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## **.02 Significant Limitations on State Taxation**

### **A. Overview**

The United States Constitution, federal law, treaties, and the South Carolina Constitution impose limits on the ability of South Carolina's General Assembly to impose and collect taxes. This section makes no attempt to thoroughly discuss all the constitutional, statutory, and treaty limitations which limit the authority of the South Carolina General Assembly and the Department.<sup>1</sup> This section will discuss nexus, including the *Geoffrey* case,<sup>2</sup> which establishes South Carolina's position on Due Process and Commerce Clause nexus, and South Carolina's guidelines on Public Law 86-272.<sup>3</sup>

### **B. Nexus**

Nexus is a sufficient connection between a state and a taxpayer which allows the state to subject the taxpayer to its taxing jurisdiction.

The SC Code imposes a corporate income tax on the South Carolina taxable income of corporations and other entities taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within South Carolina or having income within South Carolina, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting," "conducting," and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.<sup>4</sup> The South Carolina Supreme Court has held that this provision extends to the limits of the Constitution South Carolina's authority to tax foreign corporations.<sup>5</sup>

Recognizing that nexus is a complex concept with substantial uncertainty, the Department has exercised its authority to compromise taxes<sup>6</sup> and provided a procedure granting relief from penalties and some tax liability for companies with nexus with South Carolina that voluntarily file with the State. This procedure is designed to: (1) encourage nonfilers to come forward voluntarily and begin paying taxes without incurring penalties; and (2) allow the Department to maximize compliance with its limited audit resources.<sup>7</sup>

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<sup>1</sup>See Tax Management Multistate Portfolios 1400, 1410, 1420, and 1430 for a thorough discussion.

<sup>2</sup>*Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993) *cert. denied* 114 S. Ct. 550 (1993).

<sup>3</sup>Other Constitutional limitations are discussed in Worksheet 6.

<sup>4</sup>SC Code §12-6-530.

<sup>5</sup>*Geoffrey*.

<sup>6</sup>SC Code §12-4-320(3).

<sup>7</sup>See the discussion in Section .01 E. of this portfolio and SC Rev. Proc. #01-5.

## C. Miscellaneous Nexus Statutes

### 1. Certificate of Authority

By obtaining a certificate of authority from the South Carolina Secretary of State, a foreign corporation or a foreign limited liability company, whether or not taxed as a corporation, agrees to be subject to the jurisdiction of the Department and South Carolina courts to determine its South Carolina tax liability, including withholding and estimated taxes, together with related interest and penalties, if any. Obtaining a certificate of authority is not an admission of tax liability.<sup>8</sup>

**Comment:** The Department has never argued that merely obtaining a certificate of authority creates nexus.

### 2. Contracts with Printers

A corporation that does not otherwise have nexus with South Carolina and contracts for commercial printing in South Carolina is not subject to state income taxes, unless it engages in activities in South Carolina, other than those listed below, that exceed the protection of Public Law 86-272.<sup>9</sup>

This exemption from nexus is not lost even if: (1) the corporation owns or leases tangible or intangible property located at the South Carolina premises of the commercial printer that is used in connection with printing contracts, or (2) it sells property printed or imprinted at, and shipped or distributed from, the South Carolina premises of the commercial printer by the commercial printer. This exemption is also not lost because of activities performed pursuant or incident to a printing contract by or on behalf of the corporation by the commercial printer.<sup>10</sup>

**Comment:** Similarly, a corporation that otherwise does not have nexus with South Carolina that contracts for printing in South Carolina is not considered to have nexus for sales and use tax purposes.<sup>11</sup>

### 3. Interstate Motor Carriers

The Department considers an interstate motor carrier to have nexus if during the taxable year it: (1) owned or rented real or personal property in South Carolina, other than mobile property; or (2) traveled more than 25,000 miles in South Carolina; or (3) made more than 12

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<sup>8</sup>SC Code §§33-15-105(d) and 33-44-1002(c).

<sup>9</sup>SC Code §12-6-555. See Section .02 E. of this portfolio for a discussion of Public Law 86-272.

<sup>10</sup>SC Code §12-6-555.

<sup>11</sup>SC Code §12-36-75.

pickups or deliveries in South Carolina. The provisions of items (2) and (3) only apply to the holder of the operating authority issued by the Interstate Commerce Commission, not to the interstate motor carrier's agents.<sup>12</sup> Anything less is considered *de minimis*, and does not give rise to nexus.

## **D. Geoffrey**

### **1. Facts**

Geoffrey, Inc. (Geoffrey) is a Delaware corporation and a second tier subsidiary of Toys R Us (Toys). Geoffrey became the owner of several trademarks and symbols such as "Toys R Us," "Kids R Us," and "Geoffrey the Giraffe." In order to produce income from these symbols and trademarks, Geoffrey entered into a licensing agreement in August 1984 with Toys in which Toys was allowed to use the trademarks and symbols in return for paying Geoffrey a one percent (1%) royalty or license fee based on the sales made by Toys. The trademarks and symbols were licensed for use in all states except for Massachusetts, Pennsylvania, New Jersey, Texas and New York. The symbols are displayed in South Carolina on Toys' buildings and are used on the tags of the merchandise sold in the State as well as on advertising material distributed in the State.

Geoffrey had no officers or employees in South Carolina, no property other than property arising from the licensing transaction, if any, and has never engaged in any other activities in South Carolina.

