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In this edition of The Art of SALT, the authors discuss general versus specific substantial nexus, particularly as it applies to state tax issues. They conclude that failing to recognize the difference and imputing general nexus too broadly could result in an undue burden on interstate commerce.

A company sells thousands of different products online to customers throughout the world. It has no employees or facilities in State X. However, it provides a warranty for three of its products under which an unrelated service provider, under a contract with the company, will visit the customer to service the products in State X. Such physical presence may (or may not) justify imposing sales tax collection on sales of those products; however, it should not give rise to a collection and remittance obligation on all the company's internet sales within the state.

A state government may legitimately exercise its power or assert its jurisdiction only on those people, whether natural or corporate, with which it has a certain connection. In the context of state taxation, the connection or nexus between the taxing state and the taxpayer must meet two U.S. constitutional nexus standards — the minimal connection standard under the due process clause, and the substantial nexus standard under the commerce clause. The U.S. Supreme Court has ruled that for state tax purposes, the former of these standards is comparable to the standard used for *in personam* purposes (that is, when a person is subject to the courts of a state) and has relied on "specific" *in personam* authority in reaching that conclusion.

Specific *in personam* jurisdiction has been long recognized and utilized by the Court. The concept allows a state's jurisdiction to extend over a person in some situations only in the context of matters arising from specific in-state activities conducted by that person. This contrasts with general *in personam* jurisdiction, which allows a state's jurisdiction to extend to any matter in which that person is involved. There is no reason to believe that this bifurcation between specific and general jurisdiction does not apply to state taxation.

While the Court has implemented the bifurcated jurisdictional approach only in the context of the due process requirement, the rationale underlying the approach should be just as applicable in the commerce clause context. Due process jurisdiction has been bifurcated because of the burden that imposing jurisdiction places on a defendant. The commerce clause is similarly concerned with burden, but it is the burden on interstate commerce that is at issue. Situations regularly arise in which a person's connection with a state may result in specific substantial nexus (the commerce clause standard) as to that presence, but not general substantial nexus for the person because the aggregate effects of such situations would unduly burden interstate commerce.

I. Background

The principles of due process jurisdiction have developed alongside state tax nexus concepts. The correlation between the two is evident in the U.S. Supreme Court's 1954 statement, made in relation to state taxing authority, that "jurisdiction is as necessary to valid legislative as to valid judicial action."[1] A careful examination of the cases establishing due process jurisdiction and the cases regarding nexus for state tax purposes strongly supports a conclusion that an analogous general and specific jurisdiction model properly applies to commerce clause state tax nexus.

In *Complete Auto Transit Inc. v. Brady*, the Supreme Court laid out the four-prong test for the constitutionality of a state tax and explained that for a state tax obligation to be constitutional for dormant commerce clause purposes, it must be "applied to an *activity* with a substantial nexus with the taxing State."[2] The Court did not specifically define substantial nexus; nor did it explain what, if any, difference existed between due process and commerce clause nexus. However, the cases leading up to the *Complete Auto* commerce clause analysis suggest that three of the four prongs — fair apportionment, substantial nexus, and fairly related to state services — have their roots in due process.[3]

In *Quill Corp. v. North Dakota*, the Supreme Court clarified that the requisite nexus analysis consists of two separate components: (1) a minimum contacts nexus analysis under the due process clause; and (2) a substantial nexus analysis under the commerce clause.[4] In establishing the two-part framework, the *Quill* Court relied heavily on personal jurisdiction cases that emphasized the distinction between general and specific jurisdiction for due process purposes. The Court also extended the substantial nexus prong of *Complete Auto* to include nexus with the taxpayer in addition to nexus with the activity.

[1] *Miller Brothers Co. v. Maryland*, 347 U.S. 340 (1954) (internal citations omitted).

[2] *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274 (1977) (emphasis added).

[3] John A. Swain, "State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective," 45 *Wm. & Mary L. Rev.* 319, 328, 328 n.34 (2003) (The "nexus, fair apportionment, and fairly related prongs of the [*Complete Auto*] test were often rooted in due process rather than dormant Commerce Clause analysis").

