The Tricky Intersection of E-Commerce and State Corporate Income Taxes

By Melissa Oaks and Rebecca Newton-Clarke
The last few decades have seen enormous changes in the ways companies do business — changes that states’ corporate income tax laws did not anticipate and lawmakers did not foresee. Companies increasingly engage in transactions with customers in a state while lacking any of the contacts traditionally associated with sales of goods or performance of services. Sales of products can involve downloads and streaming of items that cannot be touched or held; services can be performed remotely, rather than in proximity to the customer.

These “pure e-commerce transactions” raise many corporate income tax issues that states are only beginning to consider, much less address. They include, just for example, sales of: music, video and software downloads, remote access to software and apps, streaming games and entertainment, electronically-provided information services, cloud computing services, digital storage, online education and online research. New kinds of transactions are continually emerging, outpacing states’ ability to catch up.

The first question to consider is nexus, or whether a state can and does assert jurisdiction to impose tax on a seller of pure e-commerce, and, if so, whether federal law affords the seller any additional protections. States have significant latitude in designing and implementing their tax systems, but federal constitutional and statutory provisions do place constraints on state government action in this area. The following discussion examines these constraints and the context into which pure e-commerce transactions have emerged. Few states have considered the nexus implications of pure e-commerce transactions specifically.

If the state does have nexus with a seller of pure e-commerce, the next question is how the seller apportions its pure e-commerce sales under the state’s law. A handful of states have provided detailed guidance, but many states have offered little to no guidance concerning apportionment of pure e-commerce transactions.

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NEXUS

The preliminary issue in the pure e-commerce context is nexus, or the state’s jurisdiction to tax.3

The U.S. Constitution establishes that for a state to impose income tax on an out-of-state business, the business must have a sufficient connection to, or nexus with, the state.4 The transaction being taxed must also have a connection with the taxing state. These federal constitutional limits on the taxation of interstate commerce flow from the Due Process Clause and the Commerce Clause.5 The Due Process Clause protects taxpayers against arbitrary state action, the Commerce Clause prohibits states from impeding or discriminating against interstate commerce.6

The Due Process Clause guarantees both substantive and procedural due process.7 In two leading cases decided in 1959, Northwestern States Portland Cement and Stockham Valves and Fittings, the U.S. Supreme Court established a cornerstone of corporate income tax nexus law by upholding taxes when a state levied them only on the part of the taxpayer’s net income arising from its activities within the taxing state.8 The Court found that imposition of the taxes did not violate the Due Process Clause because the taxpayers’ activities within the state formed a sufficient nexus between the taxpayer and the taxing state.9

In 1977, the U.S. Supreme Court, in Complete Auto Transit v. Brady, established a four-prong test for determining whether a state tax on an out-of-state corporation’s activities in interstate commerce violates the dormant Commerce Clause.10 In the absence of Congressional legislation, a state tax imposition will comply with Commerce Clause requirements, if it:

1. Is applied to an activity with a substantial nexus with the taxing state
2. Is fairly apportioned
3. Does not discriminate against interstate commerce
4. Is fairly related to services provided by the taxing state11

In Allied-Signal, Inc. v. Director, the U.S. Supreme Court enunciated the “fundamental requirement of the Due Process and Commerce Clauses that there be some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax.”12 If the tax is on an activity, the Court said, the connection must be between the state and “the activity itself,” rather than merely “to the actor” the state seeks to tax.13

Historically, the U.S. Supreme Court did not distinguish between the nexus requirements flowing from the Due Process Clause and those flowing from the Commerce Clause.14 In the 1992 case of Quill v. North Dakota, however, the Court established distinct tests for due process and regulation of interstate commerce, finding that North Dakota law violated the Commerce Clause, but not the Due Process Clause, by imposing use tax collection duties on an out-of-state mail order company that sold goods to North Dakota customers but had no outlets, sales representatives or other significant property in the state.15

In Quill, the U.S. Supreme Court interpreted the Due Process Clause, which protects taxpayers against arbitrary state action, to require a “minimum connection” between a state and the person, property or transaction that it seeks to tax.\(^\text{16}\) The Court determined that the Commerce Clause, by contrast, gives Congress the power to regulate commerce among the states and that the negative corollary of this power, called the “Dormant Commerce Clause,” prohibits states from placing undue burdens on or discriminating against interstate commerce and accordingly requires a “substantial nexus” between a state and the activity that it seeks to tax.\(^\text{17}\) As part of the Commerce Clause analysis, the U.S. Supreme Court, relying on the principles established in National Bellas Hess, held that the mail-order company did not have substantial nexus with the state because it had no physical presence in the state.\(^\text{18}\)

