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# SALT WATCH



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## Illinois Circuit Court Holds That Significant Economic Presence is Proper Test for Corporate Income Tax Nexus

### Summary

On May 11, 2015, the Illinois Circuit Court of Sangamon County granted the Illinois Department of Revenue's cross motion for summary judgment in *Capital One Financial Corporation v. Brian Hamer, Director of the Illinois Department of Revenue*, Docket No. 2012-TX-0001/02, and held that Capital One had sufficient nexus with the state for corporate income tax purposes. In so holding, the court adopted and applied the "significant economic presence" test used in *Tax Comm'r v. MBNA Am. Bank, N.A.*, 220 W. Va. 163, 640 S.E.2d 226 (2006).

### Details

Capital One filed a motion for summary judgment, and the Department filed a cross motion for summary judgment - each asking the court to interpret whether Capital One had substantial nexus with the state under the Commerce Clause of the Constitution of the United States. Neither Capital One nor the Department could point to a specific Illinois case interpreting substantial nexus for corporate income tax purposes. Capital One urged the court to adopt a physical presence standard for this purpose. The Department urged the court to adopt a substantial economic presence standard "as being the fairest test of corporate income tax given the current internet based world."

The court sided with the Department and adopted and applied the significant economic presence test used in *MBNA*. Under this test, the court found that Capital One had nexus with the state by reason of: (i) collecting millions in fees and interest from Illinois residents; (ii) systematically and continuously engaging Illinois consumers via telephone, email, and direct mail solicitation to apply for credit; (iii) use of Illinois courts to recover debts on delinquent accounts; and (iv) filing and enforcing judgment liens in Illinois.

Capital One filed a notice of appeal on June 4, 2015.

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(cont.)

### Insights

- If the court's holding stands on appeal, Illinois could be yet another state to limit the physical presence standard in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) to sales and use taxes.
- The management of a corporation with sales into Illinois should assess whether the corporation may have an income tax reporting and payment responsibility with the state under this decision, and, if necessary, discuss with their tax advisor whether there is a need to begin reporting and paying Illinois income tax or accrue for a liability under ASC 740.

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