



State and Local Tax Newsletter

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EHTC State and Local Tax Services

INCOME & FRANCHISE TAX

- Tax Minimization Studies
- Business Structure Reviews
- Allocation and Apportionment Planning
- Combined, Consolidated, & Unitary Planning
- Nexus Studies
- Amended State Tax Returns from IRS Audits
- Single Business Tax Training

SALES & USE TAX

- Reverse Audits
- Compliance System Review
- Direct Pay & Compliance Agreements
- Exemption Certificate Documentation
- Industrial Processing / Manufacturing Exemption
- Utility Studies
- Nexus Studies
- Sales & Use Tax Training
- Transportation Company
- Procurement Company

PROPERTY (AD VOLOREM) TAX

- Real Property Tax Reviews
- Personal Property Tax Reviews

TAX AUDIT & APPEALS

- Sales & Use Tax Audit Defense & Appeals
- Single Business Tax Audit Defense & Appeals
- Property Tax Audit Defense & Appeals
- State and Local Tax Litigation Support
- Merger & Acquisition Due Diligence Reviews
- Voluntary Disclosure

BUSINESS INCENTIVE SERVICES

- Business Relocation & Expansion Services
- Tax Credits, Exemptions, & Abatements
- Grants, Financing, & Infrastructure Assistance

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Business Activity Tax Simplification Act Would Enact Federal Nexus Standards

Legislation was introduced into the United States Congress that would establish a physical presence test to determine when an out of state business would be subject to a state's taxing jurisdiction. The Business Activity Tax Simplification Act (HR 1956, S2721) is designed to bring uniformity and predictability to what is seen as an unpredictable and hostile tax environment brought about by different state interpretations of the U. S. Supreme Court's decision in *Quill v. North Dakota*, [504 US 298](#) which requires a business to have substantial **nexus** in a state before it can be subjected to tax. The Act would adopt the position of those states using the physical presence test as a bright line test for determining **nexus**.

Requirements for Physical Presence

Under the proposed law, a person would have a physical presence in a state only if the person's business activities in the state include the following, collectively and on more than 21 days in the aggregate, during the person's taxable year:

(1) Being an individual physically in the state, or assigning one or more employees to be in the state. However, the following activities are excluded:

- activities in connection with a possible or an actual purchase of goods or services, for consumption by the person's business;
- gathering news and covering events for print, broadcast, or other distribution through the media;
- gathering information needed in order to perform services outside the state;
- meeting government officials for purposes other than selling goods or services, for consumption by such government;
- merely attending educational or training conferences, seminars or other similar functions; and
- participating in charitable events.

(2) Using the services of an agent (excluding an employee) to establish or maintain the market in the state, if the agent does not perform business activities in the state for any other person during the taxable year.

(Continued on the next page)

Edward S. Kisscorni is the Director of State and Local Taxation with EHTC in Grand Rapids. Ed has over 35 years of experience in Michigan state and local taxation as an auditor with the Michigan Department of Treasury, in the tax department of a large international CPA firm, as a sole practitioner, and in the state and local tax group of a national CPA firm.

He currently serves on the Treasury Business Advisory Group and other organizations.

Ed's practice areas include Consultation and Planning and Litigation Support in the areas of State and Local Taxation and Accountant's Legal Liability.

STATE AND LOCAL TAX WHITEPAPERS

MICHIGAN SINGLE BUSINESS TAX

- History
- Compensation
- Capital Acquisition Deduction
- Agricultural Exemption
- Entities Under Common Control
- Combined or Consolidated Returns
- Jurisdictional Standards
- Apportionment & Allocation
- Foreign Taxpayers
- Small Business Credit
- Investment Tax Credit
- Michigan Economic Growth Authority Credit (MEGA)
- Brownfield Zone Credit
- Renaissance Zone Credit
- Historic Resource Credit



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About EHTC

Echelbarger, Himebaugh, Tamm & Co., P.C. (EHTC), a professional corporation was established in 1977 by Dennis M. Echelbarger. Since that time, our Firm has grown to become one of the largest, most successful, local accounting firms in the Greater Grand Rapids, Michigan area, and we are a recognized leader in the business community. Our success is based on building partnering relationships with our customers. We are large enough to serve a wide diversity of customers but small enough to maintain personalized attention.

EHTC's professional team is highly trained to provide technical and consulting services in the areas of accounting, taxes, and strategic planning to nonprofit, profit and service organizations and related entities.

Minimizing your tax liability requires careful, advance planning rather than preparing tax returns as deadlines near. Our tax professionals provide complete tax services and are assisted by our extensive tax library and the latest technology.

We pay careful attention to your unique circumstances such as your current requirements and your plans for the future. We then recommend a plan that best suits your needs while minimizing financial risk.

(3) Leasing or owning tangible personal property or real property in the state. However, the following are excluded in determining whether the 21-day limit has been exceeded:

- (a) tangible personal property located in the state for purposes of being assembled, manufactured, processed, or tested by another person for the benefit of the owner or lessee, or used to furnish a service to the owner or lessee by another person;
- (b) marketing or promotional materials distributed in the state; and
- (c) any property to the extent used ancillary to an activity that is excluded from the computation of the 21-day period.

Application of P.L. 86-272 expanded. In addition to establishing **federal nexus standards**, the Act would expand P.L. 86-272, which currently provides that when an out-of-state business' only contact with a state is the solicitation of orders for tangible personal property in that state, then the state may not tax the income of that out-of-state company. The Business Activity Tax Simplification Act amends P.L. 86-272 to change its application from merely the solicitation of orders for tangible personal property, to apply to both tangible and intangible property, as well as to all types of services.

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STATE AND LOCAL TAX WHITEPAPERS

MICHIGAN SALES AND USE TAX

- Michigan Sales Tax
- Exemptions from the Michigan Sales Tax
- Sourcing of Sales
- Records & Record Keeping Requirements
- Direct Pay Authorization
- Compliance Agreements
- Michigan Use Tax
- Exemption Documentation Requirements
- Construction Contractors
- Contractor vs. Retailer
- Service vs. Tangible Personal Property
- Industrial Processing
- Extractive Operations
- Containers, Cartons & Wrapping Materials
- Health Care
- Computer Software
- Rentals
- Taxability of Interstate Motor Carrier Property
- Discounts, Rebates, & Coupons
- Drop Shipments
- Delivery Services
- Food for Human Consumption
- Interstate Commerce
- Isolated Sales



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