

STATE & LOCAL TAX NEWSLETTER



National Tax Recovery LLC
(State & Local Tax Services)

State & Local Tax Refund Program identifies and recovers overpaid state and local taxes paid directly to the State through use taxes or tax paid to vendors.

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State & Local Tax Advisory Program helps clients develop and implement tax strategies that will make state and local taxes a controllable expense and explore every legitimate way to limit your tax obligation.

Income Tax Advisory Service gives clients the proper knowledge and expertise needed to interpret the complex and ever changing IRS regulations and laws.

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Ohio affirms bright-line presence test for out-of-state retailers

The Ohio Supreme Court has issued 3 decisions upholding commercial activity tax (CAT) assessments on out-of-state retailers with no physical presence in Ohio. In each case, the Ohio Board of Tax Appeals found the out-of-state online retailer to have more than \$500,000 in gross receipts in Ohio sales over the periods at issue, therefore meeting the bright-line presence test for nexus with Ohio.

The retailers contested the CAT assessments, arguing that they lacked substantial nexus with Ohio. The retailers argued that their nexus in Ohio was not sufficiently substantial because they lacked physical presence in Ohio. On appeal to the Ohio Supreme Court, the Tax Commissioner argued that the Commerce Clause does not impose a physical-presence requirement and accordingly, the \$500,000 sales receipts threshold set forth in the Ohio CAT statute satisfies the Commerce Clause requirement for substantial nexus.

The Court agreed with the Tax Commissioner's argument, stating that its reading of the case law indicated that the physical-presence requirement recognized and preserved by the U.S. Supreme Court for purposes of use tax collection does not extend to business-privilege taxes such as the CAT. The Court determined that *Quill v North Dakota's* holding that physical presence is a necessary condition for imposing the tax obligation does not apply to a business-privilege tax like the CAT, as long as the privilege tax is imposed with a quantitative standard that ensures that the taxpayer's nexus with the state is substantial. The Court felt that the quantitative standard is the \$500,000 sales-receipts threshold.

The Court concluded that the statutory threshold of \$500,000 of sales in-state constitutes a sufficient guarantee of the substantial nexus for purposes of the Commerce Clause. It is expected that these cases will be appealed to the U.S. Supreme Court.

Given the Ohio Supreme Court's finding that the physical presence test determined in *Quill* does not apply to a business privilege tax, a decision if the cases were to be heard might not resolve the longstanding sales and use tax nexus question. We will continue to monitor these cases and their relevance to sales and use tax collection responsibility.

(*Crutchfield, Inc. v. Testa*, No. 2016-Ohio-7760, Ohio Supreme Court, November 17, 2016; *Newegg, Inc. v. Testa*, No. 2016-Ohio-7762, Ohio Supreme Court, November 17, 2016; and *Mason Companies, Inc. v. Testa*, No. 2016-Ohio-7768, Ohio Supreme Court, November 17, 2016)

<http://www.salestaxinstitute.com/resources/news/ohio-affirms-bright-line-presence-test-out-state-retailers>



SUCCESS IS THE SUM OF SMALL EFFORTS, REPEATED DAY IN AND DAY OUT. ~ **Robert Collier**

RECENT TAX POLICY LETTER RULINGS & DECISIONS



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 "My accountant says this is the best way for me to avoid paying taxes until he comes up with a better plan."

Texas ~ Corporate Income Tax: Costs Associated With Showing Films May be Included in COGS Deduction

A Texas Court of Appeals has issued a substituted opinion in a case holding that a taxpayer in the movie theater business, which primarily exhibits films and other content, could deduct its costs associated with exhibiting films in its cost of goods sold (COGS)

deduction when determining its Texas franchise tax liability.

In the original opinion, the court had allowed the COGS deduction because a subsection of the relevant law section makes it clear that for purposes of the COGS calculation, the term "tangible personal property" includes films without regard to the means or methods of distribution or the medium in which the property is embodied.

The substituted opinion reached the same conclusions, but removed the portion of the original opinion that stated that the Texas legislature defined "tangible personal property" to include personal property that can be seen or that is perceptible to the senses in any other manner.

<http://news.cchgroup.com/2017/01/11/texas-corporate-income-tax-costs-associated-showing-films-may-included-cogs-deduction/>

that was approved by California voters in November 2012 to temporarily increase the sales and use tax by 0.25 percent expired Dec. 31, 2016.

The web page at maps.gis.ca.gov/boe/TaxRates allows visitors to find the correct rate in a city or county. Additionally, a listing of sales and use tax rates for each city and county is available on the California City & County Sales & Use Tax Rates webpage at boe.ca.gov/app/rates.aspx.

A retailer who continues to charge and collect the higher statewide sales and use tax rate after Jan. 1 must either refund the excess tax collected to their customer or pay the excess tax to the Board of Equalization (BOE).

If the excess tax collected has been paid to the BOE, the retailer may request a refund on behalf of their customer by completing form BOE-101, Claim for Refund or Credit. merchandise passes to the customer prior to delivery.

<http://www.signaltribunenewspaper.com/?p=32841>

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TAX PREPARATION SERVICE



"If my dog goes outside to do his business, can I write off my back yard as office space?"

Georgia ~ Sales and Use Tax: Eligibility for Exemption as "Manufacturer" Discussed

The Georgia Department of Revenue has issued a letter ruling discussing whether a taxpayer who provided dismantling and demolition services for scrap metal met the statutory definition of a "manufacturer" in order to be eligible for the sales and use tax exemption for manufacturers.

According to statute, the term "manufacturer" means a person or a business engaged in the manufacture of tangible personal property for sale or further manufacturing, and such person or business is required to be classified as a manufacturer under 2007 North American Industrial Classification System (NAICS) Sectors 21, 31, 32, or 33, or NAICS industry code.

In this case, the taxpayer could not be regarded as a manufacturer because its NAICS code of 423930 did not fall under the manufacturer classification, and it was primarily engaged in, and derived its income from, the sale of scrap metal and waste. Consequently, the taxpayer did not qualify for the exemption applicable to manufacturers.

<http://news.cchgroup.com/2017/01/10/georgia-sales-use-tax-eligibility-exemption-manufacturer-discussed/>

California ~ CA's sales-tax rate decreased as of Jan. 1

On Jan. 1, the statewide sales and use tax rate decreased one quarter of one percent (0.25%) from 7.5 percent to 7.25 percent. The decrease in the statewide rate is effective for all cities and counties in California; however, in many jurisdictions in California the actual sales and use tax rate may still be higher than the statewide rate due to the addition of district taxes. Proposition 30, The Schools and Local Public Safety Protection Act of 2012

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