Toys took a deduction for royalty payments made to Geoffrey. Geoffrey had not filed or paid an income tax to any state on its royalty income. It was exempt from Delaware income tax, but did file a franchise tax report with Delaware. The Department maintained that Geoffrey was subject to income tax in South Carolina because it was doing business in South Carolina, and that nexus for income tax purposes does not require physical presence.

### **2. South Carolina Supreme Court**

On July 6, 1993, the South Carolina Supreme Court affirmed a lower court's ruling requiring Geoffrey to pay South Carolina income taxes and corporate license fees. According to SC Code §12-7-230,<sup>13</sup> in order for a corporation to be taxed in South Carolina the corporation must be "transacting, conducting, doing business, or having an income within this State." The Court construed this language as extending to the limits of the US Constitution South Carolina's authority to tax foreign corporations. Then the Court held that the taxation of Geoffrey's royalty income pursuant to SC Code §12-7-230 was not prohibited by the Due Process Clause or the Commerce Clause.

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<sup>12</sup>See SC Code §12-6-4920 which provides that a motor carrier that meets any of these conditions must file an income tax return and pay the tax.

<sup>13</sup>Since recodified as SC Code §12-6-530.

## a. Due Process

The Court cited *Quill Corp. v. North Dakota*<sup>14</sup> (*Quill*), for its holding reaffirming that the Due Process Clause requires (1) “some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,” and (2) that the “income attributed to the state for tax purposes be rationally related to values connected with the taxing State.” Citing *Quill*, the South Carolina Supreme Court held that the nexus requirement (first prong) of the Due Process Clause can be satisfied even where the corporation has no physical presence in the taxing state if the corporation has purposefully directed its activity at the state’s economic forum.

The Court found that Geoffrey was not unwillingly brought into contact with South Carolina through the unilateral activity of an independent party. It found that Geoffrey contemplated and purposefully sought the benefit of economic contact with South Carolina. “Geoffrey has been aware of, consented to, and benefited from Toys R Us’ use of Geoffrey’s intangibles in South Carolina. Moreover, Geoffrey had the ability to control its contact with South Carolina by prohibiting the use of its intangibles here as it did with other states.”<sup>15</sup> The Court concluded that Geoffrey purposefully directed its activities toward South Carolina, and therefore, the Due Process Clause was satisfied. The Court found significant that:

1. “... licensing intangibles for use in South Carolina and receiving income in exchange for their use ...” was purposeful activity.<sup>16</sup>
2. Geoffrey designed an agreement that assured its intangibles would be used in South Carolina. At the time the license agreement was executed, it was contemplated that the symbols would be used in South Carolina since the agreement prohibited the use of the symbols in only five states.
3. Geoffrey, the party deriving the income, had the ability to control the use of its intangibles in South Carolina.

In addition, the Court found that the nexus requirement (first prong) of the Due Process Clause test was also satisfied by the presence of Geoffrey’s intangible property in South Carolina. The sales in South Carolina created an account receivable for Geoffrey. In addition, Geoffrey had a franchise (license of the trademarks and trade names) in South Carolina.

The Court held that the second prong of the Due Process test was satisfied by South Carolina conferring benefits upon Geoffrey to which the challenged tax is rationally related. The Court stated that the real source of Geoffrey’s income is not a paper agreement but South Carolina’s Toys R Us customers, and that Geoffrey received protection, benefits and opportunities from South Carolina which permitted it to earn income in South Carolina.

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<sup>14</sup>112 S.Ct. 1904 (1992).

<sup>15</sup>313 S.C. at 19; 437 S.E.2d at 16.

<sup>16</sup>*Geoffrey*, 437 S.E.2d at 16.

## **b. Commerce Clause**

In accordance with *Complete Auto Transit, Inc. v. Brady*,<sup>17</sup> a tax will survive challenge under the Commerce Clause as long as it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state.

The Court found that the tax was valid under the *Complete Auto* tests. It found that *Quill's* requirement that a person have physical presence in a state before that state could subject the person to tax without violating the Commerce Clause was limited to sales and use taxes, and therefore, had no applicability to this case. It also held that the presence of intangible property is sufficient to establish nexus. It reasoned that a state may tax that part of the income of a nonresident that is fairly attributable either to property located in the state or to events or transactions which are within the protection of the state and entitled to other benefits which the state confers, at least if the taxpayer regularly exploits the markets of the state. The Court held that by licensing intangibles for use in South Carolina and deriving income from their use in South Carolina, Geoffrey had substantial nexus with South Carolina.

## **3. Some Implications of *Geoffrey* — Examples**

The United States Supreme Court denied the taxpayer's petition for a writ of certiorari to review the judgment of the South Carolina Supreme Court, leaving the issues in *Geoffrey* as perhaps the most significant and sharply divided controversy in state taxation today.

In SC Rev. Rul. #98-3, the Department addressed some of the common questions that have arisen relating to taxpayers concerned about the implication of *Geoffrey*. Specifically, it provides examples that show activities or relationships which will not, by themselves, create income tax nexus with South Carolina. Since developments in this area are constantly taking place, the Department stated that any change in its position illustrated by the examples will be prospective upon announcement.

Each example described below is based solely upon the facts indicated and assumes the person in the example has no other nexus creating activity in South Carolina. Each example refers only to income tax nexus.

### **a. Authors**

A New York best selling author's books are sold nationwide, including in South Carolina. The author does not have nexus with South Carolina just because his books are sold in South Carolina.

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<sup>17</sup>112 S.Ct. 1904 (1992).