**PUBLIC LAW 86-272**

Corporations have another protection against state income taxation in Public Law 86-272 (15 USC 381 through 15 USC 384), which provides immunity from tax on net income when a corporation’s activities in the state are limited to solicitation (and activities ancillary to solicitation) of orders for sales of tangible personal property — and when an independent contractor operating on behalf of the corporation solicits and accepts orders for sales of tangible personal property — that are shipped or delivered by the seller from outside the state. Looking to the plain language of the law, a number of states take the position that the immunity does not extend to solicitation for sales of services or intangible property or to taxes measured by something other than net income.\(^\text{19}\)

**ATTRIBUTIONAL NEXUS**

Sometimes a company that lacks property in and other physical contacts with a state can have attributional nexus through a related company or third party.

In Scripto, Inc. v. Carson and Tyler Pipe Industries, Inc. v. Washington State Department of Revenue, the U.S. Supreme Court ruled that independent contractors soliciting sales on behalf of out-of-state retailers established sales and use and direct tax nexus for the retailers in Florida and Washington, respectively.\(^\text{20}\) Although Scripto was a sales and use tax case, Tyler Pipe was a direct tax case, meaning that the test for attribution should apply in the corporate income tax context as well as for sales and use tax purposes.\(^\text{21}\) According to the Tyler Pipe decision, to create nexus for a remote seller, the third party’s activities on behalf of the seller in the state must be “significantly associated with the taxpayer’s ability to establish and maintain a market” for sales in the state.\(^\text{22}\)

For corporate income tax purposes, of course, P.L. 86-272 (15 USC 381 through 15 USC 384) precludes states from asserting corporate income tax nexus based on an independent contractor’s solicitation and acceptance of orders for sales of tangible personal property in the state, if the orders are shipped from outside the state.

The Quill court characterized Scripto as the furthest attribution the Court has allowed, suggesting that the Scripto/Tyler Pipe test is the furthest permissible stretch of nexus.\(^\text{23}\)

Enlarging upon the reasoning of the Supreme Court in Scripto, Inc. v. Carson and Tyler Pipe Industries, Inc. v. Washington State Department of Revenue, however, states increasingly take the position that the immunity does not extend to solicitation for sales of services or intangible property or to taxes measured by something other than net income.\(^\text{24}\)

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THE RISE OF ECONOMIC NEXUS

Many, if not most, states maintain that the physical presence requirement established in Quill applies only in the context of sales and use taxes.\textsuperscript{25} In the year following Quill, the South Carolina Supreme Court ruled in Geoffrey, Inc. v. South Carolina Tax Commission that an out-of-state trademark holding company lacking a physical presence in South Carolina had nexus sufficient to subject it to the state’s corporate income tax based on the company’s intangible and economic presence in the state through earning royalties from trademarks used in the state.\textsuperscript{26} The U.S. Supreme Court denied certiorari in the case, leaving states to grapple with the constitutionality of “economic nexus” standards.\textsuperscript{27}

The constitutionality of economic nexus claims is uncertain. Yet the U.S. Supreme Court denied certiorari in Geoffrey and has declined to take up every income tax economic nexus case since, even those involving fully operational businesses rather than mere intangible holding companies.\textsuperscript{28}

In the two decades following Quill and Geoffrey, a growing number of state courts have asserted “economic nexus” against businesses based on the economic benefits a business receives through intangibles such as licensing trademarks that are used in the state.\textsuperscript{29}

Increasingly, states have begun to codify their assertions of economic nexus against interstate corporations by enacting “factor presence” tests that look to receipts, property and payroll in the state.\textsuperscript{30} In addition, states increasingly claim nexus over corporations based on the activities in the states of their affiliates, employees, agents or representatives.\textsuperscript{31}

Few states have provided nexus guidance specific to companies engaged only in pure e-commerce transactions.

FACTOR PRESENCE LAWS

Sellers of pure e-commerce should be particularly cognizant of states that have codified bright-line economic nexus thresholds.\textsuperscript{32} These “factor presence” laws assert substantial nexus based on amounts of receipts, property and/or payroll in the state.\textsuperscript{33} The laws tend to be similar to a model law proposed by the Multistate Tax Commission (MTC), although the specifics, and particularly the threshold amounts, often differ.\textsuperscript{34} As discussed above, economic nexus laws are of uncertain constitutionality, but in the absence of action by Congress or a ruling by the Supreme Court, states continue to adopt and apply them.