[4] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

II. Due Process Nexus Generally

The due process clause of the 14th Amendment requires that a state have a sufficient relationship with a person to justify exercising jurisdiction that would "deprive [that] person of life, liberty, or property."[5] Thus, personal jurisdiction commonly refers to the concept of subjecting a defendant to the power of the courts of a state. The reach of personal jurisdiction consists of two subsets: general jurisdiction and specific jurisdiction.

Interestingly, the case that is best known for articulating the modern specific jurisdiction standard in the due process context is a state tax case. In *International Shoe Co. v. Washington*, the Court explained that due process is satisfied if a defendant has sufficient "minimum contacts" with the state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[6] Minimum contacts is the criterion for specific jurisdiction.

At issue in *International Shoe* was whether an out-of-state company could be required to pay into the state unemployment compensation fund based on the wages paid for the services of its salespeople in Washington state when the company regularly shipped orders to the salespeople. The Court found that Washington had the requisite specific jurisdiction because the activities carried on by the company were found to be "systematic and continuous," and thus the personal jurisdiction standard was met even though the company had no permanent place of business in Washington.[7]

It is clear based on *International Shoe* that some transient physical presence does not support general jurisdiction. Indeed, some types of physical presence may result in a minimum contact that justifies jurisdiction related solely to that presence. As the *International Shoe* Court explained: "It has been generally recognized that the casual presence of the corporate agent, or even his conduct of single or isolated items of activities in a state in the corporation's behalf, are not enough to subject it to suit on causes of action

[5] U.S. Const. Amend. XIV.

[6] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

[7] *Id.* at 318.

unconnected with the activities there."[8] That is also evident in the Court's later statement that "territorial presence *frequently* will enhance a potential defendant's affiliation with a State."[9] If any physical presence always resulted in general jurisdiction for due process purposes, the Court would likely not have used the word "frequently."

A. General Jurisdiction

The concept of general jurisdiction means that the state has jurisdiction over a defendant or taxpayer regarding *any* activity of such person — including jurisdiction to impose a general income tax independent of the transactions having nexus with the taxing state — based on the defendant's systematic and continuous contact with that state. Essentially, general jurisdiction means a taxpayer is "at home" in the state.[10] Stated otherwise, general jurisdiction is present when a person's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."[11]

Notable in the Supreme Court's recent general jurisdiction analysis is the 2011 decision *Goodyear Dunlop Tires Operations, S.A. v. Brown*.[12] In *Goodyear*, North Carolina residents whose children had died in a bus accident in France filed a lawsuit in North Carolina against a Goodyear entity organized under the laws of Ohio and three of its foreign affiliates. Because the suit was unrelated to any of the defendants' contacts with North Carolina, the state's courts could have jurisdiction only if the state had general jurisdiction over the defendants.

A North Carolina appellate court held that general jurisdiction existed because the defendants' products were in the state through the defendant having placed them in "the stream of commerce."[13] Indeed, thousands of the defendants' tires ended up in North Carolina. The Supreme Court, however, overturned the North Carolina court's decision and rejected the "sprawling view of general jurisdiction" it applied.[14] Importantly, the Court explained that the stream of commerce justification is limited to specific jurisdiction cases — placing goods in the stream of commerce cannot provide the basis for a finding of general jurisdiction.[15]

B. Specific Jurisdiction

The other subset of personal jurisdiction is specific jurisdiction. In contrast to general jurisdiction, specific jurisdiction is limited to causes of action that "arise[] out of or relate[] to" the defendant's activity in the state.[16] The existence of specific jurisdiction gives the state the power to subject a person to its authority solely regarding actions that are derived from and limited to the defendant's contacts with the state. Thus, a defendant's contacts could be sufficient to support a finding of specific jurisdiction, even if the contacts are insufficient to support a finding of general jurisdiction. Some courts have held that "even a single, substantial act directed toward the forum can support specific jurisdiction."[17]

C. Due Process and Burdens

Since *International Shoe*, it is clear that a major focus of the due process analysis is the burden on the defendant. As the Supreme Court explained in *World-Wide Volkswagen Corp. v. Woodson*:

> The concept of minimum contacts . . . can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.[18]

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[8] *Id*. at 317.

[9] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (emphasis added).

[10] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).

[11] *International Shoe*, 326 U.S. at 318.

[12] *Goodyear*, 131 S.Ct. at 2846.

[13] *Brown v. Meter*, 681 S.E.2d 382 (N.C. Ct. App. 2009).