## **b. Celebrities**

1. A Chicago basketball player's picture is on cereal boxes, T-shirts, and television ads in South Carolina. The celebrity does not have nexus with South Carolina.
2. A Tennessee country singer's music is played on South Carolina radio stations and a California actor's movies are played in South Carolina theatre. The singer and the actor do not have nexus with South Carolina. However, a singer who comes to South Carolina for a live performance has income tax nexus with South Carolina and is subject to tax on the earnings from the performance.

## **c. Subsidiary**

A North Carolina company that does not do any business in South Carolina owns a subsidiary that is incorporated in and transacts business in South Carolina. The North Carolina company does not have nexus with South Carolina.

## **d. Bank Accounts**

A North Carolina company does not conduct business in South Carolina. Its only connection with South Carolina is the maintenance of bank accounts in South Carolina. The company does not have nexus with South Carolina.

## **e. Debts**

1. A New York company does not conduct business in South Carolina. Its only activity in South Carolina is negotiating and obtaining bank loans from a South Carolina bank. Officers of the New York company visit South Carolina for one or two days twice a year to discuss business with the South Carolina bank. The company does not have nexus with South Carolina.
2. A North Carolina finance company does business in North Carolina and Tennessee. It does not solicit business from South Carolina. The company makes a personal loan to a North Carolina resident who moves to South Carolina the following year. The finance company does not have nexus with South Carolina. The result would not change if the North Carolina resident who moved to South Carolina had his personal car secured by the North Carolina loan. Further, the finance company does not have nexus with South Carolina if the South Carolina borrower contacts the North Carolina finance company to renew the loan.
3. A North Carolina finance company does business only in North Carolina. It does not solicit business from South Carolina. A South Carolina resident travels to North Carolina and asks the finance company for a personal loan. The finance company approves the loan in North Carolina and sends the check to the South Carolina resident. The finance company does not have nexus with South Carolina.

4. A New York hotel advertises in South Carolina. A South Carolina resident incurs a large bill at the hotel. The hotel agrees that the debt can be paid in 12 monthly installments. The hotel does not have nexus with South Carolina.
5. A New York company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States. A few of the debtors and some of the property securing the loans are located in South Carolina. The passive investors do not have nexus with South Carolina.

#### **f. Sales of Tangible Personal Property, Including Internet Sales**

Each example described in this section is based upon the assumption that the only activity in which nexus is a question is the activity described in the example; any other activity the taxpayer has in South Carolina is protected under Public Law 86-272.<sup>18</sup>

1. A California retailer makes sales to South Carolina customers by means of an 800 telephone order number. The company advertises in South Carolina. The company does not have nexus with South Carolina.
2. An Ohio company has a website server in North Carolina. The website can be accessed in South Carolina through a South Carolina or an out of state third party internet service provider. A website which is accessible in, but not located in, South Carolina is viewed as the equivalent of an 800 telephone number. Soliciting through electronic mail is viewed as the equivalent of soliciting by letter. The Ohio company does not have nexus with South Carolina.
3. A New York manufacturing company is selling tangible personal property with a trademark or trade name it owns on the product, such as a sport drink, to South Carolina retailers. The trademark or trade name is used by retailers in advertising in South Carolina. The only business activity of the New York company within South Carolina consists of the solicitation of orders for sales of tangible personal property. The orders are sent outside of South Carolina for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside South Carolina. The South Carolina sales by the New York company create accounts receivable in South Carolina. Based upon Public Law 86-272, the activities of the New York company in South Carolina described in this example do not create nexus with South Carolina. *Geoffrey* does not remove the company's protection under Public Law 86-272. Note that Public Law 86-272 does not protect a company which only licenses trademarks and trade names.

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<sup>18</sup>Public Law 86-272, as codified at 15 U.S.C. Section 381, places certain limits on the power of a state to impose a tax on the income derived from within its borders. See Section .02 E. 1. of this portfolio for a discussion of Public Law 86-272. It is reproduced in Worksheet 12.

4. A Georgia company is selling tangible personal property to retailers in South Carolina. The only business activity of the Georgia company within South Carolina consists of the solicitation of orders for sales of tangible personal property. The orders are sent outside of South Carolina for acceptance or rejection, and, if accepted, are delivered from a point outside South Carolina in the company's own delivery truck. Based upon Public Law 86-272 and SC Rev. Rul. #97-15, the activities of the Georgia company do not create nexus with South Carolina.
5. A Georgia company does business in Georgia and Tennessee. It does not conduct business in South Carolina. A salesperson enters South Carolina on his own initiative and makes a single sale. This is done without the knowledge of the company. The sale is approved for purposes of goodwill and will not happen again in South Carolina. The company does not have nexus with South Carolina.

#### **g. Employee Activities**

1. A North Carolina company sends various employees (*e.g.*, legal staff and witnesses) to South Carolina to assist its independent legal counsel defend a lawsuit. The employees are temporarily present in South Carolina. Use of the South Carolina court system does not give the North Carolina company nexus with South Carolina. The South Carolina law firm providing counsel is taxable in South Carolina.
2. An Ohio manufacturer does not conduct business in South Carolina. The company sends its employees to South Carolina to purchase raw materials and inventory. The company does not have nexus in South Carolina.

#### **h. Printers**

A Kentucky retailer's only South Carolina activities are the solicitation of orders and activities ancillary to solicitation. The retailer contracted with a commercial printer located in South Carolina to print advertisements. The retailer leases tangible personal property located at the South Carolina printer for use in connection with the printing contract. The printer, once the work is complete, ships the printed material to a Tennessee company for addressing and mailing. Pursuant to SC Code §12-6-555 the retailer does not have nexus with South Carolina.<sup>19</sup>

#### **i. Personal Property**

A Kentucky company sends its business records to South Carolina temporarily for use by its independent auditors. The company does not have nexus with South Carolina.