In practice, the receipts threshold will usually have the most practical effect for e-commerce businesses. Alabama, one of the states with a law inspired by the MTC’s model statute, provides that a corporation establishes substantial nexus if, during the tax period, its sales attributable to the state exceed $500,000 or 25% of its total sales.\textsuperscript{35} Other factors are tied to property and payroll, which ordinarily would appear to involve contacts with the state beyond pure e-commerce transactions, although the property factor could be relevant in states where electronically-transmitted software or digital goods are classified as tangible personal property for apportionment purposes.


\textsuperscript{34} See generally, Legislation Broadening Franchise and Income Taxes on Out-Of-State Financial Businesses, Section 6.30, Hellerstein & Hellerstein, State Taxation.

New York has an economic presence nexus law under which corporations deriving more than $1 million in New York-sourced receipts are subject to tax. For combined unitary groups, the state requires aggregation of receipts from each member having at least $10,000 in New York receipts to determine whether the group has met the $1 million threshold. According to draft guidance issued by the New York Department of Taxation and Finance, only receipts from corporations conducting a unitary business and meeting the ownership requirements of N.Y. Tax Law § 210-C, with at least $10,000 in New York receipts, are aggregated.

Michigan asserts nexus when a corporation actively solicits sales in Michigan and has Michigan-sourced gross receipts of $350,000 or more in a given tax year. The Michigan Department of Treasury defines active solicitation for purposes of this law, saying in a bulletin that the tax does not apply if a remote seller’s sole in-state business activity is soliciting orders for sales of tangible personal property, when the orders are sent outside the state for approval or rejection and are filled by shipment or delivery from a point outside the state. A mail order seller was not subject to the corporate income tax, for example, when its only in-state activity was soliciting orders for sales of tangible personal property through mail order catalogs. (The seller was subject to the modified gross receipts tax component of the tax, however.

**BEYOND BRIGHT-LINE TESTS**

If substantial nexus does not arise under this kind of bright-line law — i.e., the corporation’s in-state sales and other factors are below the statutory thresholds — the company must determine whether its pure e-commerce transactions alone create nexus and whether they involve contacts the state might consider to fall outside the protections of P.L. 86-272.

Washington has laws that explicitly answer this question in the affirmative, but the state is a special case. Rather than a tax on net income, Washington imposes a business and occupation (B&O) tax, a broad-based tax on the gross income of business, the value of products or the gross proceeds of sales; the tax base and rate depend on the business’ classification under the law. Because Washington’s B&O tax is not a tax on net income, the Washington Department of Revenue takes the position that P.L. 86-272 does not apply and so the mere in-state solicitation of orders is sufficient to expose an out-of-state business to tax liability. The Department also takes the position that physical presence is not necessary to create nexus for service transactions. Beginning September 1, 2015, Washington law extends the economic nexus standards to persons making taxable wholesale sales, including sales of digital goods, digital codes, digital automated services and services related to digital goods. As of September 1, 2015, Washington law also presumes that a remote seller presumed to have sales and use tax nexus under the state’s click-through nexus law also has nexus for B&O tax purposes.

In many states, questions about the nexus implications of pure e-commerce transactions remain. Even when it is clear that a pure e-commerce transaction would not ordinarily create nexus — even in a state that has adopted an economic nexus position — companies should look closely at relationships with in-state persons that could affect the nexus implications of a transaction. The likelihood of a state’s asserting nexus could change if, just for example, the company provides or distributes the service or product using an in-state server that is owned by a third party with whom the seller contracts to provide ISP services, digital storage, remote access to software or other remote products or services. Whether the third party and the seller are related entities could also be relevant to the nexus determination.

