

From: Glaccum, David <DavidGlaccum@gov.sc.gov>
To: Patel, Swati <SwatiPatel@gov.sc.gov>
Pisarik, Holly <HollyPisarik@gov.sc.gov>
Date: 5/17/2016 6:52:17 PM
Subject: RE: Click through Nexus and absentee ballot bill

According to a quick search, this website has 18 states listed: <http://blog.taxjar.com/states-charge-sales-tax-click-through-nexus/>

Here is a very brief article saying how click-through nexus laws challenge the nexus requirements in Quill v. ND: <https://tax.thomsonreuters.com/blog/onesource/indirect-tax/alabama-south-dakota-challenge-quill-v-north-dakota-nexus-standards/>

From: Glaccum, David
Sent: Tuesday, May 17, 2016 3:36 PM
To: Patel, Swati; Pisarik, Holly
Subject: RE: Click through Nexus and absentee ballot bill

In Quill Corp v. North Dakota, the Supreme Court held that a corporation must have a “substantial nexus” with a taxing state to meet the constitutional requirements of the Commerce Clause. The Court upheld a previous decision creating a safe harbor for vendors “whose only connection with customers in the [taxing] state is by common carrier or the United States mail.” Further, the Court stated that “Congress [is] better qualified to resolve” and “has the ultimate power to resolve” this issue. To date, Congress has not resolved this issue (Marketplace Fairness Act) and Quill remains the law of the land.

Rick agreed with the constitutional analysis (that this bill was questionable), said he is not in favor of the expansion of government, but that it would provide DOR another quiver to go after businesses that arguably owe SC taxes. They have remained neutral on the bill to legislators, but only discussed what impact it would have on the agency. Per the fiscal impact, this will have very little-to-no impact because the potential pool of online retailers that do not have a physical nexus and that otherwise meet the monetary thresholds in the bill are very small.

Therefore, completely aside from any policy concerns we may have with internet taxation, this bill is constitutionally suspect and should not be passed, especially when its impact on state revenue is so miniscule.

From: Patel, Swati
Sent: Tuesday, May 17, 2016 1:40 PM
To: Glaccum, David; Pisarik, Holly
Subject: RE: Click through Nexus and absentee ballot bill

Holly – let me know what you think about this.

David – can you send me a summary of the legal argument? Also, do we know how many other states have click through nexus laws. Also, I know that Rick Reames doesn’t take a policy position with the General Assembly, but what does he think about it (just curious)?

From: Glaccum, David
Sent: Tuesday, May 17, 2016 8:41 AM
To: Pisarik, Holly; Patel, Swati
Subject: FW: Click through Nexus and absentee ballot bill

For your reading pleasure - Below is what I sent Haley and Katherine re: the click through nexus bill. I remember this case being discussed in D.C. by proponents of the “Marketplace Fairness Act”, because they argued without it, it is unconstitutional for states to collect the use tax across state lines.

From: Glaccum, David

Sent: Tuesday, May 03, 2016 11:11 AM
To: Veldran, Katherine; Mottel, Haley; Baker, Josh
Subject: Click through Nexus and absentee ballot bill

I would argue the click-through nexus use tax bill is unconstitutional until Congress allows this type of nexus:
<https://www.law.cornell.edu/supct/html/91-0194.ZO.html> (holding that lack of physical nexus in a state is sufficient to exempt a business from having to pay sales and use taxes to that state).

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