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<sup>19</sup>See the discussion of printers in Section .02 C. 2. of this portfolio.

## **j. Seminars, Meetings, and Other Visits**

1. Employees of a New York company attend an annual training seminar, convention, trade show, retreat, or board of directors meeting in South Carolina for 14 or less consecutive days each year. During their stay, employees stay in contact with the New York office and conduct business over the telephone or fax machines in South Carolina. Since the conduct of business over the phone and fax in South Carolina is not the purpose of the visit in South Carolina and is for a limited time, it is considered incidental (*i.e., de minimis*), and the company does not have nexus with South Carolina. This result would not change if the employees of the New York company were in South Carolina on a company yacht docked in Charleston, South Carolina, while the employees attended seminars and social functions, or if the employees flew into South Carolina on a company plane.
2. An Ohio company does not conduct business in South Carolina. Each year the highest performing sales person is given an expense paid week vacation to Myrtle Beach, South Carolina. The company does not have nexus with South Carolina.

## **E. Public Law 86-272**

### **1. Wrigley**

Public Law 86-272<sup>20</sup> limits the power of South Carolina to impose net income taxes on income that out-of-state companies derive from the sale of tangible personal property when the only business activity within South Carolina is the solicitation of orders by such company for sales of tangible personal property, which orders are sent outside South Carolina for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside South Carolina.

*Wisconsin Department of Revenue v. Wrigley*<sup>21</sup> held that “solicitation of orders” extends beyond the sole act of inviting an order and includes the entire process associated with the invitation (*e.g.*, a company car or a stock of free samples provided to a salesman). “Solicitation of orders” does not include activities apart from the invitation of orders that the company has reason to do anyway (*e.g.*, repair or service activities by sales personnel). Further, the Court determined that the maintenance of an office in a taxing state was not protected by Public Law 86-272 under any circumstances.

The Court also examined whether *de minimis* or insignificant activity apart from solicitation of orders by the company within the taxing state resulted in the loss of immunity from taxation. With respect to this issue, the Court held:

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<sup>20</sup>15 USC §381. Public Law 86-272 places certain limits on the power of a state to impose a tax on the income derived from within its borders. It is reproduced in Worksheet 12.

<sup>21</sup>505 U.S. 214; 112 S.Ct. 2441 (1992).

...whether in-state activity other than “solicitation of orders” is sufficiently *de minimis* to avoid loss of the tax immunity conferred by 381 [Public Law 86-272] depends upon whether that activity establishes a nontrivial additional connection with the taxing State.

...We need not decide whether any of the nonimmune activities was *de minimis* in isolation; taken together, they clearly are not....<sup>22</sup>

Therefore, if a company engages in business activity other than solicitation of orders, the activity serves an independent business function other than the solicitation of orders, and the activity is not trivial, the protection of Public Law 86-272 is lost. Further, any business activities, other than the solicitation of orders, are viewed in the aggregate, rather than separately.

## **2. South Carolina’s Interpretation of Public Law 86-272**

### **a. Overview**

The Department published guidelines in SC Rev. Rul. #97-15 to assist in determining whether Public Law 86-272 protects certain activities from South Carolina taxation. These guidelines were based upon *Wrigley*<sup>23</sup> and the Multistate Tax Commission’s (MTC’s) 1994 guidelines,<sup>24</sup> but vary somewhat from MTC’s guidelines.

Only the solicitation to sell tangible personal property is afforded immunity under Public Law 86-272. The leasing, renting, licensing or other disposition of tangible personal property, or transactions involving real property or intangibles, such as franchises, patents, copyrights, trademarks, service marks, and the like, are not protected activities under Public Law 86-272. The selling or providing of services is also not protected.

The sale or delivery, and the solicitation for the sale or delivery, of any type of service that is not either: (1) ancillary to solicitation or (2) otherwise set forth as a protected activity in SC Rev. Rul. #97-15 is also not protected under Public Law 86-272.

### **b. Definitions**

For an in-state activity to be a protected activity under Public Law 86-272, it must be limited solely to solicitation (except for *de minimis* activities described in this section and certain activities conducted by independent contractors described below.)

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<sup>22</sup>505 U.S. at 235; 112 S.Ct. at 2460.

<sup>23</sup>*Wisconsin Department of Revenue v. Wrigley Co.*, 505 U.S. 214 (1992).

<sup>24</sup>The Multistate Tax Commission is an agency of state governments established to help make state tax systems fair, effective and efficient as they apply to interstate and international commerce, and to protect state fiscal authority. MTC’s guidelines are available through its Department at [www.mtc.gov](http://www.mtc.gov). South Carolina is an associate member of the MTC and a member of its National Nexus Program.

