

# Of Names, Notices & Nexus: A Perspective on Multi-State Taxation

Presented by

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# Why Multi-State Taxation?

- Multi-State Tax Commission
- Federation of Tax Administrators
- Streamlined Sales and Use Tax Agreement

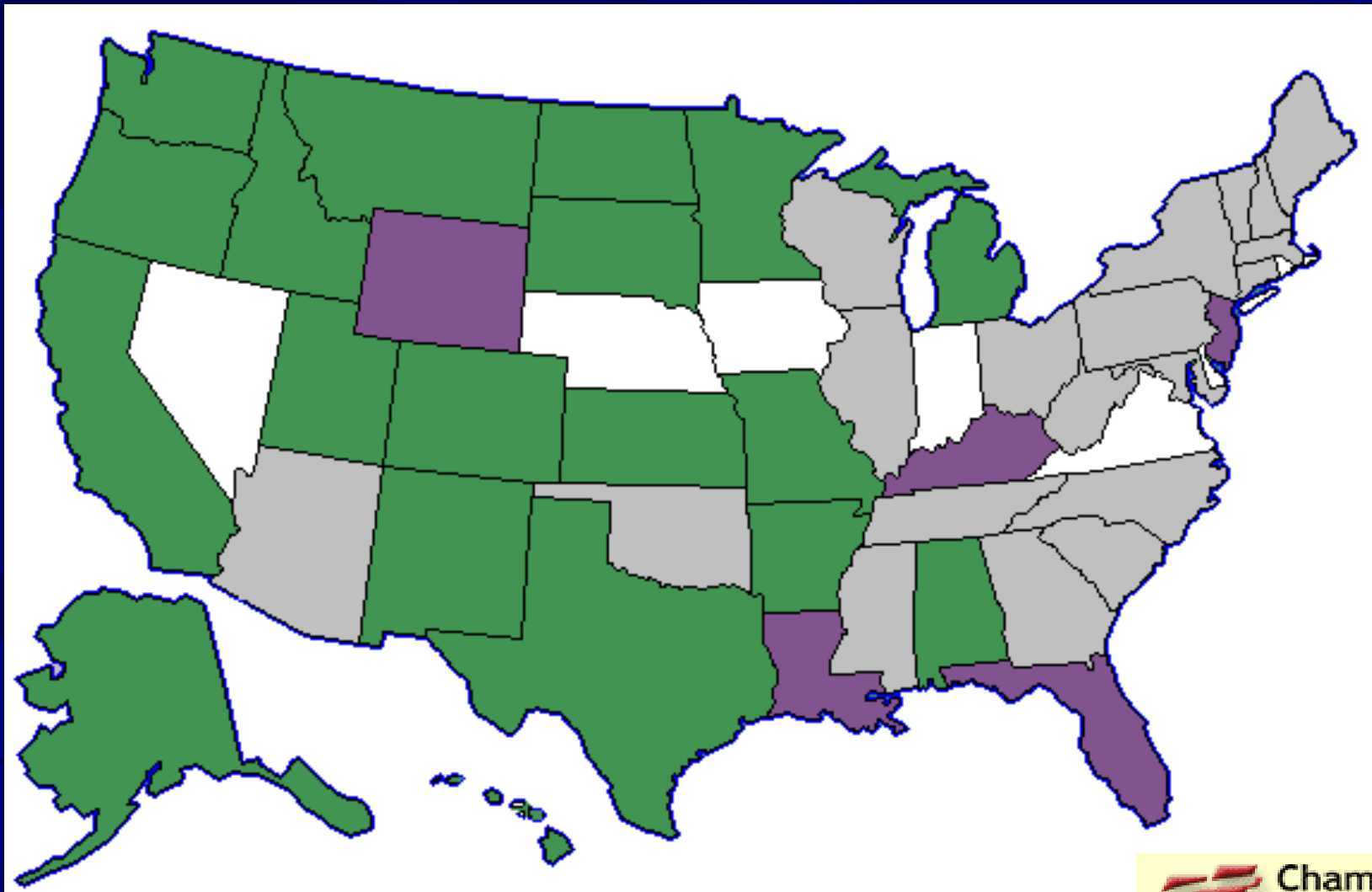




# Multistate Tax Commission

█ Compact Members  
█ Associate Members

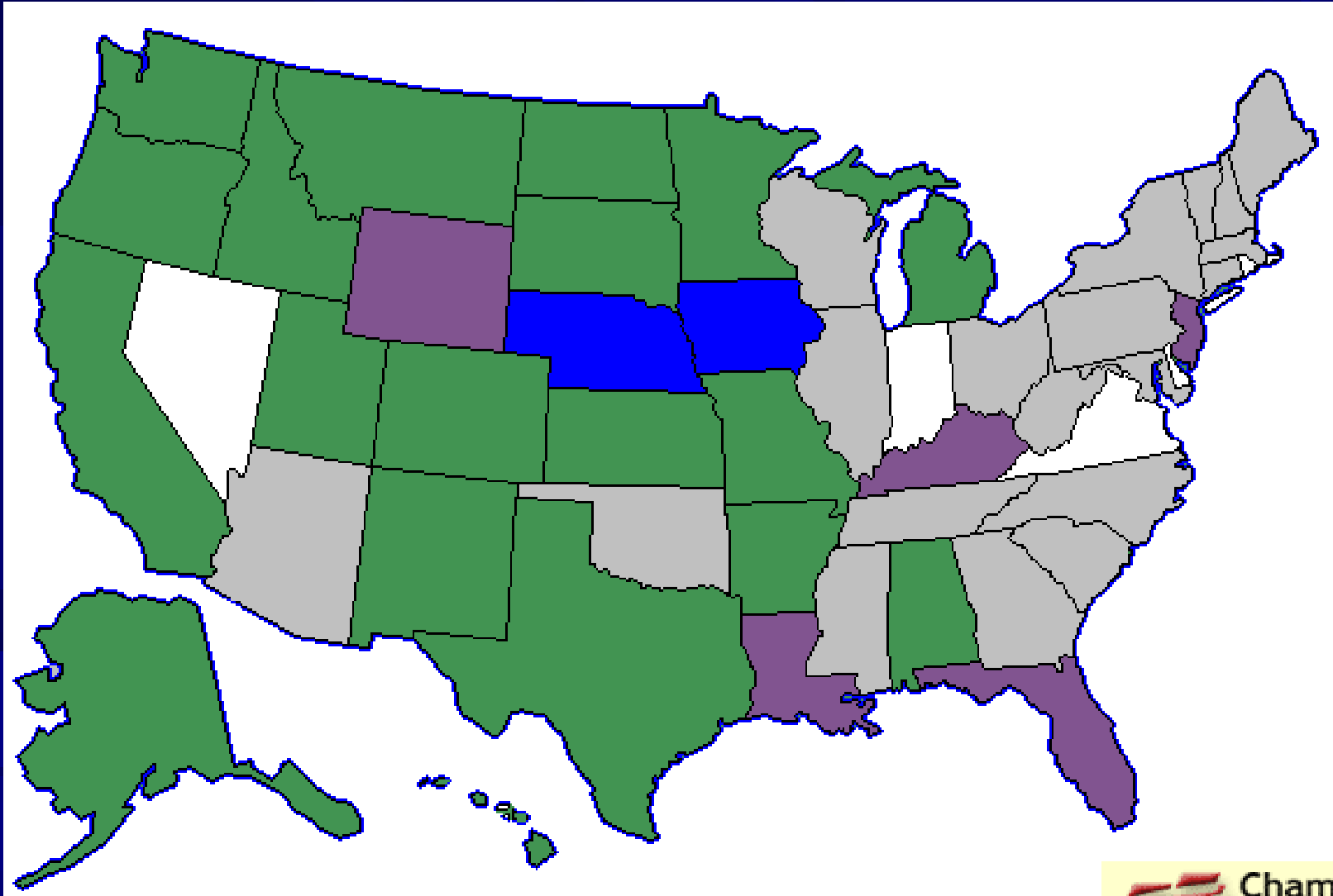
█ Sovereignty Members



# Multistate Tax Commission

█ Compact Members  
█ Associate Members

█ Sovereignty Members  
█ Project Members



# Nexus

- A definite link or minimum connection between the state seeking to impose a tax and the person, property or transaction it seeks to tax.

# Constitutional Standards

## ■ Due Process Clause

- 14<sup>th</sup> Amendment
- Minimum contacts

## ■ Commerce Clause

- Article I
- No undue burden on interstate commerce

# Applying the Standards

## ■ Sales & Use Tax

- Due Process *and* Commerce Clause

## ■ Income Tax

- Due Process *or* Commerce Clause

# What's in a Name?

- New York Corporation Franchise Tax
  - An income tax – measured on income
- Kansas Corporation Franchise Tax
  - Not an income tax – measured on equity
- Georgia Net Worth Tax
  - Not an income tax – measured on net worth
- Washington Business and Occupation Tax
  - Not an income tax and not a sales tax – measured on gross receipts
- Michigan Single Business Tax
  - Not an income tax — *Gillette Co. v. Department of Treasury*, 198 Mich. App. 303, 497 N.W.2d 595 (1993)

# Applying the Standards

- Business Privilege, Net Worth, Capital Stock Taxes
  - Statutory
  - No Constitutional Implications
  - Only if the tax is not an income tax

# Message in a Bottle

- Nexus questionnaire
- Business registration notice
- Assessment

# Income Tax Cases

## ■ Fairly Apportioned

- *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).
- *General Motors Corp. v. Franchise Tax Board*, Court of Appeals, Second District, Division 2, No. B165665, (January 29, 2007)

## ■ Solicitation of Orders

- Public Law 86-272
- *Wisconsin Dept. of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214 (1992).

