

APPENDIX A

States That Have Adopted “Economic Presence” Laws That Would Expressly Authorize The Imposition Of Sales Tax Liability Against Retailers That Lack A Physical Presence On A Retroactive Basis (7):¹

Alabama (Dep’t of Revenue Rule 810-6-2-.90.03); **Connecticut** (*see* Connecticut DRS Media Release, “Connecticut Pursues Sales Taxes Not Paid by On-line Retailers,” (Mar. 28, 2017)); **Indiana** (Ind. Code 6-2.5-9-9(e)); **Maine** (36 M.R.S.A. § 1951-B(3)); **Massachusetts** (830 C.M.R. 64H.1.7); **Mississippi** (Miss. Code Ann. § 35.4.03.09); and **Ohio** (Ohio Rev. Code § 5741.01(I)(2)(h) & (i); and Ohio Dep’t of Taxation Information Release ST 2017-02 (Oct. 2017)).

States With Existing Laws That, But For *Quill*, Authorize Imposition Of Sales Tax Collection Obligations Against Retailers Without A Physical Presence, And Thus Would Permit Retroactive Liability (19):

Arizona (*see* Az. DOR Transaction Privilege Tax Ruling 16-1); **California** (Cal. Rev. & Tax. Code § 6203); **Colorado** (Colo. Rev. Stat. 39-26-102(3)(b)(I)); **Florida** (Fla. Stat. 212.0596(2)(1)); **Georgia** (Ga. Code Ann. § 48-8-1); **Idaho** (Id. Code § 63-3611(2)); **Kansas** (Kan. Stat. Ann. § 79-3207(h)(1)(f));

¹ Some of these states also have laws adopted prior to their “economic presence” statutes that would permit the state to assert retroactive liability for earlier periods. *E.g.*, Ohio Rev. Code § 5741.01(I)(1) (1987).

Minnesota (Minn. Stat. § 297A.66, Subd. 3(a)); **Nevada** (Nev. Rev. Stat. § 372.724(1)(a), (b)); **New Jersey** (N.J. Stat. Ann. 54:32B-2(i)(1)(C)); **New York** (N.Y. Tax Law § 1101(b)(8)(E)); **North Carolina** (N.C. Stat. Ann. 105-164.8(b)(5)); **North Dakota** (N.D. Cent. Code § 57-40-2.01(7)); **Oklahoma** (Okla. Admin. Code 710:65-15-3(c)); **Pennsylvania** (72 Pa. Stat. Ann. 7201(b)(3)); **Rhode Island** (R.I. Gen. L. §§ 44-18-15(a)(6)(iv), -23(3)(iv), -24); **South Carolina** (S.C. Code Ann. § 12-36-1340(4)); **Virginia** (Va. Code Ann. § 58.1-612(F)); and **Wisconsin** (Wis. Admin. Code 11.97(1)).

State Laws That Do Not Clearly Prohibit Retroactive Imposition Of Sales Tax Collection Requirements Against Retailers Without A Physical Presence (4):

Iowa (Iowa Code § 423.1); **Kentucky** (Ky. Stat. § 139.340(2)(c)); **Michigan** (Michigan Rev. Admin. Bulletin 1999-1); and **West Virginia** (W.V. Admin. Code § 110-15-2.78).

State Laws That May Prohibit Retroactive Imposition Of Sales Tax Collection Requirements Against Retailers Without A Physical Presence (8):

Arkansas (Ark. Code Ann. § 26-53-124(3)); **Hawaii** (Haw. Rev. Stat. § 237-22(a)); **Illinois** (35 ILCS 105/2); **Louisiana** (La. Rev. Stat. § 47:305(E)); **Nebraska** (Neb. Admin. Code, tit. 316, § 1-004.02D, .02E); **New Mexico** (N.M. Stat. Ann. § 7-9-10); **Tennessee** (*see* Tenn. DOR Sales and Use Tax Notice 17-12); and **Texas** (Tex. Tax Code §§ 151.107(a), 307(a)).

Statutes Expressly Prohibiting Retroactive Liability (2):

South Dakota (SDCL 10-64-6); and **Wyoming** (Wyo. Stat. Ann. 39-15-501(d)).

State Laws That Have Language Preventing Imposition Of Sales Tax Collection Requirements Against Retailers Without A Physical Presence, Thus Preventing Imposition Of Retroactive Liability (6):

District of Columbia (D.C. Code 47-3932); **Maryland** (Md. Code 11-701(b)(1)); **Missouri** (12 Mo. Code Reg. 10-114-100(1)); **Utah** (Utah Code Ann. § 59-12-107(2)(a)(iii)); **Vermont** (Vt. Stat. Ann. § 9701); and **Washington** (Wash. Admin. Code 458-20-193(102)).

States That Have No Statewide Sales Tax (5):

Alaska, Delaware, Montana, New Hampshire, Oregon.