The following terms are defined:<sup>25</sup>

- (i) **Solicitation** means (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.
- (ii) **Ancillary activities** are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders. Activities that a seller would engage in apart from soliciting orders are not considered as ancillary to the solicitation of orders. The mere assignment of activities to sales personnel does not make such activities ancillary to solicitation of orders. Additionally, activities that seek to promote sales are not necessarily ancillary, because Public Law 86-272 does not protect activities that facilitate sales; it only protects ancillary activities that facilitate the request for an order. The conducting of activities not falling within the foregoing definition of solicitation will cause a company to lose its protection from a net income tax afforded by Public Law 86-272, unless the disqualifying activities, taken together, are *de minimis* or are otherwise permitted.
- (iii) **De minimis activities** are those that, when taken together, establish only a trivial connection with South Carolina. An activity conducted within a South Carolina on a regular or systematic basis or pursuant to a company policy (whether such policy is in writing or not) will not normally be considered trivial. Whether or not an activity consists of a trivial or nontrivial connection with the state is to be measured on both a qualitative and quantitative basis. If the activity either qualitatively or quantitatively creates a nontrivial connection with South Carolina, then such activity exceeds the protection of Public Law 86-272. Establishing that the disqualifying activities only account for a relatively small part of the business conducted within South Carolina is not determinative of whether a *de minimis* level of activity exists. The relative economic importance of the disqualifying in-state activities, as compared to the protected activities, does not determine whether the conduct of the disqualifying activities within South Carolina is inconsistent with the protection afforded by Public Law 86-272.

### c. Examples of Unprotected Activities in SC Rev. Rul. #97-15

The following activities within South Carolina (assuming they are not, combined with other unprotected activities, *de minimis*) are not considered solicitation of orders or ancillary thereto or otherwise protected under Public Law 86-272 and will cause otherwise protected sales to lose their protection under the Public Law:

1. Making repairs or providing maintenance or service to the property sold or to be sold.
2. Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.

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<sup>25</sup>SC Rev. Rul. #97-15. See *Wrigley*.

3. Investigating credit worthiness.
4. Installation or supervision of installation at or after shipment or delivery.
5. Conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation.
6. Providing any kind of technical assistance or service including, but not limited to, engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders.
7. Investigating, handling, or otherwise assisting in resolving customer complaints, other than facilitating communication between the company and the customer, when the purpose of such mediation is to ingratiate the sales personnel with the customer.
8. Approving or accepting orders.
9. Repossessing property.
10. Securing deposits on sales.
11. Picking up, replacing, giving credit for, or purchasing damaged, outdated, or returned property.
12. Hiring, training, or supervising personnel, other than personnel involved only in solicitation.
13. Using agency stock checks or any other process or means by which sales are made within South Carolina by sales personnel.
14. Maintaining a sample or display room in excess of two weeks (14 days) at any one location within South Carolina during the tax year.
15. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value.
16. Owning, leasing, using, or maintaining any of the following facilities or property within South Carolina:
  - a. Repair shop.
  - b. Parts department.
  - c. Any kind of office other than an in-home office as described as permitted under unprotected activity 17 and protected activity 2.

- d. Warehouse.
  - e. Meeting place for directors, officers, or employees, except when not done on a regular or systematic basis during the tax year.
  - f. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation.
  - g. Telephone answering service that is publicly attributed to the company or the agent(s) of the company in their representative status.
  - h. Mobile stores, *i.e.*, vehicles with drivers who are sales personnel making sales from the vehicles.
  - i. Real property or fixtures to real property of any kind.
17. Maintaining, by any employee or other representative, an office or place of business of any kind (other than an in-home office located within the residence of the employee or representative that (a) is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity, and (b) so long as the use of such office is limited to soliciting and receiving orders from customers; for transmitting such orders outside South Carolina for acceptance or rejection by the company; or for such other activities that are protected under Public Law 86-272 or under the protected activities of SC Rev. Rul. 97-15).

A telephone listing or other public listing within South Carolina for the company or for an employee or representative of the company in such capacity or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within South Carolina will normally be determined as the company maintaining within South Carolina an office or place of business attributable to the company or to its employee or representative in a representative capacity. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company is not, by itself, considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

The maintenance of any office or other place of business in South Carolina that does not strictly qualify as an "in home" office as described above will, by itself, cause the loss of protection. For the purpose of this activity, it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining such office.

18. Entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state.
19. Conducting any activity not listed below under “Protected Activities” which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

**d. Examples of Protected Activities in SC Rev. Rul. #97-15**

The following activities within South Carolina will not cause the loss of protection for otherwise protected sales:

1. Soliciting orders for sales by any type of advertising.
2. Soliciting of orders by a South Carolina resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an “in-home” office as described above in unprotected activity 17.
3. Carrying samples and promotional materials only for display or for distribution without charge or other consideration.
4. Furnishing and setting up display racks and advising customers on the display of the company’s products without charge or other consideration.
5. Providing automobiles to sales personnel for their use in conducting protected activities.
6. Passing orders, inquiries, and complaints on to the home office.
7. Missionary sales activities; *i.e.*, the solicitation of indirect customers for the company’s goods. For example, a manufacturer’s solicitation of retailers to buy the manufacturer’s goods from the manufacturer’s wholesale customers would be protected if such solicitation activities are otherwise immune.
8. Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order.
9. Checking of customers’ inventories without charge (for reorder, but not for other purposes such as quality control).
10. Maintaining a sample or display room for two weeks (14 days) or less at any one location within South Carolina during the tax year.

11. Recruiting, training, or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel.
12. Facilitating communication between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer.
13. Owning, leasing, using, or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer, and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted under the protected activities section of SC Rev. Rul. 97-15 does not, by itself, remove the protection.
14. Shipping or delivering goods to a purchaser in South Carolina from a point outside South Carolina by any means of transportation, including private carrier, irrespective of whether a delivery fee is charged.

**e. Examples of Activities by Independent Contractors in SC Rev. Rul. #97-15**

Public Law 86-272 affords immunity from taxation to certain activities within a state if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives. Independent contractors may engage in the following limited activities within South Carolina without the company's loss of immunity:

1. Soliciting sales.
2. Making sales.
3. Maintaining an office.

Sales representatives who represent a single principal are not considered to be independent contractors. Such representatives are subject to the same limitations as employees of the taxpayer.

