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Subject: Economic/Affiliate Nexus
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To Our Clients and Friends:

Economic nexus and/or nexus via an affiliate operating in the state continues to be a frequently litigated topic. Under these theories, a corporation with no physical presence in a taxing state can still be subject to tax if the corporation has purposefully directed its activity at the state's economic forum (generally through affiliated entities). Attached for your information is a recent decision involving economic/affiliate nexus that illustrates the current state tax environment.

In Geoffrey, Inc. v. Commissioner of Revenue, Massachusetts Appellate Tax Board, No. C271816, July 24, 2007, an out-of-state holding company with no physical presence in Massachusetts, that licensed the use of trademarks, trade names, and service marks to stores that used such intangibles in Massachusetts, was subject to Massachusetts corporate excise tax.

The court held that the constitutional physical presence requirement applicable to sales and use taxes was not applicable to income tax. The court further held that the imposition of the Massachusetts corporate excise tax did not violate the substantial nexus requirement of the Commerce Clause of the United States Constitution. In this regard, the economic presence in Massachusetts of the holding company (which derived more than \$33 million in royalties from the Massachusetts consumer marketplace during the years at issue) was deemed sufficient for substantial nexus purposes. Finally, the court upheld apportionment of the holding company's royalty income to Massachusetts based on a sales factor consisting of the ratio of the company's royalty income from Massachusetts retail operations to royalty and interest income from all sources.

If you have any questions regarding the within, or any other state and local tax matters, please do not hesitate to contact me.

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