# Income Tax Cases

## ■ Economic Nexus

- *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15, 437 S.E.2d 13 (1993)
- *K-Mart Properties, Inc. v. Taxation and Revenue Dept.*, 139 N.M. 177, 131 P.3d 27 (2001).
- *Steager v. MBNA Am. Bank, NA*, No. 04-AA-157 2005 WL 1978490 (W. Va. Cir. Ct. June 17, 2005).

# Income Tax Cases

## ■ Physical Presence

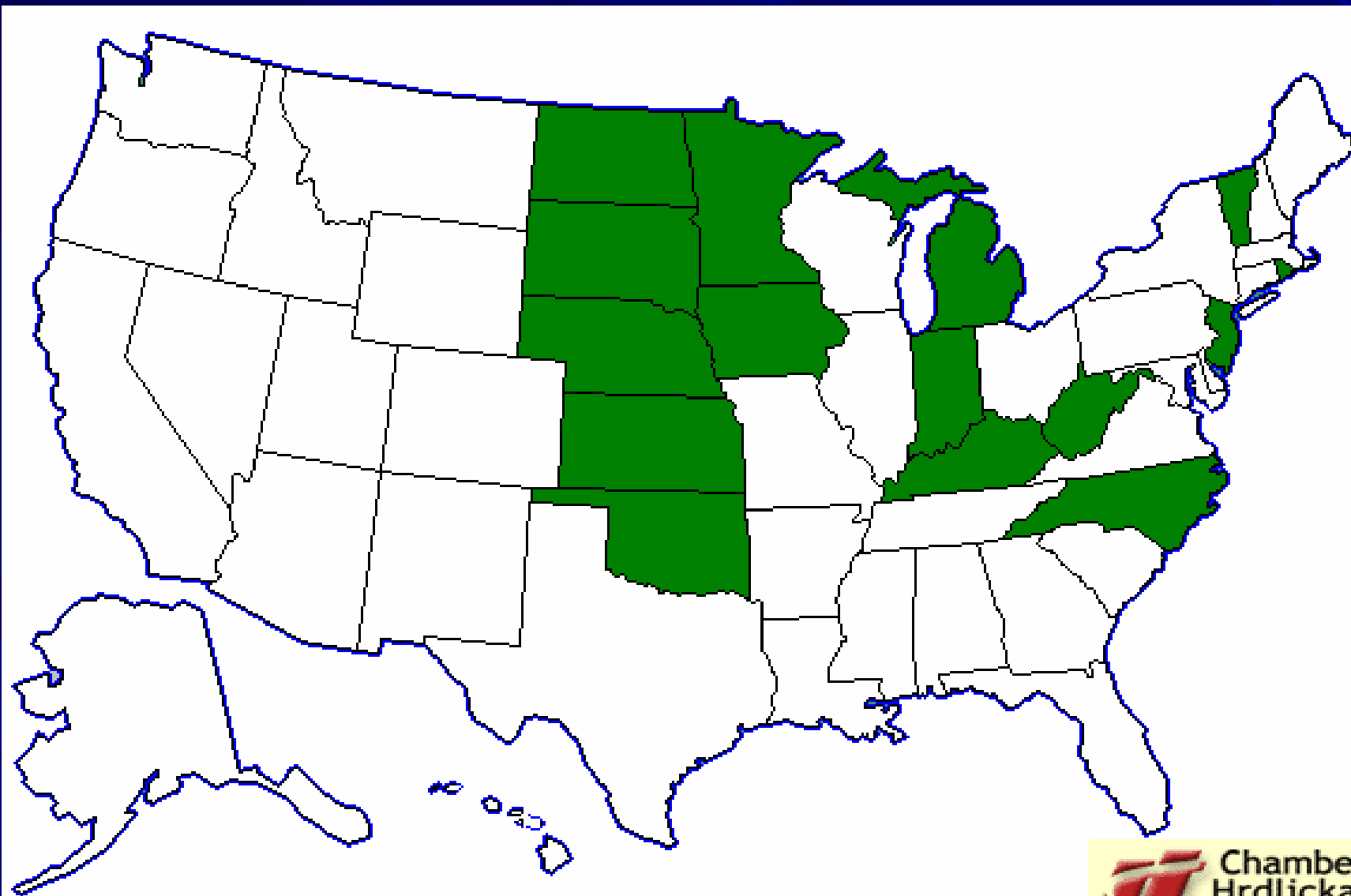
- *JC Penney National Bank v. Johnson*, 19 S.W.3d 831 (Tenn. App. 1999) *cert denied* 531 U.S. 927 (2000).