**Comment:** Some state tax personnel take the position that independent contractors (as defined in Public Law 86-272), like employees, cannot keep an inventory of the items for sale in the state. The authors are of the view that it is permissible for an independent contractor to keep an inventory of items for sale since they are entitled to make sales and keeping the inventory would be ancillary to making sales. This inventory cannot, however, be used to fill orders obtained by employees or representatives.

### **3. *Heublein, Inc. v. South Carolina Tax Commission***<sup>26</sup>

Heublein brought suit to recover income and license taxes assessed by South Carolina on Heublein's sale of alcoholic beverages within South Carolina. Heublein had one employee in South Carolina that solicited orders for Heublein and otherwise conducted activities that would allow Heublein to claim the protection of Public Law 86-272 except that when Heublein shipped goods to South Carolina they were shipped in care of its representative at the premises of a liquor wholesaler. This arrangement, which did not serve Heublein's business interests, was adopted to conform to the requirements of the South Carolina Alcoholic Beverage Control Act. Under that Act, producers must have a resident representative who has no direct or indirect interest in a local liquor business. Shipments of liquor into the state may be made only to the producer in care of its representative.

The United States Supreme Court held South Carolina may, pursuant to an otherwise valid regulatory scheme, compel Heublein to undertake activities that take it beyond the protection of Public Law 86-272, and therefore South Carolina could assess income and license taxes on Heublein's sales of alcoholic beverages in South Carolina. The Court also held that the statute did not violate the Commerce Clause because the Twenty-first Amendment to the United States Constitution permitted states to restrict the importation of intoxicants destined for use, distribution, or consumption within its borders.

### **4. Examples of Income Tax Nexus Creating Activities in SC Rev. Rul. #03-4**<sup>27</sup>

SC Rev. Rul. #03-4 addresses types of business activities or relationships that, by themselves, may or may not create corporate income tax nexus. The following categories of nexus creating activities are discussed: (a) general activities; (b) property and other investments in South Carolina; (c) sales and other related activities in South Carolina; (d) employee activities; (e) activities of unrelated parties; (f) distribution and delivery; (g) financial activities/transactions; and (h) transactions with South Carolina printers. Note: Activities that create nexus for income tax purposes differ somewhat from those that create nexus for other tax purposes.

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<sup>26</sup>409 US 275 (1972).

<sup>27</sup>This advisory opinion does not address the imposition of any license fee, filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce. Note: Since developments in this area are constantly taking place, any response in SC Rev. Rul. #03-4 is subject to change due to a future statute, court decision, or advisory opinion. Any change in South Carolina's position will be prospective.

**a. General Activities**

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 1. The corporation is licensed, registered, authorized, or certified to conduct business in South Carolina.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 2. The corporation makes sales to customers in South Carolina by means of an 800 telephone order number and advertises in South Carolina.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. The corporation is listed in the local telephone books of cities in South Carolina.<br>Note: Assuming phone is not answered in South Carolina.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 4. The corporation uses local phone numbers in South Carolina, which are forwarded to the corporation's headquarters located in another state.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 5. The corporation has a Web site located on a server in South Carolina.<br>Note: Assuming server is a common carrier, and the corporation does not own or lease the server.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 6. The corporation reimburses its in-state salespersons for the costs of maintaining an in-home office.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 7. Does South Carolina have a de minimis standard?<br>Note: South Carolina has a de minimis standard and follows the principles defined by the courts. See <i>Wisconsin Department of Revenue v. William Wrigley, Jr., Co.</i> , 112 S. Ct. 2447 (1992), SC Revenue Ruling #97-15, SC Private Letter Ruling #94-8, and SC Code Section 12-6-4920. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 8. Does South Carolina conform to the Multistate Tax Commission's Nexus Bulletin 95-1 "Computer Company's Provision of In-State Repair Services Creates Nexus?"<br>Note: South Carolina has not adopted MTC's Nexus Bulletin, however, see Questions E. 5. and E. 7.  | <input type="checkbox"/>            | <input type="checkbox"/>            |

**b. Property and Other Investments in South Carolina**

- |   | YES                                 | NO                       |
|---|-------------------------------------|--------------------------|
| 1. The corporation owns raw land.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year.<br>Note: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under SC Code Section 12-6-555. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. The corporation ships in-process inventory to an unrelated party in South Carolina solely for processing.<br>Note: Except for processing in connection with a printing contract under SC Code Section 12-6-555.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- |  | YES                                 | NO                                  |
|--|-------------------------------------|-------------------------------------|
| 4. The corporation consigns goods to vendors, independent contractors, or other parties.<br>Note: Except for independent contractors under Public Law 86-272.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 5. The corporation owns display racks.<br>Note: Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity under SC Revenue Ruling #97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 6. The corporation owns tooling, molds, dies, etc., located at a manufacturing facility in South Carolina.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 7. The corporation leases (as lessor) real estate in the state to an unrelated third party.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 8. The corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in South Carolina five or fewer times per year.<br>Note: Assuming it is not de minimis. See SC Private Letter Ruling #94-8 where it was concluded that the leasing of airplanes landing in SC three times per year was de minimis.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 9. The corporation owns or leases automobiles provided to salespersons.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 10. The corporation owns or leases trucks or automobiles used by non-salespersons.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 11. The corporation owns or leases other machinery or equipment.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 12. The corporation owns an interest in an investment partnership or LLC that has operations in South Carolina.<br>Note: Although the income may not be taxed in SC. See SC Commission Decision #92-58 and SC Private Letter Ruling #95-2.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 13. The corporation owns a general interest in a partnership that is doing business in South Carolina.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 14. The corporation owns a limited interest in a partnership that is doing business in South Carolina.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 15. The corporation owns an interest in an LLC that is doing business in South Carolina and is involved in managing the LLC.<br>Note: Assuming the LLC is taxed as a partnership or S Corporation.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 16. The corporation owns an interest in an LLC that is doing business in South Carolina, but is not the managing member or otherwise involved in managing the LLC.<br>Note: Assuming the LLC is taxed as a partnership or S Corporation.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**c. Sales and Other Income-Related Activities in South Carolina**

