

# BREAKING NEWS

## SALT WATCH

### Ohio Supreme Court Rules Commercial Activity Tax Can Be Imposed On Online Retailers Without Physical Presence

On November 17, 2016, the Ohio Supreme Court issued an opinion in *Crutchfield Corp. vs. Testa*. The court ruled that Ohio can impose its commercial activity tax on an online retailer that meets the statutory threshold of \$500,000 of annual gross receipts sourced to Ohio, regardless of whether the retailer has any physical presence in the state.

The Commerce Clause of the United States Constitution requires that a taxpayer must have substantial nexus with a state in order for the state to impose its tax laws upon the taxpayer. In the 1992 case *Quill Corp. v. North Dakota*, the Supreme Court of the United States ruled that a company must have physical presence within a state to establish substantial nexus for sales and use tax purposes. Many taxpayers have relied on that physical presence standard for income, franchise, and sales and use taxes since that ruling.

In *Crutchfield*, the taxpayer was a direct marketer of consumer electronics. The company made sales of greater than \$500,000 per year to Ohio customers, but the company did not have any physical presence in Ohio. The court ruled that Ohio's statutory threshold of \$500,000 was an adequate measure of whether the taxpayer had established substantial nexus with the state. The court differentiated *Crutchfield* from *Quill* on the basis that different considerations apply to business privilege taxes like the commercial activity tax versus the sales and use taxes addressed in *Quill*.

The court ruled similarly in two companion cases, *Newegg v. Testa* and *Mason v. Testa*. In both cases, the taxpayers shipped products into Ohio from out-of-state locations and exceeded \$500,000 in annual Ohio sales. The court found that both taxpayers had established nexus for commercial activity tax purposes despite neither taxpayer establishing a physical presence in Ohio.

These rulings have the potential to confirm the existence of significant commercial activity tax liabilities for out-of-state taxpayers that have based their compliance practices on the physical presence standard. GBQ SALT professionals are available to assist taxpayers with understanding the applicability of nexus standards, mitigating tax liabilities through the use of voluntary disclosure agreements, and other tax compliance issues.



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## Ohio Supreme Court Rules Commercial Activity Tax Can Be Imposed On Online Retailers Without Physical Presence (cont.)

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