

SO, YOU THINK YOUR CORPORATION IS NOT SUBJECT TO NEW YORK TAX? THINK AGAIN.

Smarter Way to Cross Blog Archives
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In 2014, New York State enacted sweeping reforms to its corporate tax system. For the most part, these reforms became effective for a taxpayer's first tax year beginning in 2015. The new laws include a few provisions that are of particular interest to non-US corporations.

First, let's take a quick trip down Memory Lane to establish some of the old rules. Most state governments impose a corporate income tax on those corporations actively engaged in business within the state's borders. Most states feel that international tax treaties are not binding on them, so even if a non-US corporation is not subject to US federal income tax because of a treaty provision (e.g. because the corporation may not have a permanent establishment in the US), it still may be taxed by one or more states in which it may be "doing business." For purposes of determining taxability, doing business includes owning or leasing property in the state, maintaining an office, or having employees or contractors in the state on a regular (even if infrequent) basis. But before 2015, taxability in New York required some sort of physical connection to the state.

Last year that all changed.

As part of the corporate tax reform, New York's Legislature adopted a new "economic nexus" test that could result in non-US corporations being taxed even if they never have any physical connection to the state. Under the new rule, a corporation can be taxed in New York even if it has nothing and no one in the state. Beginning in 2015, non-New York corporations (including non-US corporations) are taxable in New York if they have \$1 million or more of New York receipts. Under the new law, the source of receipts is generally determined based on the location of the customer. So, sales of at least \$1 million of goods, services and/or digital products to New York customers in any year may subject a corporation to tax in New York even if the corporation has never had any people or property in the state, and even if the customers go outside of the state to take delivery from the corporation.

Although a few other states adopted some form of economic nexus before New York, the concept has not been fully vetted by the courts. And a court might conclude that sales in New York—even sales of \$1 million or more—are not enough of a connection under the US Constitution to permit New York to exercise its taxing jurisdiction over an out-of-state corporation. But until the courts so rule, Canadian

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corporations are advised to keep a close eye on their New York sales and file in New York if receipts from those sales reaches the \$1 million threshold.