[14] *Goodyear*, 131 S.Ct. at 2856.

[15] *Id*. at 2854-2856.

[16] *See Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (quotes omitted); and A. von Mehren and D. Trautman, "Jurisdiction to Adjudicate: A Suggested Analysis," 79 *Harv. L. Rev*. 1121, 1135 (1966).

[17] *Dalton v. R&W Marine*, 897 F.2d 1359, 1361-62 (5th Cir. 1990).

[18] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

The Court emphasized that concept again in *Burger King Corp. v. Rudzewicz* when it explained that due process is concerned with the burden on the defendant.[19] In the state tax context, that means the tax burdens (for example, filing, payment, collection, and remittance) imposed on the individual taxpayer are permissible.

III. *Quill*

In *Quill*, the Supreme Court, for the first time, formally articulated and applied the separate due process nexus and commerce clause nexus requirements. Regarding the company at issue, the Court concluded that sufficient nexus existed for due process but not commerce clause purposes. In so doing, the *Quill* Court provided a thorough history of the development of *in personam* jurisdiction and stated the modern rule of due process nexus for tax purposes by referring to those nontax, *in personam* decisions. The Court wrote:

> To the extent that our decisions have indicated that the Due Process Clause requires physical presence in a State for the imposition of duty to collect a use tax, we overrule those holdings as superseded by developments in the law of due process. In this case, there is no question that Quill has purposefully directed its activities at North Dakota residents, that the magnitude of those contacts is more than sufficient for due process purposes, and that the use tax is related to the benefits Quill receives from access to the State.[20]

Consistent with its due process jurisdiction cases, the Supreme Court in *Quill* concluded that physical presence is not a requirement for specific jurisdiction in the area of due process.[21] In other words, the Court concluded that minimum contacts supports tax jurisdiction regarding those specific contacts.

A. Due Process Nexus Under *Quill*

As noted above, *Quill* was a specific jurisdiction case. Importantly, the *Quill* Court relied heavily on *International Shoe* and *Burger King* in its articulation of due process nexus, making it clear that the Court's *in personam* due process jurisdiction analytical framework is equally applicable to the due process nexus framework for state tax purposes.[22] Quill Corp. was found to have due process nexus because it purposefully availed itself of the taxing state's market. Essentially, the Court found that specific jurisdiction existed for all of Quill's sales because those sales resulted from the company's targeting of North Dakota as a market, and that targeting equated to minimum contacts.

B. Commerce Clause Nexus Under *Quill*

Quill explained that commerce clause nexus is closely related to due process nexus and that the two concepts "are not always sharply separable in dealing with these problems. . . . To some extent they overlap."[23] However, the commerce clause is concerned with more than the due process rights of a taxpayer — it also analyzes potential burdening effects on interstate commerce.[24] The Court, continuing to quote *International Harvester*, wrote that "there may be more than sufficient factual connections, with economic and legal effects, between the transaction and the taxing state to sustain the tax as against due process objections. Yet it may fall because of its burdening effect upon the commerce."

The *Quill* Court held that the commerce clause requires non-de minimis physical presence to

[19] *Burger King Corp.*, 471 U.S. at 477.

[20] *Quill Corp.*, 504 U.S. at 308. The plural use of "decisions" references several *in personam* jurisdiction decisions of the Court described in the text leading up to the cited sentence. *Id*.

[21] *See Burger King*, 471 U.S. at 462 (defendant in a breach of contract claim could be sued in Florida as a result of its Burger King franchise arrangement despite no physical presence in the state).

[22] This principle has been recognized by noted commentators as well as by state courts. *See* Jerome R. Hellerstein, Walter Hellerstein, and John A. Swain, *State Taxation*, para. 6.03 (2001, with updates to Apr. 2017) ("Insofar as the U.S. Supreme Court's state tax jurisprudence regarding due process nexus is informed by its due process jurisprudence addressed to jurisdiction over a nonresident defendant, as *Quill* indicates it is, several contemporary Supreme Court cases holding that states lacked personal jurisdiction over nonresident defendants may have implications for the states' power to tax in some cases"); and *The Department of Revenue of the State of Illinois v. ABC Leasing Inc.*, No. UT 02-6 (Department of Rev. Hearings, Nov. 14, 2002) ("For due process purposes, the *Quill* Court equated a state's jurisdiction to tax a foreign corporation on its commercial activities within the state with the state's judicial jurisdiction, that is, its power to make a foreign corporation come into the state and defend against a lawsuit initiated there").

