

**2017 STT 55-4 SALT EXPERTS DISCUSS 'KILL QUILL' CASES, FUTURE OF  
TRANSFER PRICING LITIGATION (Doc 2017-47548)**

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Whether taxpayers are obligated to follow "unconstitutional" state tax laws and what the future could hold for transfer pricing litigation in light of recent state court rulings are some of the challenges states face, panelists said during a March 21 discussion.

**Body**

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Published by Tax Analysts(R)Whether taxpayers are obligated to follow "unconstitutional" state tax laws and what the future could hold for transfer pricing litigation in light of recent state court rulings are some of the challenges states face, panelists said during a March 21 discussion.

Speaking at the 2017 American Bar Association and Institute for Professionals in Taxation conference in New Orleans, Jordan Goodman of Horwood Marcus & Berk Chtd. asked fellow panelists whether taxpayers are required to follow "unconstitutional" state laws, like those challenging the physical presence standard in *Quill Corp. v. North Dakota*.

The ruling in *Quill* "is Supreme Court precedent — we follow it," University of Connecticut law professor Richard Pomp said.

Helen Hecht of the Multistate Tax Commission said there are various schools of thought on what to make of the direct challenges to *Quill* but acknowledged that the states are frustrated.

“To use a word that is probably overused now, this is fraught to say that we’re going to disregard what is the law to bring a challenge to this case,” Hecht said. “We could’ve continued to sort of whittle away at it over time, but I think that states took Justice [Anthony M.] Kennedy at his word and said, ‘You want a case, we’ll bring you a case.’”

The panel's discussion then turned to transfer pricing in light of recent state court rulings in *Rent-A-Center E. Inc. v. Dep’t of Revenue* (Doc 2015-20540) in Indiana and *See’s Candies Inc. v. Utah Tax Commission* (Doc 2016-22233).

Hecht said there has been a series of cases on whether intercompany transactions require economic substance before a state has the power to change the allocation and loss between the companies for tax purposes.

“I think the states have gotten themselves into a little bit of a cul-de-sac, where we’ve been arguing essentially what are economic substance arguments when, in fact, we ought to be arguing about what do we all agree is the right result and does this look like that?” Hecht said. “The federal government has its own way of doing this, and it’s got its own system in which it does it. And saying to states ‘look, you have to do it exactly like the federal government does’ doesn’t work.”

Hecht said the states struggle with making economic substance arguments, when in reality the issue is more about income distortion.

One way to tackle the transfer pricing issue — and the issue of tax havens — is for states to adopt combined reporting, Pomp said.

During a later discussion on the rise of use tax notice and reporting requirements after the Tenth Circuit's ruling in *Direct Mktg. Ass’n v. Brohl* was allowed to stand when the U.S. Supreme Court denied cert, Pomp said another thing to keep an eye on is a provision in a New York budget proposal.

“Right now, in a version of the [New York] budget is the following: If you sell on the Amazon platform, Amazon has to collect New York use tax,” Pomp said. “That is a game changer, should it be upheld and passed.”

## References

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Subject Areas:

Litigation And Appeals;  
Sales And Use Taxation;  
Transfer Pricing