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36 N.Y. Tax Law § 209(1)(b), eff. 01/01/2015.
37 N.Y. Tax Law § 209(1)(d)(i), eff. 01/01/2015.
38 Corporate Tax Reform FAQs, New York State Department of Taxation and Finance, 05/08/2015.
40 Michigan Revenue Administrative Bulletin No. 2013-9, 06/05/2013.
44 Wash. Rev. Code § 82.04.220(1).
47 Wash. Rev. Code § 82.04.467(6)(a); Wash. Rev. Code § 82.04.257(7); Wash. Rev. Code § 82.04.270; New Nexus Standards for Wholesale and Retail Sales, Washington State Department of Revenue, 09/01/2015.
The Proliferation of E-Commerce Transactions

As discussed above, types of pure e-commerce transactions are always proliferating, continually outpacing state laws, cases, regulations and rulings. Even relatively commonplace transactions do not have clear nexus consequences in some states, and a state that asserts nexus based on one kind of pure e-commerce transaction might not assert nexus based on a seemingly similar transaction. The following pure e-commerce transactions are among those businesses should consider when evaluating possible nexus with a state, even if they do not own or lease servers in the state and lack any contact with the state beyond these transactions:

1. Selling prewritten software for download
2. Selling custom software for download
3. Selling apps for cell phones, tablets, computers and other devices
4. Providing cloud computing [including Software as a Service (SaaS), Platform as a Service (PaaS) and Infrastructure as a Service (IaaS)]
5. Providing digital storage
6. Selling downloads of songs, ebooks, video or games
7. Providing subscriptions for otherwise selling access to streaming video, music and events or other entertainment offerings
8. Providing subscriptions or otherwise selling access to games
9. Providing subscriptions to research sites
10. Providing professional services (legal, medical, accounting, research, analytical, engineering or consulting services)
11. Providing information services
12. Providing online educational services
13. Hosting advertising on its website
14. Providing customer service or product support
15. Providing remote maintenance or warranty services
16. Engaging in other purely electronic transactions

Apportionment Basics
Typically, taxpayers with income from business activity that is taxable in more than one state must allocate and apportion their income among those states. The Uniform Division of Income for Tax Purposes Act (UDITPA), the Multistate Tax Compact and Multistate Tax Commission regulations lay out model allocation and apportionment rules that states have adopted to varying degrees.

Business vs. Nonbusiness Income
In most states, taxpayers must classify income as “business income” (which is subject to apportionment) or “nonbusiness income” (which is subject to allocation). Business income is income arising from transactions and activity in the regular course of the taxpayer’s trade or business. Some states adopt a broader definition that includes all constitutionally-apportionable income that is not subject to allocation. Whether the taxpayer delivers its products and services electronically should not affect whether the income from those transactions constitutes business or nonbusiness income. However, the scope of a state’s jurisdiction to tax the income from a taxpayer’s pure e-commerce division or subsidiary may depend on whether it is considered part of a unitary business with the taxpayer’s other enterprises.

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In nearly every state, taxpayers apportion business income to the state using an apportionment factor — a formula consisting of a sales factor and, in some cases, a property factor and a payroll factor. Under UDITPA, taxpayers weight the three factors evenly.\(^{50}\)

Recently, however, many states have moved away from UDITPA’s evenly-weighted, three-factor apportionment formula in favor of a formula that places extra (or sole) weight on the sales factor. The Multistate Tax Compact previously conformed to UDITPA but was amended in 2014 and 2015 and now recommends that states adopt a three-factor formula with a double-weighted sales factor.\(^{51}\) For the 2017 tax year, only nine states use the UDITPA formula on an elective or mandatory basis.

MULTISTATE TAX COMPACT DISPUTES
Taxpayers in California, Colorado, Michigan, Minnesota, Oregon and Texas have challenged whether the state can require taxpayers to use a sales-factor-weighted formula without leaving (i.e., repealing) the Multistate Tax Compact.\(^{52}\) The Supreme Court of California held in The Gillette Company et al. v. Franchise Tax Board that taxpayers could not apportion income under the Compact’s provisions.\(^{53}\) The U.S. Supreme Court denied certiorari in Gillette and in a similar case from Minnesota.\(^{54}\)

SALES FACTOR: CLASSIFICATION
In general, the sales factor measures the ratio of a taxpayer’s in-state sales to its total sales using gross receipts. Whether a sale is considered “in-state” and included in the numerator of the sales factor depends on how the state classifies the underlying transaction. States use two primary categories for classifying sales: (1) sales of tangible personal property and (2) sales other than sales of tangible personal property. The second category encompasses sales involving real property, services and intangible property.

Fitting novel, purely-electronic transactions into this framework can be tricky. It may be unclear, for example, whether a state treats downloaded software as a sale of a service, of tangible personal property or of an intangible. Most states lack substantial authority on this issue. A few states, however, are leading the charge and have adopted detailed classification rules that encompass a variety of pure e-commerce transactions.