[23] *Quill*, 504 U.S. at 305, quoting *International Harvester Co.* v. *Department of Treasury*, 322 U.S. 340, 353 (1944).

[24] *Id*. at 306.

meet the substantial nexus requirement. That significant difference between nexus for due process and commerce clause purposes means that "a corporation may have the 'minimum contacts' with a taxing State as required by the Due Process Clause, and yet lack the 'substantial nexus' with that State as required by the Commerce Clause."[25]

"Structural concerns about the effects of state regulation on the national economy" prompted the Supreme Court's decision in *Quill*.[26] Potential structural burdens were identified decades before in *National Bellas Hess Inc. v. Department of Revenue of Illinois*, when the Court noted the "many variations in rates of tax, in allowable exemptions, and in administrative and recordkeeping requirements could entangle [a mail-order house] in a virtual welter of complicated obligations."[27] Given those structural issues, the *Quill* Court concluded that the bright-line rule established in *Bellas Hess* "encourages settled expectations and, in doing so, fosters investment by businesses and individuals."[28]

IV. Commerce Clause Substantial Nexus Is Properly Divided Between Specific and General Nexus

Commerce clause nexus is properly divided between general and specific nexus in the same way that those concepts exist for due process purposes. It is logical that the commerce clause standard, which is a higher standard than the due process standard, would follow the bifurcation of the due process standard. For example, as noted in the introduction, it would be appropriate to bifurcate substantial nexus for a company that sells thousands of different products online but provides a guarantee for three of its products under which an unrelated service provider, under contract with the company, will visit the customer to service the item in State X. The repair services provided by the third party in State X for three of the company's products would provide specific substantial nexus — a physical presence as to the sales of those products. However, such activity could hardly be viewed as establishing general substantial nexus for the thousands of other items for which that kind of arrangement is not in place.

Both the due process and commerce clause standards address burdens. Although due process is concerned with the burden on the taxpayer and the commerce clause is concerned with structural burdens on commerce, *Quill*'s rationale for a commerce clause physical presence requirement rested heavily on the aggregate burden imposed on individual taxpayers. Thus, if one state's burden on an individual — a due process concern — risks repetition by all the states and localities, the aggregation of that burden would create commerce clause concerns. That principle is evidenced by footnote 6 in *Quill*, which states that not only could North Dakota impose a collection obligation, but "what is more significant, similar obligations might be imposed by the Nation's 6,000-plus taxing jurisdictions."[29]

Applying a general nexus/specific nexus paradigm to the commerce clause substantial nexus framework leads to three conclusions. First, if a taxpayer has general substantial nexus with a state for commerce clause purposes, no specific nexus is necessary to impose tax obligations on the taxpayer. Second, the nature or scope of a transaction or a series of transactions may be so limited that it gives rise to substantial nexus for only that transaction or series of transactions. Third, based on *Quill*, de minimis physical presence is insufficient for both general and specific substantial nexus analyses for commerce clause purposes. It is the nature and extent of that physical presence that determines whether the physical presence establishes general or specific substantial nexus.

The *Quill* Court's treatment of previous state tax nexus decisions suggests that applying the general nexus/specific nexus paradigm in the context of the commerce clause is appropriate. In 1977, the *National Geographic* Court held that a taxpayer had nexus for all sales and use tax purposes even though its mail-order sales did not

[25] *Quill Corp.*, 504 U.S. at 313.

[26] *Id.* at 312.

[27] *National Bellas Hess Inc. v. Department of Revenue of Illinois*, 386 U.S. 753, 759-760 (1967).

[28] *Quill Corp.*, 504 U.S. at 316.