- |  | YES                                 | NO                                  |
|--|-------------------------------------|-------------------------------------|
| 1. The corporation holds title to property located in South Carolina until the contract price has been paid.<br>Note: Assuming ownership has not passed and that holding title does not serve merely as a security interest.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 2. The corporation files a security interest on inventory sold until the contract price has been paid.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. The corporation licenses trademarks or trade names to related entities with locations in South Carolina.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 4. The corporation licenses trademarks or trade names to unrelated entities with locations in South Carolina.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 5. The corporation sells/licenses franchises (such as fast-food franchises) to residents of South Carolina.<br>Note: Assuming this does not mean the sale of an entire business, <i>e.g.</i> , not an outright sale of a restaurant and not a sale of all of franchisor's interest in the franchise. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 6. The corporation licenses canned software to consumers in South Carolina.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 7. The corporation provides six or fewer days of consulting services in South Carolina during the year.<br>Note: Unless de minimis.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**d. Employee Activities**

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 1. Employees, while in South Carolina, accept and approve customer orders.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 2. Employees, while in South Carolina, negotiate prices, subject to approval outside South Carolina.              | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. Employees, while in South Carolina, investigate credit-worthiness of customers.                                | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 4. Employees, while in South Carolina, secure or accept deposits on sales.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 5. Employees, while in South Carolina, handle credit disputes.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 6. Employees, while in South Carolina, collect delinquent accounts.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 7. Employees, while in South Carolina, repossess property.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 8. Employees, while in South Carolina, regularly perform installation, repair, maintenance, or warranty services. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

	YES	NO
9. Employees, while in South Carolina, perform installation, repair, or warranty services four or fewer times per year. Note: Unless de minimis.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Employees, while in South Carolina, set up promotional display of products (e.g., end caps, etc.) and inspect inventory. Note: No response. The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.	<input type="checkbox"/>	<input type="checkbox"/>
11. Employees, while in South Carolina, supervise or inspect installation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Employees, while in South Carolina, conduct training courses, seminars or lectures two times per year. Note: Unless sales training.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Employees, while in South Carolina, provide engineering or design functions related to customized products.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Employees, while in South Carolina, handle customer complaints. Note: Facilitating communication between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer, however, is a protected activity. See SC Revenue Ruling #97-15.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Employees, while in South Carolina, pick up defective merchandise.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Employees, while in South Carolina, pick up or replace damaged or returned property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Employees, while in South Carolina, provide shipping information and coordinate deliveries.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Employees, while in South Carolina, attend trade shows or maintain sample/display rooms for 14 or fewer days per year.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
19. Employees, while in South Carolina, maintain a two-month supply of free samples.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
20. Employees, while in South Carolina, check customers' inventories for reorder.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
21. Employees, while in South Carolina, telecommute from their homes located in South Carolina (assume that there are six or fewer such employees in South Carolina and all of these employees perform nonsolicitation activities.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22. Employees, while in South Carolina, assist the corporation defend a lawsuit (e.g., legal staff and witnesses) while in South Carolina for 30 or fewer days. Note: See SC Revenue Ruling #98-3 where it concluded that the use of the SC court system by an out of state company sending various employees to SC to assist its independent legal counsel defend a lawsuit does not give the out of state company nexus with SC. The law firm providing counsel is taxable in SC.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 23. Employees, while in South Carolina, purchase raw materials and inventory while in South Carolina for 20 or fewer days.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 24. Employees, while in South Carolina, attend seminars.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 25. Employees, while in South Carolina, attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for 14 or fewer consecutive days each year (assume that during their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone or fax machines in South Carolina.) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 26. Employees, while in South Carolina, fly into South Carolina on a company plane to attend a seminar.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 27. Employees, while in South Carolina, fly into South Carolina on a company plane to attend sports events at least four times, but fewer than 10 times per year.<br>Note: Assuming the employees are attending as spectators.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 28. Employees, while in South Carolina, attend seminars or social functions while staying on a company yacht docked in waters in South Carolina for 14 or fewer days.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 29. An employee, while in South Carolina, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was de minimis.)   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 30. An employee, while in South Carolina, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was not de minimis.)   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 31. An employee, while in South Carolina, solicits sales of services in South Carolina six or fewer days per year.<br>Note: Assuming not de minimis.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**e. Activities of Unrelated Parties**

