state.		
4. travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
5. travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
6. "back hauls" *(i.e.* , picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.		
7. holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).		
8. holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).		
Comments: (Please indicate the question to which you are referring.)		

J. Third-Party Solicitation Activities and Attributional Nexus	2014 Response	2015 Response
The corporation makes remote sales into your state and hires a third party to:		
1. distribute flyers, coupons, and other printed promotional materials.		
2. electronically distribute via e-mail or other means electronic equivalents of flyers, coupons, and other printed promotional materials.		
3. solicit sales in-person.		
4. solicit sales by telephone.		
5. demonstrate a product in person.		
6. negotiate prices to buy.		
7. negotiate prices to sell.		
8. refer a customer via website or blog click-through in exchange for a percentage of the sale.		
9. advertise a product on in-state website or blog, but with no click-through to buy.		
10. post informational content on in-state websites or blogs.		
11. employ search engine optimization techniques, such as generating targeted advertisements based on specific searches.		
Comments: (Please indicate the question to which you are referring.)		

K. Transactions Involving Franchise Agreements	2014 Response	2015 Response
The out-of-state corporation licenses intangible property to an in-state franchisee and the out-of-state corporation:		
1. owns only intangible property such as trademarks in your state.		
2. makes one inspection visit to the franchisee's location per year.		
3. makes two to six inspection visits to the franchisee's location per year.		
4. makes more than six inspection visits to the franchisee's location per year.		
5. leases machinery and equipment worth $20,000 to the franchisee.		
6. leases machinery and equipment worth $100,000 to the franchisee.		
7. maintains and repairs the franchisee's equipment in your state.		
Comments: (Please indicate the question to which you are referring.)		

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L. Service Providers	2014 Response	2015 Response
The out-of-state corporation:		
1. repairs tangible personal property in another state and delivers it by common carrier to an in-state customer (assume the repair services are taxable in your state).		
2. provides a taxable service to an in-state customer in which no part of the service, including the tangible personal property that is incidental to the performance of the taxable service, is physically transferred to the in-state customer.		
3. provides a taxable service to an in-state customer in which tangible personal property that is incidental to the performance of the service is physically transferred (i.e., by common carrier) to the in-state customer.		
4. transfers documents that are incidental to the performance of a taxable service to an in-state customer by electronic means only.		
5. has employees that regularly (*e.g.,* 12 or more times per year) enter the state to deliver to in-state customers tangible personal property that is incidental to the performance of a taxable service.		
6. has employees occasionally (*e.g.,* one to 11 times per year) enter the state to deliver to an in-state customer tangible personal property that is incidental to the performance of a taxable service.		
7. uses a third party in your state to store tangible personal property that is transferred by the corporation to in-state customers as an incidental part of the performance of a taxable service.		
Comments: (Please indicate the question to which you are referring.)		

M. Cloud Computing	2014 Response	2015 Response
(If the fees addressed in any of the following questions are not taxable in your state, please answer "N/A" and note it in the Comments section below.) The out-of-state corporation:		
1. charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state.		
2. charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state and remotely performs a taxable service in your state.		
3. sends an employee to your state to perform an initial setup and then charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state.		
4. hires an independent contractor in your state to provide training to in-state customers and charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state.		
5. charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state and occasionally (*e.g.,* one to 11 times per year) has employees meet with customers in your state.		
6. charges fees to in-state customers for the right to access **non-downloadable prewritten software** that is hosted on a server in another state and regularly (*e.g.,* 12 or more times per year) has employees meet with customers in your state.		

7. charges fees to in-state customers for the right to access **information on its website** that is hosted on a server in another state.		
8. charges fees to in-state customers for the right to access **information on its website** that is hosted on a server in another state and remotely performs a taxable service in your state.		
9. sends an employee in your state to perform an initial set up and then charges fees to in-state customers for the right to access **information on its website** that is hosted on a server in another state.		
10. hires an independent contractor in your state to provide training to in-state customers and then charges fees for the right to access **information on its website** that is hosted on a server in another state.		
11. charges fees to in-state customers for the right to access **information on its website** that is hosted on a server in another state and occasionally (*e.g.,* one to 11 times per year) has employees meet with customers in your state.		
12. charges fees to in-state customers for the right to access **information on its website** that is hosted on a server in another state and regularly (*e.g.,* 12 or more times per year) has employees meet with customers in your state.		
Comments: (Please indicate the question to which you are referring.)		

N. Registration with State Agencies/Departments (New for 2015)	**2014 Response**	**2015 Response**
The out-of-state corporation:		
1. is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.	**NEW**	
2. holds a general business license issued by your state.	**NEW**	
3. holds a specialty license issued by your state, such as a specialty insurance license.	**NEW**	
4. is registered with the state tax department for payroll tax purposes.	**NEW**	
5. is registered with the state agency or department that regulates or administers workers' compensation.	**NEW**	
6. is registered with the state as a government vendor or contractor.	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

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O. Drop Shipment Transactions (New for 2015)	2014 Response	2015 Response
The out-of-state corporation:		
1. is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and		
(a) the distributor has nexus with your state.	**NEW**	
(b) the distributor does not have nexus with your state.	**NEW**	
2. is a distributor that uses an in-state manufacturer, who acts as a fulfillment agent in your state, to pack and ship orders via common carrier to in-state customers, and		
(a) the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order.	**NEW**	
(b) the corporation holds title to the inventory until the corporation directs the manufacturer to ship the order.	**NEW**	
3. is a distributor that contracts with an in-state manufacturer to perform an order fulfillment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and		
(a) the manufacturer holds title to the inventory prior to shipment.	**NEW**	
(b) the corporation holds title to the inventory prior to shipment.	**NEW**	
4. is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and		
(a) the corporation charges product return inventory back to the manufacturer such that the manufacturer owns the returned inventory.	**NEW**	
(b) the corporation retains ownership of the product return inventory.	**NEW**	
Comments: (Please indicate the question to which you are referring.)		

P. Conformity to Streamlined Sales and Use Tax Agreement (SSUTA) Provisions (as of Jan. 1, 2015)	2014 Response	2015 Response
Your state:		
1. is a full member (fully compliant) with the SSUTA.		
2. is in compliance with the SSUTA except for sourcing.		
3. has adopted some SSUTA provisions.		
4. has not adopted any SSUTA provisions.		
5. has one sales tax rate that applies to all taxable sales everywhere.		
Comments: (Please indicate the question number to which you are referring.)		

DON'T MESS WITH NEXUS

Nexus. It's complicated. Every state has different rules for determining which activities are subject to different forms of taxation. And they're constantly changing. Understanding whether your organization or clients are affected has been nearly impossible. Until now.

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