[29] *Quill Corp.*, 504 U.S. at 313 n. 6. The Supreme Court applied the aggregation principle in the commerce clause context in *Wickard v. Filburn*, 317 U.S. 111 (1942).

have a connection to the office the seller maintained in the taxing state.[30] In that case, the Supreme Court distinguished the facts before it from the facts in *National Bellas Hess* by reaffirming "the 'sharp distinction . . . between mail order sellers with retail outlets, solicitors, or property within [the taxing] State, and those [like Bellas Hess] who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business.'"[31]

The Supreme Court in *Quill* reiterated the language *National Geographic* used to support a general nexus versus specific nexus distinction for commerce clauses purposes. *Quill* was a specific jurisdiction case, as evidenced by its reliance on *International Shoe* and *Burger King*, which were also specific jurisdiction cases. Importantly, when the *Quill* Court cited the language of *National Geographic*, it substituted the phrase "a physical presence in the taxing" state for "retail outlets, solicitors, or property within [the taxing] State," which had been used in *National Bellas Hess* and *National Geographic*.[32] That substitution suggests that the *Quill* Court viewed the physical presence described in *National Geographic* — that is, the presence of an office, retail outlets, solicitors, or property — as the type of facts that would determine if a taxpayer was, using the Court's modern terminology, "at home" in the taxing state. Thus, *Quill*'s reference to the sharp distinction identified by *National Bellas Hess* was meant, in part, to differentiate the two specific jurisdiction cases (*International Shoe* and *Burger King*) from the general nexus line of tax cases (for example, *National Geographic* and *Standard Pressed Steel Co. v. Washington Revenue Department*[33]) that it had decided previously, and which presented significantly different facts.

Moreover, the rationale behind the *Quill* physical presence test supports the general versus specific nexus distinction in the context of the commerce clause because it reduces burdens that would otherwise hinder interstate commerce.

[30] *National Geographic Society v. State Board of Equalization*, 430 U.S. 551 (1977).

[31] *Id*. at 559, quoting *National Bellas Hess*, 386 U.S. at 758.

[32] *Quill Corp.*, 504 U.S. at 311.

[33] *Standard Pressed Steel Co. v. Washington Revenue Department*, 419 U.S. 560 (1975).

Taxpayers that have nothing but specific physical presence contacts with a state should not be forced to comply with burdensome collection requirements and audits regarding activities that do not have the same physical presence connection to the state.

Failure to apply the distinction to the commerce clause would lead to the unnatural result that certain types of physical presence, which establish minimum connection for due process for limited purposes, establish substantial nexus for all purposes. That would be an absurd result and inconsistent with the commerce clause physical presence requirement, which imposes a higher barrier to a tax collection responsibility than due process. Indeed, that appears to be the rationale behind the decision in *Miller Brothers Co. v. Maryland*. In that case, the Court found that a retailer operating from a store in Delaware was not required to collect sales tax on all of its sales to Maryland residents even though it made deliveries into Maryland in its own trucks for a portion of the sales.[34] Had the question in the case been whether the seller was required to collect sales tax for sales of products that it delivered into the state, the Court would likely have permitted the imposition of the collection duty as it related to those sales.

V. What Are the Burdens?

Let's return to the above-referenced example of a company that sells thousands of different products online. It has no employees or facilities in State X; however, it provides a guarantee for three of its products under which an unrelated service provider, under a contract with the company, will visit the customer to service the items in State X. That kind of physical presence may create specific substantial nexus and justify imposing tax on sales of those three products. However, it should not give rise to a collection and remittance obligation for all internet sales of the company (general substantial nexus). Imputing general substantial nexus in such cases runs the risk of burdening interstate commerce.

The undue burden on interstate commerce would result from collection, compliance,

[34] *Miller Bros.*, 347 U.S. at 340.

remittance, and defense costs on the thousands of products not guaranteed under the above-described arrangement. More specifically, the additional burdens would include:

- **Determining Taxability:** Companies such as our hypothetical seller would be required to determine taxability of thousands more products than if nexus were limited to the guaranteed items. Although this may not be as challenging for some industries as for others, this is a time-consuming and never-ending task for many companies.
- **Rate Determination:** Companies would also be required to determine the rates for thousands more products. An individual state may have varying sales tax rates. Also, localities' rates would need to be accounted for.
- **Determining and Tracking Potential Customer Exemptions:** Extending nexus to all sales would increase the number of customers with which companies would need to coordinate to determine exemption status and appropriately document any exemption. Tracking often involves collecting exemption certificates upfront and ensuring they are up to date. That would become extremely difficult if expanded to thousands more sales.
- **Collecting and Remitting:** Collecting and remitting the appropriate amount of tax on thousands more purchases would be burdensome for many reasons. That could mean companies like our hypothetical seller may be required to report more frequently (for example, monthly instead of quarterly). Even compliant companies spend significant time collecting funds, cutting checks, and dealing with the intricacies of various payment methods and systems. We are aware that companies' accountants spend significant time resolving payment-related issues (for example, failure of an electronic remittance to a state to properly post), and such issues would likely increase exponentially if nexus were extended to all sales.
- **Increased Likelihood of an Audit:** States are much more likely to audit companies with higher sales in the state because there is a greater likelihood of any needed corrections being material. Increasing the number of sales subject to tax significantly increases the likelihood of an audit.
- **Increased Time and Expense of an Audit:** Companies invest significant time and resources in audit defense, even when the companies are generally compliant and the audits are routine. The costs and duration of audits would increase significantly if more sales were involved.

To cope with these burdens, companies would be required to hire additional internal personnel and outside advisers. Fees for outside advisers would increase correspondingly. Not only would additional personnel be needed, but that would generate additional work for existing personnel, including chief financial officers and tax directors who would be faced with additional reports and management responsibilities. Moreover, additional computer hardware and software would be required.

What would be the aggregate effect of those additional burdens? Certainly, it would have the chilling effect on interstate commerce that has concerned the Supreme Court for decades. It is possible that companies would cease conducting the relatively insignificant activities that create specific substantial nexus if there were such a high corresponding penalty. That would result in the exact opposite of the free flow of goods intended by the commerce clause. Not only would the retailers be hurt by reduced sales, but manufacturers of such products and their materials suppliers as well as delivery companies would suffer from decreased business.

VI. *National Geographic* and the Recent Washington Cases

Applying general nexus and specific nexus concepts to the commerce clause does not require breaking from *National Geographic*. Rather, *National Geographic* merely underscores that general nexus for commerce clause purposes obviates any need for specific substantial nexus; it does not mean that specific substantial nexus results in general substantial nexus.

The issue as articulated by the Court suggests that the Court viewed *National Geographic* as essentially a general nexus case. The Court stated:

> The question presented by this case is whether the Society's activities at the offices in California provided sufficient nexus between the out-of-state seller appellant and the State — as required by the Due Process Clause of the Fourteenth Amendment and the Commerce Clause — to support the imposition upon the Society of a use-tax-collection liability.[35]

What the Court really seemed to be asking was whether the fact that the company was at home in California meant it could be required to collect use tax on all its California sales, regardless of the connection of those sales to the state. The Court answered this question in the affirmative.

The *National Geographic* Court's rejection of the slightest presence test further supports the paradigm advanced above. As the Court explained:

> Our affirmance of the California Supreme Court is not to be understood as implying agreement with that court's "slightest presence" standard of constitutional nexus. Appellant's maintenance of two offices in the State and solicitation by employees assigned to those offices of advertising copy in the range of $1 million annually . . . establish a much more substantial presence than the expression "slightest presence" connotes.[36]

Thus, the Court appeared willing to cast a broad nexus net for commerce clause purposes when a taxpayer was at home in a state, but unwilling to do so if a taxpayer had a limited activity — a slightest presence, even a physical one — in the state.

The two recent Washington decisions refusing to permit a taxpayer to dissociate for tax nexus purposes some of their sales into a state from other activities in the state easily fall within the model described above. In *Avnet Inc. v. Department of Revenue*, the company had an office in Washington and unsuccessfully attempted to dissociate its sales that were unrelated to the in-state office.[37] In *Irwin Naturals v. Department of Revenue*, the taxpayer operated a store in the state and similarly failed on its dissociation arguments.[38] Those decisions in which the taxpayers maintained significant facilities in the state are unsurprising and consistent with the framework set forth above. Neither stands for the proposition that a limited activity in the taxing state leads to general nexus.

VII. Conclusion

Some activities may establish substantial nexus for a company, but the nexus is properly limited. Specific nexus principals prohibit the expansion of commerce clause nexus to all of a company's sales when the company is not at home in a state because to do so would impermissibly burden interstate commerce. ■

[35] *National Geographic*, 430 U.S. at 554.

[36] *Id.* at 556.

[37] *Avnet Inc. v. Department of Revenue*, 348 P.3d 1273 (Wash. Ct. App. 2015).

[38] *Irwin Naturals v. Department of Revenue*, No. 739662-I (Wash. Ct. App. 2016).