## ■ Add Back Statute

- *VFJ Ventures v. Surtees*, Circuit Court of Montgomery County, No. CV-03-3172 (January 24, 2007)

# Streamlined Sales and Use Tax Agreement

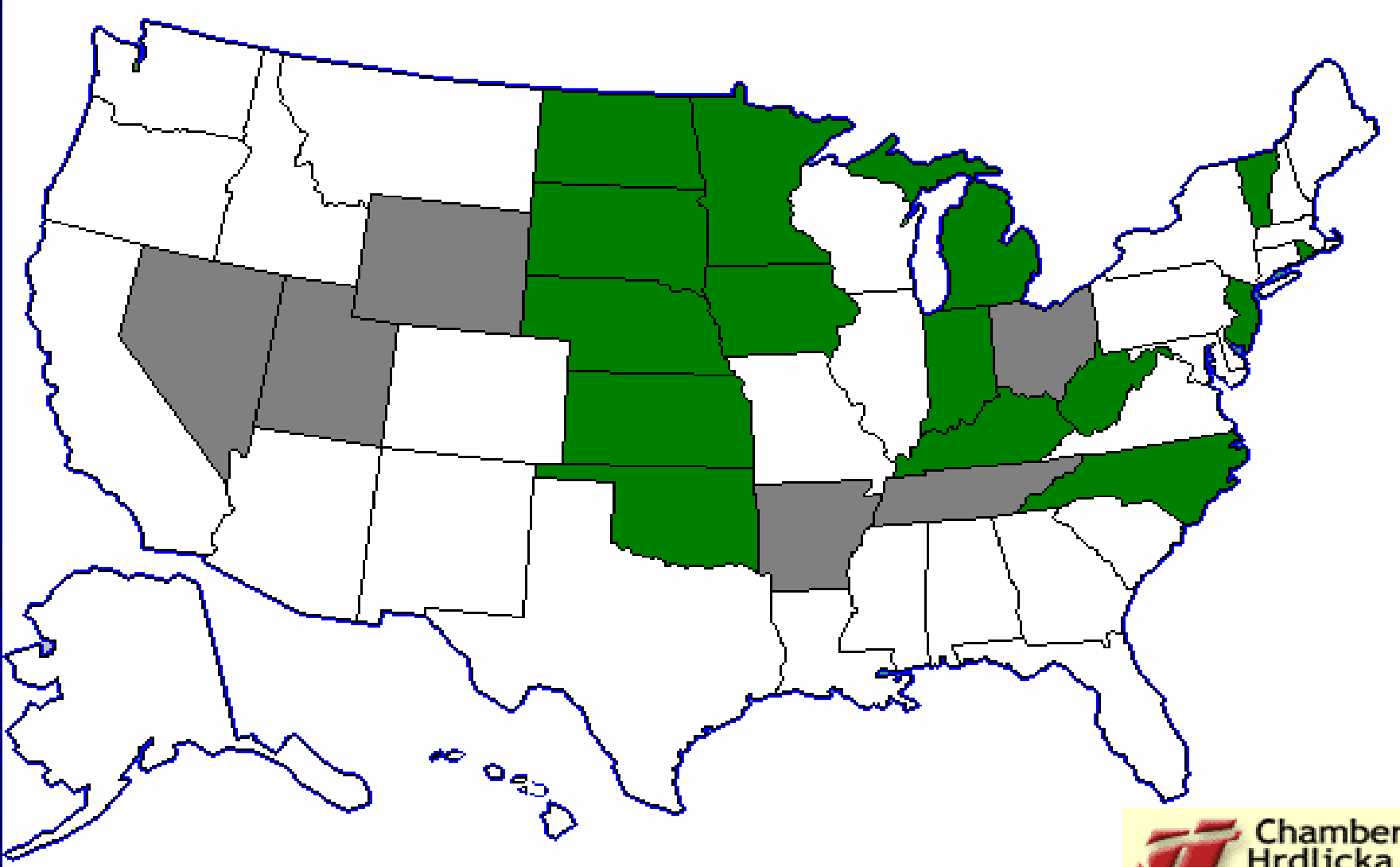
| Full Members



# Streamlined Sales and Use Tax Agreement

| Full Members

| Associate Members



# Sales and Use Tax Cases

## ■ Physical Presence

- *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

## ■ Attributional Nexus

- *Borders Online, LLC v. State Board of Equalization*, 129 Cal. App. 4<sup>th</sup> 1179, 29 Cal. Rptr. 176 (1<sup>st</sup> Dist. 2005).
- New York Commissioner of Taxation and Finance, TSB-A-06(29)S (Service Contracts)