- |  | YES                                 | NO                       |
|--|-------------------------------------|--------------------------|
| 1. Unrelated third parties located in South Carolina provide fulfillment services ( <i>i.e.</i> , fill product orders from corporate-owned inventory.)<br>Note: No Response. Depends upon facts that have not been provided. | <input type="checkbox"/>            | <input type="checkbox"/> |
| 2. Unrelated third parties located in South Carolina collect regular or delinquent accounts.<br>Note: Assuming the collection is being done on behalf of the out of state company.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Unrelated third parties located in South Carolina investigate credit-worthiness of new customers.<br>Note: Assuming the investigation is done on behalf of the out of state company.                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Unrelated third parties located in South Carolina repossess property six or fewer times a year.<br>Note: If not de minimis.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- |   | YES                                 | NO                       |
|---|-------------------------------------|--------------------------|
| 5. Unrelated third parties located in South Carolina repair or provide maintenance, including warranty services, six or fewer times per year.<br>Note: If not de minimis and if conducted on behalf of the out of state company. Generally, services will be considered to be conducted on behalf of the out of state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Unrelated third parties located in South Carolina assist with the “set-up” or installation of the company’s products.<br>Note: See Question E. 5. note.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Unrelated third parties located in South Carolina perform repairs under standard or extended warranty.<br>Note: See Question E. 5. note.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. Unrelated third parties located in South Carolina close mortgage loans for an out-of-state financial organization.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. Unrelated third parties located in South Carolina service mortgage and/or consumer loans for an out-of-state financial organization.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**f. Distribution and Delivery**

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 1. The corporation ships products into South Carolina in returnable containers.<br>Note: Assuming the corporation asks for their return.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 2. The corporation delivers goods into South Carolina (from a point outside South Carolina) to customers in the corporation’s owned or leased vehicles.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. The corporation picks up defective products or scrap materials in South Carolina in taxpayer-owned vehicles.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 4. The corporation picks up raw materials in South Carolina in taxpayer-owned vehicles.<br>Note: Assuming the pickup is not a backhaul; see Question F. 8.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 5. The corporation travels to or through South Carolina no more than six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina.<br>Note: See SC Code Section 12-6-4920.                          | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 6. The corporation travels to or through South Carolina more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina.<br>Note: See SC Code Section 12-6-4920. | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 7. The corporation travels to or through South Carolina more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina.<br>Note: See SC Code Section 12-6-4920.                              | <input type="checkbox"/>            | <input type="checkbox"/>            |

- |  | YES                                 | NO                                  |
|--|-------------------------------------|-------------------------------------|
| 8. The corporation “back hauls” ( <i>i.e.</i> , pick up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 9. The corporation holds title to electricity flowing through a transmission wire within South Carolina (the transmission neither originates nor terminates in South Carolina.)<br>Note: Assuming the corporation does not own or lease the transmission wire. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 10. The corporation holds title to natural gas flowing through a pipeline within South Carolina (the natural gas neither originates nor terminates in South Carolina.)<br>Note: Assuming the corporation does not own or lease the pipeline.                   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

**g. Financial Activities/Transactions**

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 1. The corporation maintains a bank account at a bank located in South Carolina.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 2. The corporation negotiates and obtains bank loans from a bank located in South Carolina (assume officers of the corporation visit the bank at least twice a year to discuss business.)   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. The corporation makes loans secured by real estate located in South Carolina.<br>Note: No response, depends on facts that are not provided.  | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 4. The corporation makes personal loans secured by tangible property located in South Carolina.<br>Note: No response, depends on facts that are not provided. SC Revenue Ruling #98-3 provides an example where a NC finance company does business in NC and TN. The company makes a personal loan to a NC resident who moves to SC the following year. The finance company does not have nexus with SC. The result would not change if the NC resident who moved to SC had his personal car secured by the NC loan. Further, the finance company does not have nexus with SC if the SC borrower contacts the NC finance company to renew the loan. | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 5. The corporation issues credit cards to residents of South Carolina.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 6. The corporation purchases, via the secondary market, loans secured by real estate located in South Carolina.<br>Note: No response, depends on facts that are not provided. SC Revenue Ruling #98-3 provides an example where a NY company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the US. A few of the debtors and some of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser “services” the loans in SC, there may be nexus depending on the facts and circumstances.                       | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 7. The corporation purchases, via the secondary market, credit account balances of residents of South Carolina.<br>Note: No response. See Question G. 6. note.  | <input type="checkbox"/>            | <input type="checkbox"/>            |

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 8. The corporation makes personal loans to 20 or more residents of South Carolina who traveled across the state-border to obtain the loans.<br>Note: No response, depends on facts that are not provided.   | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 9. The corporation makes personal loans to 20 or more out-of-state residents who over a number of years subsequently move to South Carolina.<br>Note: See SC Revenue Ruling #98-3 debt examples.  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 10. The corporation makes automobile loans to 20 or more out of state residents who over a number of years subsequently move to South Carolina.<br>Note: See SC Revenue Ruling #98-3 debt examples.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 11. The corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States (assume a few of the debtors and some of the property securing the loans are located in South Carolina.)<br>Note: See SC Revenue Ruling #98-3 debt examples. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 12. The corporation forecloses on one parcel of real estate located in South Carolina.<br>Note: No response, depends on facts that are not provided.  | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 13. The corporation forecloses on several parcels of real estate located in South Carolina.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**h. Transactions with South Carolina Printers**

- |   | YES                      | NO                                  |
|---|--------------------------|-------------------------------------|
| 1. The corporation leases tangible personal property located at a printer in South Carolina for use in connection with a printing contract (assume that once the work is complete, the printer ships the printed material out of South Carolina for addressing and mailing.)<br>Note: See SC Code Section 12-6-555. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The corporation owns raw materials at an in-state printer.<br>Note: See SC Code Section 12-6-555.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The corporation visits in-state printers for quality control purposes six or fewer times per year.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |