FBA Biz
2015 Alabama Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Alabama does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Alabama's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Alabama does not require that a corporation have a physical presence in the state in order to create nexus but did not indicate whether nexus may result from the right of an in-state agent to bind the taxpayer to a contract. Alabama did not respond with their position regarding other activities.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state **/1**
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year **/2**
- Shipping in-process inventory to an unrelated party in the state solely for processing **/3**
- Consigning goods to vendors, independent contractors, or other parties in the state **/4**
- Owning display racks in the state **/5**
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state **/6**
- Leasing (as lessor) real estate in the state to an unrelated third party **/7**
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year **/8**
- Owning or leasing automobiles provided to salespersons in the state **/9**
- Owning or leasing trucks or automobiles used by non-salespersons in the state **/10**
- Owning or leasing other machinery or equipment in the state **/11**
- Holding title to property located in the state until the contract price has been paid **/12**
- Filing a security interest on inventory sold until the contract price has been paid **/13**
- Leasing a place for company employees, directors, or officers **/14**

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Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/15**
- Unrelated third parties in the state collecting regular or delinquent accounts **/16**
- Unrelated third parties in the state investigating credit-worthiness of new customers **/17**
- Unrelated third parties in the state repossessing property one to six times a year **/18**
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year **/19**
- Unrelated third parties in the state assisting with the "set-up" or installation of the company's products **/20**
- Unrelated third parties in the state performing repairs under standard or extended warranty **/21**
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/22**
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization **/23**

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Distribution and Delivery of Goods

- Shipping products into the state in returnable containers **/24**
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/25**
- Picking up defective products or scrap materials in the state in company-owned vehicles **/26**
- Picking up raw materials in the state in company-owned vehicles **/27**
- Traveling to or through the state one to six times per year in company-owned trucks,

but not picking up or delivering goods in the state **/28**

- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/29**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/30**
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks **/31**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/32**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/33**

/24 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/25 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/26 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/27 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.]

[Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/28 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.]
[Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/29 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.]
[Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/30 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.]
[Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/31 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.]
[Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person

must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/32 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/33 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Alabama interprets nexus on a case-by-case basis and as broadly allowed under the Due Process Clause and the Commerce Clauses of the U.S. Constitution.] [Bloomberg BNA Note: *See* Ala. Code § 40-18-2(a)(3); Ala. Admin. Code r. 810-27-1-4-.19.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Alabama has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Alabama has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Alaska Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Alaska does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Alaska's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Alaska does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Alaska does not have a de minimis standard. Alaska has not adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus."

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Alaska will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)

/1

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: No, [the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Alaska Stat. § 43.20.040; Alaska Admin. Code tit. 15, § 20.900(a)(3).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Alaska because it has at least one activity that Alaska has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State

Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Arizona Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Arizona applies *Quill* when making income tax nexus determinations. Arizona's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Arizona does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Arizona has a de minimis standard for activities that, when taken together, establish only a trivial connection (measured on both a qualitative and quantitative basis). *See* CTR 99-5. Arizona has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Arizona did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Arizona will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Ariz. Rev. Stat. Ann. § 43-102; Arizona Corporate Tax Ruling 99-5 (maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, is not an activity protected by Pub. L. No. 86-272); Arizona Information Publication 623.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business

contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Arizona because it has at least one activity that Arizona has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Arkansas Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Arkansas does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Arkansas' income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Arkansas does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Arkansas has a de minimis standard. *See* Ark. Regs. 6.26-51-702 (nexus not based on a specific number of activities) Ark. Regs. 8.26-51-702(4) (nexus is based on whether a sample or display room is maintained for more than 14 days at any one locations within Arkansas). Arkansas has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Arkansas did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not

create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Arkansas will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Ark. Code Ann. § 26-51-205(b); Ark. Regs. 26-51-702.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Arkansas because it has at least one activity that Arkansas has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 California Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

California did not indicate whether it applies *Quill* when making income tax nexus determinations, stating that such determinations “[d]epend upon facts and circumstances.” California's income tax

nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). *See* Cal. Rev. Tax. Code § 23101(b). However, California stated that the determination of nexus depends on the facts and circumstances. California does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. California does not have a de minimis standard, nor has it adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, California stated that it applies a legal analysis similar to MTC Bulletin 95-1 to nexus determinations. For taxable years beginning on or after Jan. 1, 2011, California has a factor-based nexus standard.

For such tax years, a corporation is "doing business" in California if it satisfies any of the following conditions:

• the taxpayer is organized or commercially domiciled in the state,
• the sales in California exceed the lesser of $500,000 or 25 percent of the taxpayer's total sales,
• the real property and tangible personal property in California exceed the lesser of $50,000 or 25 percent of the taxpayer's total real property and tangible personal property, or
• the compensation paid in California exceeds the lesser of $50,000 or 25 percent of the total compensation paid by the taxpayer. (*See* Cal. Rev. Tax. Code § 23101(b). *See also* Cal. Franch. Tax Bd., General Information on New Rules for Doing Business in California Cal. Franch. Tax Bd., Doing Business).

However, a corporation that is actively engaged in any transaction for the purposes of financial or pecuniary gain or profit is "doing business" in California, even if it does not satisfy any of the conditions set forth above. (*See* Cal. Rev. Tax. Code § 23101(b). *See also* Cal. Franch. Tax Bd., General Information on New Rules for Doing Business in California Cal. Franch. Tax Bd., Doing Business).

California noted that answers to questions addressing highly factual areas, specifically relating to nexus, are necessarily general in nature and may change based upon the specific fact pattern presented and the constantly changing nature of the law regarding nexus. Where appropriate, California said, it provided an explanation in a footnote, instead of a "yes" or "no" response. In addition, California stated that it made no attempt to address the imposition of any fee or license, filing requirements, distinctions between nexus and doing business, withholding responsibilities, or the consequences of unity and foreign commerce.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in California will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Yes, [the answer would change if the corporation was otherwise protected under Pub. L. No. 86–272.] Whether the out-of-state corporation acts through third parties is irrelevant. *See* FTB Publication 1050.] [Bloomberg BNA Note: *See* Cal. Rev. & Tax. Code § 23101; Cal. Rev. & Tax. Code § 23101.5; California Tax Publication 1050 (independent contractors may engage in the following limited activities in the state without the company's loss of immunity under Pub. L. No. 86-272: soliciting sales, making sales and maintaining an office); California FTB, General Information on New Rules for Doing Business in California.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in California because it has at least one activity that California has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Colorado Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Colorado does not apply *Quill* when making income tax nexus determinations, notwithstanding reference to *Quill* in Taxpayer Service Division FYI INCOME 58. Colorado's income tax policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Colorado does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Colorado has a de minimis standard which is based on a “nexus dollar or

percentage threshold." Colorado also stated that it "conforms to the "Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States" [u]nder Pub. L. No. 86-272." Colorado has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Colorado has a factor-based nexus standard.

Foreign entities doing business in Colorado are subject to the corporate income tax, and deemed to have substantial nexus, if the following thresholds are exceeded during a tax period:

• $50,000 of property located in Colorado,
• $50,000 of payroll in Colorado,
• $500,000 of sales in Colorado, or
• 25 percent of total property, total payroll, or total sales in Colorado. (39 Colo. Code Regs. § 22-301.1(2)(b)).

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Colorado will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Yes, if meets nexus dollar or percentage threshold.] [Bloomberg BNA Note: *See* 39 Colo. Code Regs. § 22-301.1; Colorado FYI Income 58.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Colorado because it has at least one activity that Colorado has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Connecticut Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Connecticut does not apply *Quill* when making income tax nexus determinations and did not indicate whether it has done so in the past. *See* Conn. Gen. Stat. § 12-216a. Connecticut's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Connecticut does not require that a corporation have a physical presence in the state in order to create nexus but, depending on the facts and circumstances, may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. *See* Conn. Gen. Stat. § 12-216a IP 2010 (29.1), Q A on Economic Nexus. Connecticut did not indicate whether it has a de minimis standard, nor whether it has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus."

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Shipping in-process inventory to an unrelated party in the state solely for processing **/1**
- Owning display racks in the state **/2**
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year **/3**
- Owning or leasing automobiles provided to salespersons in the state **/4**
- Holding title to property located in the state until the contract price has been paid **/5**
- Filing a security interest on inventory sold until the contract price has been paid **/6**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in

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/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/4 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/5 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/6 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/7**
- Unrelated third parties in the state collecting regular or delinquent accounts **/8**
- Unrelated third parties in the state investigating credit-worthiness of new customers **/9**
- Unrelated third parties in the state repossessing property one to six times a year **/10**
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year **/11**
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products **/12**
- Unrelated third parties in the state performing repairs under standard or extended warranty **/13**
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/14**
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an

/7 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/8 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/9 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/10 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/11 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published

position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/12 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/13 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/14 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/15 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must

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Distribution and Delivery of Goods

- Shipping products into the state in returnable containers **/16**
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/17**
- Picking up raw materials in the state in company-owned vehicles **/18**
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/19**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/20**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/21**
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks **/22**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/23**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/24**

/16 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/17 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/18 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published

position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/19 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/20 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/21 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/22 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the

business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/23 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/24 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: DRS has no published position.] [Bloomberg BNA Note: *See* Conn. Gen. Stat. § 12-216a; Conn. Agencies Regs. § 12-214-1; Connecticut Informational Publication IP 2010(29.1).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Connecticut has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Connecticut has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Delaware Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an

annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Delaware applies *Quill* when making income tax nexus determinations. Delaware requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Delaware's income tax nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Delaware does not have a de minimis standard, nor has it adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus."