\(^{50}\) UDITPA § 9.
\(^{51}\) Multistate Tax Compact, Article IV.
Massachusetts
Massachusetts classifies a license of database access, a sale of digital goods or a sale of custom software as a service. A sale of intangible property is classified based on the substance of the transaction and whether payments are contingent on productivity, use or disposition of the property.

New York
New rules effective January 1, 2015, created a “digital products” classification that covers any product or service delivered to the customer through electronic means as well as certain artistic works, services and software delivered by any means.

Nebraska
An “application services” classification covers transactions in which the taxpayer provides computer-based services to customers over a network for a fee without transferring computer software.

SALES FACTOR: SOURCING
Once a pure e-commerce transaction is classified, taxpayers must then determine how to source the sale. Generally, most sales of tangible personal property are sourced to the purchaser’s location (i.e., the state to which the property is delivered) and sales involving real property are sourced to the location of that property. For other sales (e.g., the sale of services or the sale or licensing of intangible property), two main sourcing methods exist: “cost of performance” and “market-based.”

■ Cost of Performance: UDITPA adopts the cost of performance method and sources receipts to a state based on the location of the “income-producing activity,” as determined by the state in which the greatest (or, in some states, a proportional) “cost of performance” occurs. Before 2014, the Multistate Tax Compact also employed the cost of performance method. In states that use this method, the taxpayer must ascertain how the state defines “income-producing activity” and “cost of performance.” Often, the answer depends on the company’s specific facts and circumstances. In these cases, knowing the factors that the state considers in making the determination is imperative. A state may define the terms broadly to encompass the taxpayer’s research and development or other overhead expenses, or it may narrowly focus on the specific transaction with the customer that generates the receipts (which can mimic market-based sourcing).

■ Market-Based: In recent years, a number of states have moved to market-based sourcing, which sources receipts to the location of the taxpayer’s market for the sale. The revised Multistate Tax Compact also adopts market-based sourcing. Even within market-based sourcing states, there are a variety of methods for determining the location of the taxpayer’s market for a sale:
  — The location where the product is used
  — The location where the benefit of the service is received
  — The location where the service is performed
  — The customer’s billing address
  — Or another method

Several states have issued guidance on market-based sourcing of pure e-commerce receipts:

Massachusetts
Massachusetts was the first state to issue comprehensive regulations for market-based sourcing of pure e-commerce transactions. Similar regulations were adopted in Tennessee in 2016, and the Multistate Tax Commission used the Massachusetts rules as the basis for drafting new model regulations. Massachusetts sources most pure e-commerce transactions as follows:

57 N.Y. Tax Law § 210-A(4)(a).
59 UDITPA § 17.
60 See, e.g., Indiana Letter of Finding No. 02-20140455, 01/01/2015.
61 Multistate Tax Compact, Article IV.
Services Delivered to the Customer by Electronic Transmission
These are services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves or other similar means, regardless of whether the service provider owns, leases or otherwise controls the transmission equipment. A service delivered by electronic transmission is sourced to Massachusetts to the extent that the taxpayer’s customer receives the service in Massachusetts. For business customers, this means the location at which the service is directly used by the employees or designees of the customer. If that information is not available, it must be reasonably approximated. For individual customers, this means using the billing address. For business customers, reasonable approximation requires use of a hierarchy of methods. First, the sale is sourced to the location where the contract is principally managed by the customer. If that information isn’t available, the sale is assigned to the state from which the customer placed the order. If that information isn’t available, the taxpayer can use the business customer’s billing address. The state requires taxpayers to determine the location where the contract is principally managed by the customer when the taxpayer derives more than 5% of its sales of services from that business customer.

HIGH-VOLUME SAFE HARBOR
Massachusetts provides a safe harbor for high-volume transactions. If the taxpayer engages in substantially similar transactions with more than 250 business customers, the safe harbor allows the taxpayer to source sales to business customers using the billing address as the basis for reasonable approximation without the need to step through the hierarchy first.

Services Delivered Electronically on Behalf of or Through the Customer
Services delivered electronically on behalf of the customer are transactions in which the customer contracts for the service but the taxpayer delivers the service to a third party on the customer’s behalf. This is similar to a drop shipment of tangible personal property. A service delivered electronically through the customer is one in which the service is delivered electronically to the customer who then resells and transmits that service electronically to third parties in substantially identical form. These transactions are sourced to Massachusetts to the extent that the end users or other third-party recipients are in Massachusetts. If that information is unavailable, sourcing is based on reasonable approximation and the specific criteria used depends upon the method of delivery and the nature of the customer.