APPENDIX B

**STATE STATUTES OF LIMITATION
WHEN NO TAX RETURN WAS FILED**

(for states with potential retroactive liability)

No Limitation Period (25):

Alabama (Ala. Code § 40-2A-7(b)(2)(a); **Arizona** (Ariz. Rev. Stat. § 42-1104.B.1(b)); **Colorado** (Colo. Rev. Stat. § 39-26-125, § 39-21-107); **Connecticut** (Conn. Gen. Stat. § 12-415(f)); **Florida** (Fla. Stat. § 95.091(3)(a)(5)); **Georgia** (Ga. Code Ann. § 48-2-49(c)); **Indiana** (Ind. Code § 6-8.1-5-2(f)); **Iowa** (Iowa Code § 423.37); **Kansas** (Kan. Stat. Ann. § 79-3609(b)); Kan. Admin. Regs. § 92-19-63); **Kentucky** (Ky. Rev. Stat. Ann. § 139.620(1)); **Maine** (Me. Rev. Stat. Ann. Tit. 36 § 141.2.C); **Massachusetts** (Mass. Gen. Laws ch. 62C, § 26(d)); **Michigan** (Mich. Comp. Laws § 205.27a(2)); **Minnesota** (Minn. Stat. § 289A.38, Subd. 5); **Mississippi** (Miss. Code Ann. § 27-65-42); **New Jersey** (N.J. Stat. Ann. § 54:49-6.b); **New York** (N.Y. Tax Law, § 1147(b)); **North Carolina** (N.C. Gen. Stat. § 105-241.1(e)); **Oklahoma** (Okla. Stat. tit. 68, § 223.E); **Pennsylvania** (72 P.S. § 7259); **Rhode Island** (R.I. Gen. Laws § 44-19-13); **South Carolina** (S.C. Code Ann. § 12-54-85(c)); **Virginia** (Va. Code Ann. § 58.1-634); **West Virginia** (W. Va. Code § 11-10-15(a)); and **Wisconsin** (Wis. Stat. § 77.59(3), § 77.59(3)(m)).

Assessment Must Be Issued Within Ten Years After Return Was Due (1):

Ohio (Ohio Rev. Code Ann. § 5703.58).

Assessment Must Be Issued Within Eight Years After The End Of Month Following Relevant Calendar Quarter (2):

California (Cal. Rev. & Tax Code § 6487(a); and
Nevada (Nev. Rev. Stat. § 360.355.2).

Assessment Must Be Issued Within Seven Years After Return was Due (1):

Idaho (Idaho Code § 63-3633(c)).

Assessment Must Be Issued Within Six Years After Return was Due (1):

North Dakota (N.D. Cent. Code § 57-39.2-15).

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APPENDIX C

STATE OF CONNECTICUT
Department of Revenue Services

11/17/2017

Tax Director
The Swiss Colony, LLC
1112 7th Ave.
Monroe, WI 53566-1364

Dear Tax Director,

The Swiss Colony, LLC recently received a letter from the Connecticut Department of Revenue Services (DRS) requiring electronic submission of Connecticut destination sales records in accordance with Conn. Gen. Stats. § 12-426(4) and (5) for the years 2014, 2015 and 2016, or in lieu of providing these sales records, entering into a voluntary agreement to register and prospectively collect Sales Tax in Connecticut. As of the date of this letter, The Swiss Colony, LLC, unlike many others, has not responded to that request or otherwise complied.

The Swiss Colony, LLC, is not properly registered and has failed to collect and remit Sales Tax on Connecticut destination sales transactions in accordance with state law. Pursuant to § 12-407(a)(15)(A)(v) of the Connecticut General Statutes, The Swiss Colony, LLC, has substantial nexus due to being “engaged in business” in the regular and systematic solicitation of sales of tangible personal property into Connecticut, provided the solicitations have generated over 100 sales transactions in a 12 month period from Connecticut

customers, which is the statutory threshold for being engaged in business. (Note that, at this time, DRS is focusing on companies believed to have \$300,000 or more in such annual Connecticut destination sales.)

DRS is requesting that The Swiss Colony, LLC, voluntarily register, by 12/1/2017 to prospectively collect Sales Tax in Connecticut. A REG-7 registration application is enclosed for your convenience. Failure to register for Connecticut Sales Tax by The Swiss Colony, LLC, will result in the DRS pursuing The Swiss Colony, LLC, for Connecticut Sales Tax liabilities for the years 2014, 2015, and 2016 and a \$500 per day civil penalty for not complying with DRS's required submission of reports on destination sales into the state of Connecticut.

If you have questions about this request or about registering The Swiss Colony, LLC, please contact Richard Tomaszewski at (860) 541-3279 or richard.tomaszewski@po.state.ct.us by email.

I cannot emphasize enough the seriousness of this communication and the consequences of further non-responsiveness.

Yours truly,

/s/ John / RDT

John H. Kutsukos

Director of Audit and Compliance

cc: Marilee Clark, Tax Legal Director

APPENDIX D

**EXAMPLES OF TAXCLOUD LOOKUP
ERRORS FOR SOUTH DAKOTA**

(last reviewed March 19, 2018)

200 W. 5th Avenue
Mitchell, SD 57301-7701

TaxCloud Lookup: 4.5%
Department Website: 6.5%

500 E. Capitol Avenue
Pierre, SD 57501-5007

TaxCloud Lookup: 4.5%
Department Website: 6.5%

710 W. Dakota Avenue
Pierre, SD 57501-1826

TaxCloud Lookup: 4.5%
Department Website: 6.5%

221 River View Drive
Pierre, SD 57501-4614

TaxCloud Lookup: 4.5%
Department Website: 6.5%

633 Cherry Avenue
Rapid City, SD 57701

TaxCloud Lookup: 4.5%
Department Website: 6.5%

22855 Moon Street
Rapid City, SD 57703-9005

TaxCloud Lookup: 4.5%
Department Website: 6.5%

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5424 Timberline Trail
Rapid City, SD 57702-1806

TaxCloud Lookup: 4.5%
Department Website: 6.5%

1724 S. Katie Avenue
Sioux Falls, SD 57106-4927

TaxCloud Lookup: 4.5%
Department Website: 6.5%

5225 Turtle Lane
Spearfish, SD 57783-6331

TaxCloud Lookup: 4.5%
Department Website: 6.5%

510 Main Street
Wall, SD 57790

TaxCloud Lookup: 4.5%
Department Website: 6.5%