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Delaware will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Del. Code Ann. tit. 30, § 1902.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Picking up raw materials in the state in company-owned vehicles **/2**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Del. Code Ann. tit. 30, § 1902.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus

where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Delaware because it has at least one activity that Delaware has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 District of Columbia Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

The District of Columbia does not apply *Quill* when making income tax nexus determinations, but indicated that it did apply *Quill* in 2014. The District stated that “a corporation may perform a service in the District of Columbia, but [...] not have a physical presence in the state, and still be liable for DC taxes.” The District's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the jurisdiction, even if a corporation lacks a physical presence within the jurisdiction's borders). The District does not require that a corporation have a physical presence in the jurisdiction in order to create nexus but may find that nexus results from the right of an agent located in the District to bind the taxpayer to a contract. The District stated that “[t]here is no longer a requirement of having an office, warehouse or other place of business in the District” in order to establish nexus. The District of Columbia does not have a de minimis standard. The District of Columbia has adopted MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, the District indicated that its position on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not

create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in District of Columbia will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* D.C. Code Ann. § 47-1801.04(15); D.C. Code Ann. § 47-1801.04(53); D.C. Code Ann. § 47-1807.02(a); D.C. Mun. Regs. tit. 9, § 121.1; D.C. Mun. Regs. tit. 9, § 121.2; D.C. Mun. Regs. tit. 9, § 121.3; D.C. Mun. Regs. tit. 9, § 121.4.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in District of Columbia because it has at least one activity that District of Columbia has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Florida Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Florida does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Florida's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Florida does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Florida does not have a de minimis standard. Florida has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Florida stated that whether its position on MTC Bulletin 95-1 would change if the corporation is otherwise protected under Pub. L. No. 86-272 "[d]epends on facts and circumstances."

Florida said that nexus is a very complicated issue and, in many instances, a thorough review of the facts and circumstances of each individual taxpayer's situation is required in order to make an accurate determination.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Florida will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Fla. Stat. § 220.11(1); Fla. Admin. Code Ann. r. § 12C-1.011; Florida Technical Assistance Advisement 07C1-007 (out-of-state cell phone service provider that did not have physical presence in Florida but allowed authorized in-state vendors to process transactions for its services and products had substantial nexus subjecting it to Florida corporate income tax because the vendors were licensed agents of the provider and the provider's activities in and connections with Florida met the requirements of the Due Process and Commerce Clauses).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Florida because it has at least one activity that Florida has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State

Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Georgia Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Georgia did not indicate whether it applies *Quill* when making income tax nexus determinations, nor whether it has done so in the past. Georgia stated that "[n]exus is a factual determination Georgia applies all applicable legal standards in making a determination." Georgia did not indicate whether it requires that a corporation have a physical presence in the state in order to create nexus nor did it indicate whether nexus may result from the right of an in-state agent to bind the taxpayer to a contract. Georgia also did not indicate whether its nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Georgia does not have a de minimis standard, stating that its "de minimis standard has not been defined." Georgia has not adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus."

Georgia said that the information is provided in response to Bloomberg BNA's specific inquiry and that the views expressed are the unofficial views of the writer only. Georgia added that an official letter ruling may be obtained by following the procedures set out at https://etax.dor.ga.gov/policystatements/2-22-12__TLP_Policy_Statement_SUT_2007-11-14.pdf.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Georgia will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Ga. Code Ann. § 48-7-

21; Ga. Code Ann. § 48-7-31(a); Ga. Comp. R. & Regs. r. 560-7-7-.03(1).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Georgia because it has at least one activity that Georgia has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Hawaii Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Hawaii applies *Quill* when making income tax nexus determinations. Hawaii stated that [f]or income tax purposes, Hawaii recognizes and applies Public law 86-272. *See* Tax Information Release No. 96-1, "Computer Company's Provision of In-State Repair Services Creates Nexus," which states that Hawaii will follow the Multistate Tax Commission Nexus Program Bulletin No. 95-1. Hawaii's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Hawaii also indicated that it requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Hawaii did not indicate whether it has a de minimis standard, stating that "[t]he answer would depend on the facts and circumstances." Hawaii has adopted MTC Bulletin 95-1, "Computer

Company's Provision of In-State Repair Services Creates Nexus." Hawaii did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272. *See* Tax Information Release No. 95-3, "Immunity from net Income Taxation Under Public Law 86-272."

Hawaii said that its responses provide general guidance should not be strictly interpreted as the State of Hawaii, Department of Taxation's policy on the establishment of nexus and may not be relied upon in any dispute arising under the facts outlined in the questionnaire. Hawaii also said that its responses are subject to change due to future amendments to laws, rules, or official Department positions. The state noted that additional information on Hawaii's taxes is available at the Department's website at tax.hawaii.gov.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Hawaii will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Unrelated Parties

- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/2**
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization **/3**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: The answer would depend on the facts and circumstances.] [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy

the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: The answer would depend on the facts and circumstances.] [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

Distribution and Delivery of Goods

- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/4**
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/5**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/6**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/7**
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks **/8**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/9**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/10**

/4 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/5 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such

activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/6 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/7 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/8 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/9 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations;

however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/10 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Haw. Rev. Stat. § 235-4; Haw. Rev. Stat. § 235-92; Hawaii Tax Information Release No. 95-3.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Hawaii because it has at least one activity that Hawaii has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Idaho Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Idaho does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Idaho's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Idaho does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. *See* Idaho Code § 63-3023 (transacting business). Idaho does not have a de minimis standard, except with respect to trucking companies. *See* MTC Trucking Regulation. Idaho has adopted MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, Idaho did

not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Idaho will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Idaho Code § 63-3023; Idaho Code § 63-3025; Idaho Form 41, Instructions for Idaho Corporation Income Tax Return.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/2**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/3**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/4**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Depends on total miles driven in state and percent of total miles driven in state. Nexus for trucking companies exists if any of the following applies: (a) trucks owned or rented that travel more than 25,000 miles in Idaho during a taxable year; (b) total miles traveled in Idaho by owned or rented trucks exceeds 3% of the total truck miles traveled during the taxable year; or (c) the company makes more than 12 trips in Idaho during the taxable year.] [Bloomberg BNA Note: *See* Idaho Code § 63-3023; Idaho Code § 63-3025; Idaho Form 41, Instructions for Idaho Corporation Income Tax Return.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the

employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Depends on total miles driven in state and percent of total miles driven in state. Nexus for trucking companies exists if any of the following applies: (a) trucks owned or rented that travel more than 25,000 miles in Idaho during a taxable year; (b) total miles traveled in Idaho by owned or rented trucks exceeds 3% of the total truck miles traveled during the taxable year; or (c) the company makes more than 12 trips in Idaho during the taxable year.] [Bloomberg BNA Note: *See* Idaho Code § 63-3023; Idaho Code § 63-3025; Idaho Form 41, Instructions for Idaho Corporation Income Tax Return.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/4 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Depends on total miles driven in state and percent of total miles driven in state. Nexus for trucking companies exists if any of the following applies: (a) trucks owned or rented that travel more than 25,000 miles in Idaho during a taxable year; (b) total miles traveled in Idaho by owned or rented trucks exceeds 3% of the total truck miles traveled during the taxable year; or (c) the company makes more than 12 trips in Idaho during the taxable year.] [Bloomberg BNA Note: *See* Idaho Code § 63-3023; Idaho Code § 63-3025; Idaho Form 41, Instructions for Idaho Corporation Income Tax Return.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Idaho because it has at least one activity that Idaho has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Illinois Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Illinois does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Illinois's nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Illinois does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Illinois has a de minimis standard however, it is stated that "Illinois has no specific definition of de minimis." It has not adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Illinois did not indicate whether its positions on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Illinois will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 35 ILCS 5/201; Ill. Admin. Code tit. 86, § 100.9720; Illinois General Information Letter IT 08-0033-GIL; Illinois General Information Letter IT 09-0045-GIL.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Unrelated Parties

- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/2**

- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization **/3**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 35 ILCS 5/201; Ill. Admin. Code tit. 86, § 100.9720; Illinois General Information Letter IT 08-0033-GIL; Illinois General Information Letter IT 09-0045-GIL.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/3 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 35 ILCS 5/201; Ill. Admin. Code tit. 86, § 100.9720; Illinois General Information Letter IT 08-0033-GIL; Illinois General Information Letter IT 09-0045-GIL.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Illinois because it has at least one activity that Illinois has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Indiana Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether

certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Indiana does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Indiana's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Indiana does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Indiana does not have a de minimis standard. Indiana has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Indiana indicated that its position on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

Indiana said the conclusions expressed in the survey response are those of the writer and therefore not binding on the Department of Revenue. The advice given in the survey response is based on the facts as presented and understood.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Indiana will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: The answer is "no" if the corporation is protected by P.L. 86–272.] [Bloomberg BNA Note: *See* Ind. Code Ann. § 6-3-2-2; Ind. Admin. Code tit. 45, r. 3.1-1-38.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Indiana because it has at least one activity that Indiana has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Iowa Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Iowa does not apply *Quill* when making income tax nexus determinations and ceased doing so for tax years beginning on or after January 1, 1995. It stated that "Iowa Code § 422.33(1) was amended starting in 1995 to eliminate the physical presence requirement. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on December 30, 2010. KFC's petition for the U.S. Supreme Court to hear their appeal was denied on October 3, 2011. This was also upheld in an Administrative Law Judge decision involving Jack Daniels Properties and Southern Comfort Properties issued on July 28, 2011." Iowa's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). *See* Iowa Code Ann. § 422.33(1). Iowa does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. It stated that "[t]he independent contractor/agent can maintain an office in Iowa and not create nexus for the corporation which they represent. However, any nonsolicitation activities by the independent contractor will create nexus for the corporation they represent. *See* Iowa Admin. Code r. 701-52.1(3)(w). Iowa does not have a de minimis standard. It stated that "[t]he de minimis standard is based on the totality of all types of nonsolicitation activities, and is determined on a case by case basis." Iowa has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Iowa did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

Iowa noted that its survey response is an informal opinion and only applicable to the factual situation referenced and the statutes in existence at the time of issuance. Because of this, the Department of Revenue could, in the future, take a contrary position.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific.