New York
New York provides a hierarchy of sourcing methods for sales of “digital products.” Sales of digital products are sourced to the customer’s location of primary use. If that information is not available, the taxpayer must source the sale to the place where the customer or its designee receives the digital products. If neither the place of customer location nor the place of customer receipt is available, the taxpayer sources the sale using the apportionment factor determined with respect to the digital product in the preceding tax year. Finally, if that information is not available, the taxpayer must use the apportionment factor for the current tax year for the digital products that can be sourced using the first two methods (location of use or receipt).

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Even within states that have acknowledged the shift to a digital economy, there are areas of uncertainty in apportioning receipts from pure e-commerce transactions. Many states address how to treat bundled transactions for sales tax purposes, but few have guidance on how to treat these transactions for income tax purposes. Further, the products themselves may operate in a manner that doesn’t neatly fit into the traditional sourcing methods. For companies that sell data storage services, for example, sourcing receipts from these services may be based on where the customer’s data is stored — that is, the location of the company’s servers. In these cases, the taxpayer will also have to consider how, if at all, redundancy, dynamic storage location and randomized data distribution can affect the sales factor.

**PROPERTY FACTOR: BUYER BEWARE**

The property factor is the ratio of the value of the taxpayer’s includible property located in the state to the value of all of its includible property. The factor includes real and tangible personal property owned or rented by the taxpayer during the tax year. While many states are shifting away from using the property factor to apportion income, the factor may nevertheless be used in determining nexus in those states. In states that use a property factor, taxpayers need to determine how, if at all, the state requires a corporation to account for digital products and services. Unlike the sales factor analysis, this issue affects purchasers of digital products and services.

Few states directly address the treatment of digital products for property factor purposes. For sales factor and other tax purposes, many states treat prewritten (“canned”) software delivered by physical means (e.g., on a CD) as tangible personal property. Following this classification, the value of the software would thus be includible in the software owner’s property factor. However, a state may consider canned software to be intangible property when it is delivered electronically (intangible property is not included in the property factor). Taxpayers should carefully consider the potential property factor impacts when deciding whether to take delivery of digital products electronically or physically. If the taxpayer must include digital goods in its property factor, it must also determine where the goods are located. In Arizona, for example, the property factor includes software if it is treated as tangible personal property on the taxpayer’s federal income tax return; the value of the software is included in the numerators of the states in which the software is used on a reasonable basis.

The property factor is also a concern when considering server or cloud storage space. An owned, dedicated server location is includible in the property factor as it is real property. A rental of a dedicated server location or equipment is also likely includible in the factor, to the extent the rental agreement is treated as governing real or tangible personal property. The issue becomes more complex when considering array-based or dynamic storage services, where the purchaser does not necessarily obtain a right to a specific server in a specific location. In these cases, a company purchasing data storage services should carefully review the service agreement to determine whether the company may be deemed to be owning or renting real or tangible personal property in a given state — particularly states that take an aggressive approach to nexus.

**ALTERNATIVE APPORTIONMENT AND SPECIAL INDUSTRY FORMULAS**

Many states allow taxpayers to petition for the use of an alternative (or equitable) apportionment formula when the standard apportionment formula does not fairly represent the taxpayer’s activities in the state. Similarly, state administrative departments can require a taxpayer to use an alternative apportionment formula when, for example, the standard apportionment formula does not fairly represent the taxpayer’s activities in the state. Alternative methods may include the inclusion of one or more additional factors, the exclusion of a factor, separate accounting or any other method that equitably apportions the taxpayer’s income to the state.

In addition, for certain industries, the standard apportionment methods may not accurately reflect a taxpayer’s in-state income. States have adopted special apportionment methods applicable to a number of industries including finance, telecommunications, broadcasting and transportation. Some pure e-commerce products or services may fall within these industries.

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80 See, **e.g.**, Fla. Admin. Code Ann. § 12C-1.0153(7)(g).
81 See, **e.g.**, Mass. Regs. Code 830 CMR § 63.38.1(9)(d)(7)(a).
82 See, **e.g.**, Arizona Corporate Tax Ruling No. 01-2, 05/01/2001.
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