A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Iowa will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Fulfillment services may not create nexus if criteria in Iowa Code Ann. section 422.34A(8) are met.] [Bloomberg BNA Note: *See* Iowa Code Ann. § 422.33; Iowa Code Ann. § 422.34A(8); Iowa Admin. Code r. 701-52.1(422); Iowa Admin. Code r. 701-54.1(422).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Iowa because it has at least one activity that Iowa has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Kansas Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Kansas does not apply *Quill* when making income tax nexus determinations, nor has it done so in

the past. Kansas stated that with respect to nexus "[t]he business must be conducting sufficient business activity [in the state]… Pub. L. No. 86-272 does not extend to those businesses which sell services, real estate or intangibles or incorporated in Kansas. If a business is incorporated in Kansas and is located outside of Kansas making sales into Kansas, it has nexus." Kansas did not indicate whether it requires that a corporation have a physical presence in the state in order to create nexus nor did it indicate whether nexus may result from the right of an in-state agent to bind the taxpayer to a contract. Kansas also did not indicate whether its nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Kansas does not have a de minimis standard nor has it adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus."

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Kansas will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Kan. Stat. Ann. § 79-32,110(c); Kansas Private Letter Ruling P-1998-207; Kansas Private Letter Ruling P-1998-31; Kansas Opinion Letter O-1999-04.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (see *Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Kansas because it has at least one activity that Kansas has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Kentucky Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Kentucky does not apply *Quill* when making income tax nexus determinations and ceased doing so for tax years beginning on or after Jan. 1, 2005. Kentucky's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Kentucky stated that "[t]he Commonwealth adopted the "doing business" standard as provided by Ky. Rev. Stat. § 141.010(25), effective January 1, 2005." *See also* 103 Ky. Admin. Regs. 16:240, § 4(4)(b). Kentucky does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Kentucky has a de minimis standard and stated that "[d]e minimis is determined on the facts and circumstances." *See* 103 Ky. Admin. Regs. 16:240(4)(4)(b). Kentucky has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Kentucky did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Kentucky will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Ky. Rev. Stat. Ann. § 141.010(25); 103 Ky. Admin. Regs. 16:240.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is

only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Kentucky because it has at least one activity that Kentucky has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Louisiana Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Louisiana does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Louisiana stated that it "does not require physical presence for nexus determinations, but physical presence will certainly give rise to nexus. For income tax we can use other determinations for nexus when there is no physical presence in the state." Louisiana does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Louisiana's state nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Louisiana does not have a de minimis standard however, it stated that "La. R.S. 47:287.95(C)(2)(a) contains a de minimis rule specifically for trucking companies." Louisiana has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Louisiana did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

Louisiana said that its responses to the portion of the questionnaire addressing nexus-creating activities should be considered to be general guidelines based on the scenario provided. Deviations from those scenarios might alter the determination, the state said. Additionally, the state said its responses constitute "informal advice" from the Louisiana Department of Revenue, as

contemplated by La. Admin. Code tit. 61, § 101.D.3, which provides that informal advice does not have the force and effect of law and is not binding on the department.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Louisiana will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* La. Rev. Stat. Ann. § 47:287.11; La. Rev. Stat. Ann. § 47:601; Louisiana Form CIFT-620, Instructions for Louisiana Corporation Income Tax/Franchise Tax Return.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Louisiana because it has at least one activity that Louisiana has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Maine Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether

certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Maine does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Maine's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Maine does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Maine has a de minimis standard. *See* Me. Rule 808.04(C). Maine has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Maine did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Maine will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Code Me. R. § 18-125-808.03; Code Me. R. § 18-125-808.04; Code Me. R. § 18-125-808.05.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Maine because it has at least one activity that Maine has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each

state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Maryland Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Maryland does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Maryland's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Maryland does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Maryland does not have a de minimis standard. Maryland has adopted MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, Maryland did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Maryland will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Md. Code Ann. Tax-Gen. § 10-102; Md. Code Ann. Tax-Gen. § 10-402(a); Maryland Administrative Release No. 2.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus

with a state.]

FBA Biz appears to have nexus in Maryland because it has at least one activity that Maryland has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Massachusetts Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Massachusetts applies *Quill* when making income tax nexus determinations. Massachusetts' income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Massachusetts does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. It also stated that "[f]inancial institutions have been subject to an economic nexus standard since January 1, 1995." Massachusetts does not have a de minimis standard. Massachusetts has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." *See* TIR 03-19, 98-13, DD 96-2, LR 05-8 and 830 CMR 63.39.1. However, Massachusetts did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

Massachusetts said that its responses to the questionnaire constituted an "information letter" within the meaning of the Letter Ruling Regulation, 830 Mass. Code Regs. § 62C.3.2. The responses, the state said, are intended to provide general information such as the potential applicability of the Massachusetts Department of Revenue's public written statements or well-established principles of tax law, but are not intended to provide authoritative guidance on the application of the tax laws to a specific set of facts. The state also said the responses are not a "ruling" or "letter ruling" that is legally binding on the department.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning display racks in the state **/1**
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year **/2**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/3**
- Unrelated third parties in the state collecting regular or delinquent accounts **/4**
- Unrelated third parties in the state investigating credit-worthiness of new customers **/5**
- Unrelated third parties in the state repossessing property one to six times a year **/6**
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year **/7**
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products **/8**
- Unrelated third parties in the state performing repairs under standard or extended warranty **/9**
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/10**
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization **/11**

/3 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/4 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Pursuant to 830 CRM 63.39.1(7), "the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. Activities of an independent contractor will not be imputed to the corporation." [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/5 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Pursuant to 830 CRM 63.39.1(7), "the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. Activities of an independent contractor will not be imputed to the corporation."] [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/6 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Pursuant to 830 CRM 63.39.1(7), "the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. Activities of an independent contractor will not be imputed to the corporation."] [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
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Distribution and Delivery of Goods

- Shipping products into the state in returnable containers **/12**
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/13**
- Picking up defective products or scrap materials in the state in company-owned vehicles **/14**
- Picking up raw materials in the state in company-owned vehicles **/15**
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/16**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/17**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/18**
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks **/19**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/20**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/21**

/12 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: *See* Mass. Dept. of Rev., TIR Nos. 06-9 (June 12, 2006) and 98-13 (Dec. 8, 1998); D.D. Corp. No. 95-7 (July 12, 1995) and 830 CMR Section 63.38.10.] [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1; *Aloha Freightways Inc. v. Commissioner of Rev.*, 701 N.E.2d 961 (Mass. 1998); Massachusetts Technical Information Release TIR 98-13; Massachusetts Directive 95-7.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

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95-7.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/20 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: *See* Mass. Dept. of Rev., TIR Nos. 06-9 (June 12, 2006) and 98-13 (Dec. 8, 1998); D.D. Corp. No. 95-7 (July 12, 1995) and 830 CMR Section 63.38.10. Pursuant to 830 CMR 63.39.1(6), "[a] foreign corporation is not subject to the corporate excise under Mass. Gen. L. ch. 63, § 39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common carrier or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by Mass. Gen. L. ch. 63, § 39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extend to foreign carriers whose vehicles enter Massachusetts)."] [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1; *Aloha Freightways Inc. v. Commissioner of Rev.*, 701 N.E.2d 961 (Mass. 1998); Massachusetts Technical Information Release TIR 98-13; Massachusetts Directive 95-7.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/21 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: *See* Mass. Dept. of Rev., TIR Nos. 06-9 (June 12, 2006) and 98-13 (Dec. 8, 1998); D.D. Corp. No. 95-7 (July 12, 1995) and 830 CMR Section 63.38.10. Pursuant to 830 CMR 63.39.1(6), "[a] foreign corporation is not subject to the corporate excise under Mass. Gen. L. ch. 63, § 39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common carrier or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by Mass. Gen. L. ch. 63, § 39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extend to foreign carriers whose vehicles enter Massachusetts)."] [Bloomberg BNA Note: *See* Mass. Gen. L. ch. 63, § 39; Mass. Regs. Code tit. 830, § 63.39.1; *Aloha Freightways Inc. v. Commissioner of Rev.*, 701 N.E.2d 961 (Mass. 1998); Massachusetts Technical Information Release TIR 98-13; Massachusetts Directive 95-7.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Massachusetts has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Massachusetts has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Michigan Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Michigan does not apply *Quill* when making income tax nexus determinations and ceased doing so for tax years beginning on or after Dec. 31, 2007. Michigan's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Michigan stated that "[a] person may have nexus with Michigan if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in the state and has Michigan gross receipts of $350,000 or more, or if the person has an ownership interest or a beneficial interest, held directly or indirectly, in a flow-through entity that has substantial nexus in Michigan." *See* MCL 206.621(1). However, Michigan also indicated that it requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. It stated that "[p]hysical presence is defined in MCL 206.621(2)(b) to include any activity conducted on behalf of the taxpayer by the taxpayer's agent." Michigan has a de minimis standard, which is "[p]hysical presence of 1 day or less and active solicitation of sales in Michigan with Michigan gross receipts under $350,000." Michigan has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Michigan did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Michigan will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: No, [the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272] if the unrelated parties are acting on behalf of the taxpayer and constitute the taxpayer's agent or independent contractor acting in a representative capacity.] [Bloomberg BNA Note: *See* Mich. Comp. Laws § 206.621; Michigan Revenue Administrative Bulletin 2013-9; Michigan Revenue Administrative Bulletin 2014-5 (discussing Michigan corporate income tax nexus standards); *Vestax Securities Corp. v. Michigan Dept. of Treas.*, No. 292062, 2010 BL 321804 (Mich. Ct. App. Oct, 28, 2010); Mich. Dept. of Treas., Form 1353, Nexus Questionnaire and Instructions (Rev. 06-12).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/2**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/3**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Policy under review. No, [the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Mich. Comp. Laws § 206.621; Michigan Revenue Administrative Bulletin 2013-9; Michigan Revenue Administrative Bulletin 2014-5 (discussing Michigan corporate income tax nexus standards); Mich. Dept. of Treas., Form 1353, Nexus Questionnaire and Instructions (Rev. 06-12).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus

with a state.]
/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Policy under review. No, [the answer would not change if the corporation was otherwise protected under Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Mich. Comp. Laws § 206.621; Michigan Revenue Administrative Bulletin 2013-9; Michigan Revenue Administrative Bulletin 2014-5 (discussing Michigan corporate income tax nexus standards); Mich. Dept. of Treas., Form 1353, Nexus Questionnaire and Instructions (Rev. 06-12).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Michigan because it has at least one activity that Michigan has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Minnesota Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Minnesota does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. It stated that Minn. Stat. § 290.015(1)(b) "provides, in part, that a person that conducts a trade or business is subject to taxes imposed by Minn. Stat. chapter 290 if the trade or business obtains or regularly solicits business from within the state, without regard to physical presence in the state. That statute was enacted prior to the *Quill* decision." Minnesota's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within a state, even if a corporation lacks a physical presence within the state's borders). Minnesota does not require that a corporation have a physical presence in the state

in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Minnesota does not have a de minimis standard. It stated that "Minnesota has enacted amounts that create presumptions of nexus, but has not enacted de minimis standards." Minnesota has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Minnesota did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Minnesota will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Minn. Stat. § 290.014; Minn. Stat. § 290.015; Minnesota Revenue Notice 96-16.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Minnesota because it has at least one activity that Minnesota has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Mississippi did not indicate whether it applies *Quill* when making income tax nexus determinations, nor whether it has done so in the past. Mississippi did not indicate its income tax nexus policies. Mississippi does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Mississippi did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Mississippi will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2013 Survey of State Tax Departments, carried over for 2015 at the state's request. [Bloomberg BNA Note: *See* Miss. Code Ann. § 27-7-23(a)(1); Miss. Regs. § 35.III.8.06.203.01; Miss. Regs. § 35.III.8.06.203.02.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Mississippi because it has at least one activity that Mississippi has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each

state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Missouri Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Missouri does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Missouri's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Missouri does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Missouri does not have a de minimis standard. It conforms to MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, Missouri did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Missouri will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Mo. Rev. Stat. § 143.071; Mo. Rev. Stat. § 143.441(1); Mo. Code Regs. Ann. tit. 12, § 10-2.180; *Amway Corp. v. Missouri Dir. of Rev.*, 794 S.W.2d. 666 (Mo. 1990).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*,131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be

considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Missouri because it has at least one activity that Missouri has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Montana Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Montana does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Montana's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Montana does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Montana has a de minimis standard. *See* Mont. Admin. R. 42.26.504 and Mont. Admin. R. 42.26.706. Montana has adopted MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, Montana did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Montana will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product

orders from corporate-owned inventory) /1

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Mont. Code Ann. § 15-31-101(2); Mont. Admin. R. 42.26.501; Mont. Admin. R. 42.26.502; Mont. Admin. R. 42.26.503; Mont. Admin. R. 42.26.504; Mont. Admin. R. 42.26.505; Mont. Admin. R. 42.26.506.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state /2
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state /3

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Depends on number of miles driven. *See* Administrative Rule of Montana 42.26.706.] [Bloomberg BNA Note: *See* Mont. Code Ann. § 15-31-101(2); Mont. Admin. R. 42.26.501; Mont. Admin. R. 42.26.502; Mont. Admin. R. 42.26.503; Mont. Admin. R. 42.26.504; Mont. Admin. R. 42.26.505; Mont. Admin. R. 42.26.506.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Depends on number of miles driven. *See* Administrative Rule of Montana 42.26.706.] [Bloomberg BNA Note: *See* Mont. Code Ann. § 15-31-101(2); Mont. Admin. R. 42.26.501; Mont. Admin. R. 42.26.502; Mont. Admin. R. 42.26.503; Mont. Admin. R. 42.26.504; Mont. Admin. R. 42.26.505; Mont. Admin. R. 42.26.506.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Montana because it has at least one activity that Montana has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Nebraska Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Nebraska does not apply *Quill* when making income tax nexus determinations and did not indicate whether it has done so in the past. Nebraska's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). *See* Nebraska Revenue Ruling 24-08-01. Nebraska also indicated that it requires that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Nebraska has a de minimis standard that conforms to U.S. Supreme Court case law. *See* Nebraska Revenue Ruling 24-08-01. The state conforms to MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, Nebraska did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Nebraska will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) /1

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Neb. Rev. Stat. § 77-2701.13; Neb. Rev. Stat. § 77-2734.04(12); Neb. Admin. R. & Regs. 316-24-001.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Nebraska because it has at least one activity that Nebraska has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Nevada Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Nevada does not impose a corporate tax based upon income. Because the state does not impose an income tax, this report will not show any activities as creating or not creating nexus. Instead, all activities will be displayed as activities in which the state did not indicate the nexus implication.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year
- Shipping in-process inventory to an unrelated party in the state solely for processing
- Consigning goods to vendors, independent contractors, or other parties in the state
- Owning display racks in the state
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state
- Leasing (as lessor) real estate in the state to an unrelated third party
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year
- Owning or leasing automobiles provided to salespersons in the state
- Owning or leasing trucks or automobiles used by non-salespersons in the state
- Owning or leasing other machinery or equipment in the state
- Holding title to property located in the state until the contract price has been paid
- Filing a security interest on inventory sold until the contract price has been paid
- Leasing a place for company employees, directors, or officers

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)
- Unrelated third parties in the state collecting regular or delinquent accounts
- Unrelated third parties in the state investigating credit-worthiness of new customers
- Unrelated third parties in the state repossessing property one to six times a year
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products
- Unrelated third parties in the state performing repairs under standard or extended warranty
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization

Distribution and Delivery of Goods

- Shipping products into the state in returnable containers
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles
- Picking up defective products or scrap materials in the state in company-owned vehicles
- Picking up raw materials in the state in company-owned vehicles
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state
- “Back hauling” (i.e., picking up shipments at the destination or nearby location for

delivery to another point) in company-owned trucks

- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state)
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state)

FBA Biz appears not to have any activities that Nevada has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Nevada has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 New Hampshire Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

New Hampshire does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. New Hampshire's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). New Hampshire does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. New Hampshire does not have a de minimis standard. New Hampshire conforms to MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.” However, New Hampshire did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in New Hampshire will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.H. Rev. Stat. Ann. § 77-A:1.XII; N.H. Code Admin. R. Dept. Rev. Admin. 304.01(d); N.H. Code Admin. R. Dept. Rev. Admin. 304.01(e).] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*seeJ. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning or leasing automobiles provided to salespersons in the state **/2**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.H. Rev. Stat. Ann. § 77-A:1.XII; N.H. Code Admin. R. Dept. Rev. Admin. 304.01(d).] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

FBA Biz appears to have nexus in New Hampshire because it has at least one activity that New Hampshire has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 New Jersey Nexus Report

December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

New Jersey does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. New Jersey's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). New Jersey does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. New Jersey does not have a de minimis standard. New Jersey has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, New Jersey did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in New Jersey will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.J. Rev. Stat. § 54:10A-2; N.J. Admin. Code tit. 18, § 18:7-1.6; N.J. Admin. Code tit. 18, § 18:7-1.8; N.J. Admin. Code tit. 18, § 18:7-1.9; New Jersey Technical Advisory Memorandum TAM-2011-6; New Jersey Technical Bulletin TB-79(R).] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in New Jersey because it has at least one activity that New Jersey has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 New Mexico Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

New Mexico does not apply *Quill* when making income tax nexus determinations and ceased doing so in 1998, when the state "adopted a representation and economic requirement for nexus." New Mexico's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). New Mexico also indicated that it requires that a corporation have a physical presence in the state in order to create nexus and may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract.

New Mexico has a de minimis standard, but it is limited to trucking companies that do not:

• "own or rent property,
• make any pick-ups or deliveries,
• travel more than 25,000 miles (N[ew Mexico] miles must be less than 3% [of] total miles), or
• make more than 12 trips into N[ew Mexico]."

New Mexico has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, New Mexico did not indicate whether its positions on a de minimis standard or MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

New Mexico responses are an informal analysis of the facts presented in the survey, the state said. New Mexico also advised that their response does not constitute a ruling issued pursuant to NMSA 1978, Section 9-11-6.2, and does not stop the department from taking a contrary position in the future.

The following lists the activities which will create nexus, as well as the activities which by

themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in New Mexico will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.M. Stat. Ann. § 7-2A-3; New Mexico Ruling 200-01-1; New Mexico Ruling 200-97-1; New Mexico Ruling 200-99-1; New Mexico FYI-350 Corporate Income and Franchise Tax.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (see *Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (see *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in New Mexico because it has at least one activity that New Mexico has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 New York Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

New York did not participate in the income tax portion of the 2015 survey. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which take effect Jan. 1, 2015. “Because we have only begun the process of implementing the reform provisions, it would be premature for us to opine on [the] survey at this time,” New York said.

“As should be expected with a change of this magnitude, there are numerous issues that will require guidance beyond the statutory language,” the state said, before identifying the following three ways in which it will expound upon the new law:

• a dedicated web page for corporate tax reform information (http://www.tax.ny.gov/bus/ct/corp_tax_reform.htm), including a section for FAQs, the state's official reform outline and a summary of the revised provisions
• narrowly focused guidance memoranda (TSB-Ms) issued on particular topics, which they anticipate will cover transitional issues, expense attribution and special tax benefits for manufacturers and
• regulations that the state intends to make available for public comment by the end of 2015.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state **/1**
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year **/2**
- Shipping in-process inventory to an unrelated party in the state solely for processing **/3**
- Consigning goods to vendors, independent contractors, or other parties in the state **/4**
- Owning display racks in the state **/5**
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state **/6**
- Leasing (as lessor) real estate in the state to an unrelated third party **/7**
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year **/8**
- Owning or leasing automobiles provided to salespersons in the state **/9**
- Owning or leasing trucks or automobiles used by non-salespersons in the state **/10**
- Owning or leasing other machinery or equipment in the state **/11**
- Holding title to property located in the state until the contract price has been paid **/12**
- Filing a security interest on inventory sold until the contract price has been paid **/13**
- Leasing a place for company employees, directors, or officers **/14**

/1 Answer per BBNA 2015 Survey of State Tax Departments. New York did not provide yes or no answers to the income tax portion of the BBNA 2015 Survey of State Tax Departments. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which take effect Jan. 1, 2015. “Because we have only begun the process of implementing the reform provisions, it would be premature for us to opine on [the] survey at this time,” New York said. [Bloomberg BNA Note: *See* N.Y. Tax Law § 209(1), as amended by N.Y. 2014 A.B. 8559/S.B. 6359, effective Jan. 1, 2015 (amending the list of nexus creating activities to include deriving at least $1 million in receipts from activity in New York); N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.2; N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.3.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a

sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/2 Answer per BBNA 2015 Survey of State Tax Departments. New York did not provide yes or no answers to the income tax portion of the BBNA 2015 Survey of State Tax Departments. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which take effect Jan. 1, 2015. "Because we have only begun the process of implementing the reform provisions, it would be premature for us to opine on [the] survey at this time," New York said. [Bloomberg BNA Note: *See* N.Y. Tax Law § 209(1), as amended by N.Y. 2014 A.B. 8559/S.B. 6359, effective Jan. 1, 2015 (amending the list of nexus creating activities to include deriving at least $1 million in receipts from activity in New York); N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.2; N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.3.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/3 Answer per BBNA 2015 Survey of State Tax Departments. New York did not provide yes or no answers to the income tax portion of the BBNA 2015 Survey of State Tax Departments. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which take effect Jan. 1, 2015. "Because we have only begun the process of implementing the reform provisions, it would be premature for us to opine on [the] survey at this time," New York said. [Bloomberg BNA Note: *See* N.Y. Tax Law § 209(1), as amended by N.Y. 2014 A.B. 8559/S.B. 6359, effective Jan. 1, 2015 (amending the list of nexus creating activities to include deriving at least $1 million in receipts from activity in New York); N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.2; N.Y. Comp. Codes R. & Regs. tit. 20, § 1-3.3.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
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Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/15**
- Unrelated third parties in the state collecting regular or delinquent accounts **/16**
- Unrelated third parties in the state investigating credit-worthiness of new customers **/17**
- Unrelated third parties in the state repossessing property one to six times a year **/18**
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year **/19**
- Unrelated third parties in the state assisting with the "set-up" or installation of the company's products **/20**
- Unrelated third parties in the state performing repairs under standard or extended warranty **/21**
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization **/22**
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization **/23**

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Distribution and Delivery of Goods

- Shipping products into the state in returnable containers **/24**
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/25**
- Picking up defective products or scrap materials in the state in company-owned vehicles **/26**
- Picking up raw materials in the state in company-owned vehicles **/27**
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/28**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/29**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/30**
- “Back hauling” (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks **/31**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/32**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/33**

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FBA Biz appears not to have any activities that New York has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities New York has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 New York City Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

New York City applies *Quill* when making income tax nexus determinations. New York City requires that a corporation have a physical presence in the jurisdiction in order to create nexus and may also find that nexus results from the right of an in-jurisdiction agent to bind the taxpayer to a contract. The City stated that "[e]ffective for tax years beginning on or after Jan. 1, 2011, the New York Administrative Code related to Bank Tax has been amended to tax credit card companies with customers having a mailing address in New York City regardless of whether the credit card company has a physical location in the City." New York City did not indicate whether its nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the jurisdiction, even if a corporation lacks a physical presence within the jurisdiction's borders). New York City has a de minimis standard. *See* N.Y. City Rules § 11-04(c)(iv) regarding trade shows. New York City has not adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, New York City did not indicate whether its position on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

New York City noted that nexus is a very complicated issue and, in many instances, a thorough review of the facts and circumstances of each individual taxpayer's situation is required in order to make an accurate determination. The responses to this survey have no binding effect on the New York City Department of Finance. The Department indicated that they maintain a website on which current developments are posted.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in New York City will not, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: NYC differs from New York state on this. *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website, but the entire chapter is only available through various legal research services.] [Bloomberg BNA Note: *See* N.Y. City Admin. Code § 11-603(1); N.Y. City Admin. Code § 11-603(2); N.Y. City Admin. Code § 11-503(a); N.Y. City Rules § 11-03; N.Y. City Rules § 11-04; N.Y. City Rules § 11-06.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning or leasing trucks or automobiles used by non-salespersons in the state **/2**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.Y. City Admin. Code § 11-603(1); N.Y. City Admin. Code § 11-603(2); N.Y. City Admin. Code § 11-503(a); N.Y. City Rules § 11-03; N.Y. City Rules § 11-04; N.Y. City Rules § 11-06.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

Distribution and Delivery of Goods

- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles **/3**

/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our website, but the entire chapter is only available through various legal research services.] [Bloomberg BNA Note: *See* N.Y. City Admin. Code § 11-603(1); N.Y. City Admin. Code § 11-603(2);

N.Y. City Admin. Code § 11-503(a); N.Y. City Rules § 11-03; N.Y. City Rules § 11-04; N.Y. City Rules § 11-06.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that New York City has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities New York City has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 North Carolina Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

North Carolina does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. North Carolina's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). North Carolina does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. North Carolina does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." North Carolina states that the MTC Bulletin is consistent with North Carolina's historical position. However, North Carolina did not indicate whether its position on MTC Bulletin 95-1 would change if the

corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in North Carolina will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.C. Gen. Stat. § 105-130.3; N.C. Admin. Code tit. 17, r. 5C.0101; N.C. Admin. Code tit. 17, r. 5C.0102; N.C. Admin. Code tit. 17, r. 5C.0103.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in North Carolina because it has at least one activity that North Carolina has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 North Dakota Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the

states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

North Dakota does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. North Dakota's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). North Dakota does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. North Dakota does not have a de minimis standard. North Dakota has adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, North Dakota did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in North Dakota will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* N.D. Cent. Code § 57-38-11; N.D. Cent. Code § 57-38-14; *Drackett Products Co. v. Conrad*, 370 N.W.2d 723 (N.D. 1985); Phase II Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Pub. L. No. 86-272.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*,131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in North Dakota because it has at least one activity that North Dakota has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each

state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Ohio Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Ohio does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. The state's nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). In Ohio, most corporations are now subject to the CAT, rather than a corporate income tax. The CAT's nexus standard is addressed in Ohio Rev. Code Ann. § 5751.01(H) and (I). The CAT is a privilege tax measured by taxable gross receipts (receipts sitused to Ohio). Ohio applies a factor presence test.

A person has “bright-line presence” in Ohio if any of the following applies:

• the person has at anytime during the calendar year at least $50,000 of property located in Ohio,
• the person has during the calendar year at least a $50,000 payroll in Ohio,
• the person has during the calendar year at lease $500,000 of taxable gross receipts or,
• the person has at anytime during the calendar year within Ohio at least 25 percent of the person's total property, total payroll, or total gross receipts.
Ohio Rev. Code Ann. § 5751.01(I)

Because most corporations are now subject to the CAT, rather than a corporate income tax, this report will not show any activities as creating or not creating nexus. Instead, all activities will be displayed as activities in which the state did not indicate the nexus implication. For the section regarding financial activities/transactions, Ohio noted that a new financial institution tax was signed into law on December 27, 2012, with the first return due in 2014 calculated upon calendar year 2013 information. For entities meeting the definition of financial institution under R.C. 5726.05(H), the financial activities/transactions addressed would create nexus. Other financial services companies that do not meet the definition are subject to the CAT. The activities included in the financial activities/transactions category would not subject a corporation to an income-based tax as FIT is calculated based on total equity capital, Ohio said.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state

- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year
- Shipping in-process inventory to an unrelated party in the state solely for processing
- Consigning goods to vendors, independent contractors, or other parties in the state
- Owning display racks in the state
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state
- Leasing (as lessor) real estate in the state to an unrelated third party
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year
- Owning or leasing automobiles provided to salespersons in the state
- Owning or leasing trucks or automobiles used by non-salespersons in the state
- Owning or leasing other machinery or equipment in the state
- Holding title to property located in the state until the contract price has been paid
- Filing a security interest on inventory sold until the contract price has been paid
- Leasing a place for company employees, directors, or officers

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)
- Unrelated third parties in the state collecting regular or delinquent accounts
- Unrelated third parties in the state investigating credit-worthiness of new customers
- Unrelated third parties in the state repossessing property one to six times a year
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products
- Unrelated third parties in the state performing repairs under standard or extended warranty
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization

Distribution and Delivery of Goods

- Shipping products into the state in returnable containers
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles
- Picking up defective products or scrap materials in the state in company-owned vehicles
- Picking up raw materials in the state in company-owned vehicles
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state
- “Back hauling” (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks

- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state)
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state)

FBA Biz appears not to have any activities that Ohio has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Ohio has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Oklahoma Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Oklahoma does not apply *Quill* when making income tax nexus determinations, but indicated it has done so in the past. Oklahoma's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Oklahoma also indicated that it requires that a corporation have a physical presence in the state in order to create nexus but did not indicate whether nexus may result from the right of an in-state agent to bind the taxpayer to a contract. Oklahoma does not have a de minimis standard and does not conform to MTC Bulletin 95-1, “Computer Company's Provision of In-State Repair Services Creates Nexus.”

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Oklahoma will not, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Okla. Stat. Ann. tit. 68, § 68-2355(E); Okla. Admin. Code § 710:50-17-2; Okla. Admin. Code § 710:50-17-3; Okla. Admin. Code § 710:50-17-4.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Oklahoma has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Oklahoma has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Oregon Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Oregon does not apply *Quill* when making income tax nexus determination, nor has it done so in the past. Oregon's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Oregon does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus

results from the right of an in-state agent to bind the taxpayer to a contract. Oregon does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Oregon indicated that its position on MTC Bulletin 95-1 would not change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Oregon will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Or. Rev. Stat. § 317.010(4); Or. Rev. Stat. § 318.020; Or. Admin. R. 150-317.010; Or. Admin. R. § 150-318.020(2); *Ann Sacks Tile and Stone Inc. v. Oregon Dept. of Rev.*, No. TC 4879, 2011 BL 301952 (Or. Tax Ct. Nov. 29, 2011); Or. Dept. of Rev., Foreign Corporations.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (see *Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (see *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Oregon because it has at least one activity that Oregon has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Pennsylvania applies *Quill* when making income tax nexus determinations. Pennsylvania requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Pennsylvania says that physical presence may be through agents or representatives. The state also said it "depends on the facts and circumstances" as to whether its policy is based on "economic presence." Pennsylvania does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Pennsylvania did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Pennsylvania will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 72 Pa. Stat. § 7402(a); 61 Pa. Code § 153.1; Pennsylvania Letter Ruling No. CRP-05-003; Pennsylvania Corporate Tax Bulletin No. CT 2004-01.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*See Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*See J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/2**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/3**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 72 Pa. Stat. § 7402(a); 61 Pa. Code § 153.1; Pennsylvania Letter Ruling No. CRP-05-002; Pennsylvania Corporate Tax Bulletin No. CT 2004-01.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*See Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*See J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/3 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* 72 Pa. Stat. § 7402(a); 61 Pa. Code § 153.1; Pennsylvania Letter Ruling No. CRP-05-002; Pennsylvania Corporate Tax Bulletin No. CT 2004-01.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*See Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*See J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Pennsylvania because it has at least one activity that Pennsylvania has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Rhode Island Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Rhode Island does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Rhode Island requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Rhode Island's income tax nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Rhode Island stated that "under the implementation of combined reporting, a company who is part of a unitary business may have a filing requirement because one of the related companies has nexus." Rhode Island said it has a de minimis policy, but it is "a case-by-case determination." The state does not conform to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." See RI Regulation 95-02. However, Rhode Island did not indicate whether its position on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Rhode Island will not, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* R.I. Gen. Laws § 44-11-1(4); R.I. Regs. § CT 95-2.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Rhode Island has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Rhode Island has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each

state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 South Carolina Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

South Carolina does not apply *Quill* when making income tax nexus determinations and did not indicate whether it has done so in the past. South Carolina's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). South Carolina stated that "[e]conomic presence may trigger income tax nexus in South Carolina even if a corporation lacks a physical presence in the state." South Carolina does not require that a corporation have a physical presence in the state in order to create nexus but did not indicate whether nexus may result from the right of an in-state agent to bind the taxpayer to a contract. South Carolina has a de minimis standard and follows the principles defined by the courts. The state has not adopted MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." See S.C. Code Ann. § 12-6-60 (role of distribution facility in determining nexus with state for income tax and corporate license fee purposes). However, South Carolina did not indicate whether its position on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

South Carolina's 2010 responses were carried over for the 2015 survey at the state's request. South Carolina noted that its responses to the questions regarding nexus-creating activities are formally addressed by South Carolina Department of Revenue Ruling No. 03-04 (2003). In addition, the state indicated that its answers to the questions regarding state tax addbacks are contained in Revenue Ruling No. 09-10 (2010). The responses provided to the remaining portions of the survey are the personal opinion of a department employee and should not be construed as the department's official position regarding the issue, the department stated.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Leasing a place for company employees, directors, or officers **/1**

/1 Answer per BBNA 2011 Survey of State Tax Departments, carried over for 2015 at the state's request. [2011 Survey Response: No Response.] [Bloomberg BNA Note: *See* S.C. Code Ann. § 12-6-530; S.C. Code Ann. § 12-6-60 (role of distribution facility in determining nexus with state for income tax and corporate license fee purposes); *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993); South Carolina Revenue Ruling No. 97-15; South Carolina Revenue Ruling No. 03-4; South Carolina

Revenue Ruling No. 08-1.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/2**

/2 Answer per BBNA 2011 Survey of State Tax Departments, carried over for 2015 at the state's request. [2011 Survey Response: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) S.C. Rev. Rul. No. 03-4.] [Bloomberg BNA Note: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993); South Carolina Revenue Ruling No. 97-15; South Carolina Revenue Ruling No. 03-4; South Carolina Revenue Ruling No. 08-1.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

Distribution and Delivery of Goods

- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/3**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/4**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/5**

/3 Answer per BBNA 2011 Survey of State Tax Departments, carried over for 2015 at the state's request. [2011 Survey Response: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) S.C. Code § 12-6-4920. See S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) also S.C. Rev. Rul. No. 03-4.] [Bloomberg BNA Note: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993); South Carolina Revenue Ruling No. 97-15; South Carolina Revenue Ruling No. 03-4; South Carolina Revenue Ruling No. 08-1.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/4 Answer per BBNA 2011 Survey of State Tax Departments, carried over for 2015 at the state's request. [2011

Survey Response: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) S.C. Code § 12-6-4920. See S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) also S.C. Rev. Rul. No. 03-4.] [Bloomberg BNA Note: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993); South Carolina Revenue Ruling No. 97-15; South Carolina Revenue Ruling No. 03-4; South Carolina Revenue Ruling No. 08-1.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/5 Answer per BBNA 2011 Survey of State Tax Departments, carried over for 2015 at the state's request. [2011 Survey Response: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) S.C. Code § 12-6-4920. See S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993) also S.C. Rev. Rul. No. 03-4.] [Bloomberg BNA Note: *See* S.C. Code Ann. § 12-6-530; *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993); South Carolina Revenue Ruling No. 97-15; South Carolina Revenue Ruling No. 03-4; South Carolina Revenue Ruling No. 08-1.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that South Carolina has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities South Carolina has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 South Dakota Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

South Dakota does not impose a corporate tax based upon income. Because the state does not impose an income tax, this report will not show any activities as creating or not creating nexus. Instead, all activities will be displayed as activities in which the state did not indicate the nexus implication.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year
- Shipping in-process inventory to an unrelated party in the state solely for processing
- Consigning goods to vendors, independent contractors, or other parties in the state
- Owning display racks in the state
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state
- Leasing (as lessor) real estate in the state to an unrelated third party
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year
- Owning or leasing automobiles provided to salespersons in the state
- Owning or leasing trucks or automobiles used by non-salespersons in the state
- Owning or leasing other machinery or equipment in the state
- Holding title to property located in the state until the contract price has been paid
- Filing a security interest on inventory sold until the contract price has been paid
- Leasing a place for company employees, directors, or officers

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)
- Unrelated third parties in the state collecting regular or delinquent accounts
- Unrelated third parties in the state investigating credit-worthiness of new customers
- Unrelated third parties in the state repossessing property one to six times a year
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products
- Unrelated third parties in the state performing repairs under standard or extended warranty
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization

- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization

Distribution and Delivery of Goods

- Shipping products into the state in returnable containers
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles
- Picking up defective products or scrap materials in the state in company-owned vehicles
- Picking up raw materials in the state in company-owned vehicles
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state)
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state)

FBA Biz appears not to have any activities that South Dakota has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities South Dakota has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Tennessee Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the

states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Tennessee applies *Quill* when making income tax nexus determinations. Tennessee requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. *See J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831 (Tenn. Ct. App. 1999). Tennessee's income tax nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Tennessee said it has a de minimis standard, but not one based on a specific number of days or specific activities. The state does not conform to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Tennessee stated that "[a]n in-state repair service performed in Tennessee by an out-of-state entity would create nexus for that entity, unless de minimis."

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Tennessee will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Answer given assumes the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are "unrelated," it appears that there may be an agency relationship that would create tax nexus for the principal. Absent such an agency relationship, the activities stated will not create Tennessee franchise, excise tax nexus for the principal.] [Bloomberg BNA Note: *See* Tenn. Code Ann. § 67-4-2004(14); Tenn. Code Ann. § 67-4-2004(49), *as added by* 2015 Tenn. H.B. 644, effective Jan. 1, 2016 (defining "substantial nexus in the state"); Tenn. Code Ann. § 67-4-2005; Tenn. Code Ann. § 67-4-2007, *as amended by* 2015 Tenn. H.B. 644, effective Jan. 1, 2016 (imposing the Tennessee excise tax on all persons having substantial nexus in the state); *J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831 (Tenn. Ct. App. 1999); *America Online, Inc. v. Johnson*, M2001-00927-COA-R3-CV, 2002 BL 2357 (Tenn. Ct. App. 2002); Tennessee Revenue Ruling No. 02-22.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Tennessee because it has at least one activity that Tennessee has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Texas Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Texas applies *Quill* when making income tax nexus determinations. Texas requires that a corporation have a physical presence in the state in order to create nexus and may also find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Texas' income tax nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Texas does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Texas did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

Texas noted that the Texas franchise tax is the state's major business tax and is imposed on each taxable entity that is chartered in Texas or that does business in the state. "Taxable entity" includes a corporation, limited liability company, bank, savings and loan association, partnership (general, limited and limited liability), business trusts, professional associations, business associations, joint ventures and other legal entities that are organized in Texas or that do business in Texas. However, a general partnership where direct ownership is composed entirely of natural persons is not a taxable entity. The state explained that it does not impose a corporate income tax, but does impose a franchise tax. The franchise tax is based on a taxable entity's margin.

Margin equals the least of four calculations:

- total revenue minus cost of goods sold,
- total revenue minus compensation,
- total revenue times 70 percent,
- or total revenue minus $1 million.

A taxable entity with total revenue of $10 million or less may elect to calculate its franchise tax due by multiplying total revenue times the apportionment factor times 0.575 percent. Texas said that because the survey specifically asks about the state's "income-based" tax on corporations, its responses are directed at the calculation of "margin" for franchise tax reporting purposes on taxable entities.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Texas will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Tex. Tax Code Ann. § 171.001(a); Tex. Admin. Code tit. 34, § 3.586.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Distribution and Delivery of Goods

- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state **/2**
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state **/3**
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state **/4**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Merely traveling through Texas does not create Nexus. If "traveling to the state", additional information regarding activities performed in Texas is required to determine Nexus activities.] [Bloomberg BNA Note: *See* Tex. Tax Code Ann. § 171.001(a); Tex. Admin. Code tit. 34, § 3.586.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or

maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Merely traveling through Texas does not create Nexus. If "traveling to the state", additional information regarding activities performed in Texas is required to determine Nexus activities.] [Bloomberg BNA Note: *See* Tex. Tax Code Ann. § 171.001(a); Tex. Admin. Code tit. 34, § 3.586.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/4 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Merely traveling through Texas does not create Nexus. If "traveling to the state", additional information regarding activities performed in Texas is required to determine Nexus activities.] [Bloomberg BNA Note: *See* Tex. Tax Code Ann. § 171.001(a); Tex. Admin. Code tit. 34, § 3.586.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Texas because it has at least one activity that Texas has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Utah Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether

certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Utah does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Utah's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Utah does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Utah has a de minimis standard, which is defined as "those activities that, when taken together, establish only a trivial connection with the taxing state." The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Utah did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Utah will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Utah Code Ann. § 59-7-101(12); Utah Code Ann. § 59-7-104; Utah Admin. Code § R865-6F-6; Utah Publication No. 37.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Utah because it has at least one activity that Utah has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax

nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Vermont Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Vermont does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Vermont stated that "nexus determinations depend on the totality of the circumstances." Vermont does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Vermont's income tax nexus policy is not based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Vermont has no de minimis standard. Vermont conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Vermont did not indicate whether its position on MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Vermont will not, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a

telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year **/2**
- Shipping in-process inventory to an unrelated party in the state solely for processing **/3**
- Consigning goods to vendors, independent contractors, or other parties in the state **/4**
- Owning display racks in the state **/5**
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state **/6**
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year **/7**
- Owning or leasing automobiles provided to salespersons in the state **/8**
- Owning or leasing trucks or automobiles used by non-salespersons in the state **/9**
- Owning or leasing other machinery or equipment in the state **/10**
- Holding title to property located in the state until the contract price has been paid **/11**
- Filing a security interest on inventory sold until the contract price has been paid **/12**

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

/4 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that

factor alone.]
/5 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/6 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/7 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/8 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/9 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/10 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior

Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/11 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]
/12 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: Excluding temporary ownership in the state (e.g., temporarily stored or transported in the stream of interstate commerce) or de minimis amounts, such ownership by a person is likely to create a physical presence in the state. A federal law, P.L. 86-272, does provide some protection for property located in the state used by salespersons to solicit sales of property. For example, a business owning or leasing an automobile for use by a sales person in compliance with P.L. 86-272 may potentially have substantial nexus with a state; however, the federal law prevents that state from subjecting the business to its income tax based on that factor alone.]

Distribution and Delivery of Goods

- Picking up defective products or scrap materials in the state in company-owned vehicles **/13**
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state) **/14**
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state) **/15**

/13 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/14 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-

272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]
/15 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: As nexus determinations depend on the totality of the circumstances, statements of whether specific isolated activity creates nexus are often misleading. Vermont follows Pub. L. No. 86-272.] [Bloomberg BNA Note: *See* Vt. Stat. Ann. tit. 32, ch. 5811(15); Vermont Formal Ruling No. 1995-04; Vermont Formal Ruling No. 1995-25.] [Fred Nicely, Senior Counsel for Council On State Taxation: While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears not to have any activities that Vermont has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Vermont has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Virginia Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Virginia does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. *See* P.D. 06-38. Virginia's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). *See* 23 VAC 10-120-90 P.D. 09-81. Virginia does not require that a corporation have a physical presence in the state in order to create nexus and indicated that it may not find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Virginia has a de minimis standard, which depends on the "nature, continuity, and regularity of the activities in the state." *See* Regulation 23 VAC 10-120-90G. The state does not conform to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, Virginia did not indicate whether its position on a de minimis standard would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Virginia will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: The Department's longstanding policy is that the presence of any inventory in Virginia subjects a corporation to income tax. *See* e.g., P.D. 88-146, P.D. 97-447, and P.D. 02-132.] [Bloomberg BNA Note: *See* Va. Code Ann. § 58.1-400; Va. Regs. § 10-120-90(G); Virginia Ruling of the Commissioner PD 10-252 (out-of-state taxpayer is not subject to Virginia tax on its income from third party service providers located in Virginia when the providers meet the definition of an independent contractor under Pub. L. No. 86-272); Virginia Ruling of the Commissioner PD 12-36.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Virginia because it has at least one activity that Virginia has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax

nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Washington Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Washington does not impose a corporate tax based upon income. Because the state does not impose an income tax, this report will not show any activities as creating or not creating nexus. Instead, all activities will be displayed as activities in which the state did not indicate the nexus implication.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year
- Shipping in-process inventory to an unrelated party in the state solely for processing
- Consigning goods to vendors, independent contractors, or other parties in the state
- Owning display racks in the state
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state
- Leasing (as lessor) real estate in the state to an unrelated third party
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year
- Owning or leasing automobiles provided to salespersons in the state
- Owning or leasing trucks or automobiles used by non-salespersons in the state
- Owning or leasing other machinery or equipment in the state
- Holding title to property located in the state until the contract price has been paid
- Filing a security interest on inventory sold until the contract price has been paid
- Leasing a place for company employees, directors, or officers

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)
- Unrelated third parties in the state collecting regular or delinquent accounts
- Unrelated third parties in the state investigating credit-worthiness of new customers
- Unrelated third parties in the state repossessing property one to six times a year

- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year
- Unrelated third parties in the state assisting with the “set-up” or installation of the company's products
- Unrelated third parties in the state performing repairs under standard or extended warranty
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization

Distribution and Delivery of Goods

- Shipping products into the state in returnable containers
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles
- Picking up defective products or scrap materials in the state in company-owned vehicles
- Picking up raw materials in the state in company-owned vehicles
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state
- “Back hauling” (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state)
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state)

FBA Biz appears not to have any activities that Washington has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Washington has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

2015 West Virginia Nexus Report

December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

West Virginia does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. West Virginia's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). West Virginia does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. West Virginia has a de minimis standard. West Virginia stated that "W.V. Code 11-24-7b provides a de minimis standard of activity to establish nexus for financial organizations based on soliciting business with 20 or more persons in the State or if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds $100,000." The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." However, West Virginia did not indicate whether its positions on a de minimis standard and MTC Bulletin 95-1 would change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in West Virginia will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory) **/1**

/1 Answer per BBNA 2015 Survey of State Tax Departments. [Bloomberg BNA Note: *See* W. Va. Code § 11-24-3a(a)(11); W. Va. Code § 11-24-4(8); W. Va. Code § 11-24-7b(d); *Tax Comr. of West Virginia v. MBNA America Bank*, 640 S.E.2d. 226 (W.Va. 2007) (holding that physical presence is not a prerequisite for a finding of substantial nexus because Quill does not apply to corporate income taxes); West Virginia Office of Tax Appeals Decision Docket No. 03-185 RN.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*,131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be

considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in West Virginia because it has at least one activity that West Virginia has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Wisconsin Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Wisconsin does not apply *Quill* when making income tax nexus determinations, nor has it done so in the past. Wisconsin's income tax nexus policy is based on economic presence (i.e., nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders). Wisconsin has adopted economic nexus in its definition of "doing business" in Wis. Stat. § 71.22(1r). Wisconsin does not require that a corporation have a physical presence in the state in order to create nexus but may find that nexus results from the right of an in-state agent to bind the taxpayer to a contract. Wisconsin does not have a de minimis standard. The state conforms to MTC Bulletin 95-1, "Computer Company's Provision of In-State Repair Services Creates Nexus." Wisconsin indicated that its position on MTC Bulletin 95-1 would not change if the corporation was otherwise protected under Pub. L. No. 86-272.

The following lists the activities which will create nexus, as well as the activities which by themselves will not. It is important to note that while certain activities by themselves may not create nexus, a combination of activities may. Furthermore, nexus determinations are fact specific. A specific aspect of an activity addressed in the survey might yield a different result.

The following activities of FBA Biz in Wisconsin will, by themselves, create nexus:

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product

orders from corporate-owned inventory) /1

/1 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Wisconsin adheres to Public Law 86-272 and the State has taken that into consideration for its answers.] [Bloomberg BNA Note: *See* Wis. Stat. § 71.22(1)(r); Wis. Stat. § 71.23; Wis. Admin. Code Tax § 2.82.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

The state has not indicated whether the following activities, by themselves, will create nexus:

Unrelated Parties

- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization /2
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization /3

/2 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Wisconsin adheres to Public Law 86-272 and the State has taken that into consideration for its answers. [The answer is] yes, depending on facts and circumstances.] [Bloomberg BNA Note: *See* Wis. Stat. § 71.22(1)(r); Wis. Stat. § 71.23; Wis. Admin. Code Tax § 2.82.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

/3 Answer per BBNA 2015 Survey of State Tax Departments. [2015 Survey Response: Wisconsin adheres to Public Law 86-272 and the State has taken that into consideration for its answers. [The answer is] yes, depending on facts and circumstances.] [Bloomberg BNA Note: *See* Wis. Stat. § 71.22(1)(r); Wis. Stat. § 71.23; Wis. Admin. Code Tax § 2.82.] [Fred Nicely, Senior Counsel for Council On State Taxation: It is important that states consider whether there is an agency relationship when evaluating the activities of third-parties. While these non-sales type activities may not be protected by P.L. 86-272, such activities must still satisfy the Due Process and Commerce Clause nexus bars. For a state to seek general jurisdiction over a person, the person must have continuous and systematic business contacts with the state (*see Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846 (2011)) and such person must purposefully avail itself of the privilege of conducting activities with the forum state (*see J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011)). Further, states should refrain from asserting nexus where the activity is not directly related to conducting the business or to establish or maintain a market in the state (e.g., the presence of a telecommuting employee that is only for the benefit of the employee, not the employer). Some states have provided some quantitative measurements for when the state may assert substantial nexus in these situations; however, overall qualitative factors also must be considered in determining whether a person has substantial nexus with a state.]

FBA Biz appears to have nexus in Wisconsin because it has at least one activity that Wisconsin has indicated will by itself create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.

FBA Biz
2015 Wyoming Nexus Report
December 1, 2015

This report is an analysis of state income tax nexus for the company based on a comparison of certain activities to the state's position on those activities. State positions are derived from an annual Bloomberg BNA Survey of State Tax Departments, in which states are asked whether certain activities will create nexus in their state. When identifying nexus-creating activities, the states were instructed to assume that each item is the only activity or relationship the corporation has in the state, other than activities protected by Pub. L. No. 86-272.

Wyoming does not impose a corporate tax based upon income. Because the state does not impose an income tax, this report will not show any activities as creating or not creating nexus. Instead, all activities will be displayed as activities in which the state did not indicate the nexus implication.

The state has not indicated whether the following activities, by themselves, will create nexus:

Ownership/Leasing of In-State Property

- Owning raw land in the state
- Storing inventory or other goods in a public warehouse in the state for fewer than 30 days per year
- Shipping in-process inventory to an unrelated party in the state solely for processing
- Consigning goods to vendors, independent contractors, or other parties in the state
- Owning display racks in the state
- Owning tooling, molds, dies, etc., located at a manufacturing facility in the state
- Leasing (as lessor) real estate in the state to an unrelated third party
- Leasing (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in the state five or fewer times per year
- Owning or leasing automobiles provided to salespersons in the state
- Owning or leasing trucks or automobiles used by non-salespersons in the state
- Owning or leasing other machinery or equipment in the state
- Holding title to property located in the state until the contract price has been paid

- Filing a security interest on inventory sold until the contract price has been paid
- Leasing a place for company employees, directors, or officers

Unrelated Parties

- Unrelated third parties in the state providing fulfillment services (i.e., fill product orders from corporate-owned inventory)
- Unrelated third parties in the state collecting regular or delinquent accounts
- Unrelated third parties in the state investigating credit-worthiness of new customers
- Unrelated third parties in the state repossessing property one to six times a year
- Unrelated third parties in the state repairing or providing maintenance, including warranty services, one to six times per year
- Unrelated third parties in the state assisting with the "set-up" or installation of the company's products
- Unrelated third parties in the state performing repairs under standard or extended warranty
- Unrelated third parties in the state closing mortgage loans for an out-of-state financial organization
- Unrelated third parties in the state servicing mortgage and/or consumer loans for an out-of-state financial organization

Distribution and Delivery of Goods

- Shipping products into the state in returnable containers
- Delivering goods into the state (from a point outside the state) to customers in the corporation's owned or leased vehicles
- Picking up defective products or scrap materials in the state in company-owned vehicles
- Picking up raw materials in the state in company-owned vehicles
- Traveling to or through the state one to six times per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than six times, but no more than 12 times, per year in company-owned trucks, but not picking up or delivering goods in the state
- Traveling to or through the state more than 12 times per year in company-owned trucks, but not picking up or delivering goods in the state
- "Back hauling" (i.e., picking up shipments at the destination or nearby location for delivery to another point) in company-owned trucks
- Holding title to electricity flowing through a transmission wire within the state (the transmission neither originates nor terminates in the state)
- Holding title to natural gas flowing through a pipeline within the state (the natural gas neither originates nor terminates in the state)

FBA Biz appears not to have any activities that Wyoming has indicated will create nexus. However, FBA Biz should consider whether combinations of activities might create nexus. FBA Biz should also consider activities Wyoming has not indicated whether or not would create nexus.

Disclaimer: This report is based on information from Bloomberg BNA's annual Survey of State

Tax Departments, in which Bloomberg BNA asks an official from each state whether a particular activity performed within a state's borders would, by itself, be sufficient to trigger income tax nexus and reporting and payment obligations. While the responses are generally indicative of each state's policy, they should not be relied upon as legally binding policy statements.