

ALERTS AND UPDATES

Seventh Circuit Ruling on Personal Jurisdiction in Hemi Case May Impact All Internet Retailers

November 24, 2010

Internet retailers should be aware that a recent U.S. Court of Appeals for the Seventh Circuit case held that a New Mexico company that established an interactive website in New Mexico that could be and was accessed by an Illinois resident to buy cigarettes—and where the product purchased was shipped by the company to Illinois—created due process nexus with Illinois, thereby allowing Illinois to assert personal jurisdiction over the company. In *Illinois v. Hemi Group LLC*, No. 09-1407 (September 14, 2010), the court held that "Hemi created several commercial, interactive websites through which customers could purchase cigarettes from Hemi. Hemi held itself out as open to do business with every state (including Illinois) except New York. After the customers made their purchases online, Hemi shipped the cigarettes to their various destinations. It is Hemi reaching out to residents of Illinois, and not the residents reaching back, that creates the sufficient minimum contacts with Illinois that justify exercising personal jurisdiction over Hemi in Illinois."

While this case involved a cigarettes retailer, its rationale could be applied to all Internet retailers. As a result, Internet retailers will have to wait and see whether courts will use similar reasoning to impact (1) the ability of states to request general information from Internet retailers as to their customers; (2) the jurisdiction of states to pursue Internet retailers in unclaimed property situations or (3) the reach of states in matters where the Commerce Clause's physical presence standard may not apply. In all of these instances, a state could contend that making Internet sales for delivery to residents of the state by itself creates the "minimum contacts" needed to have at least personal jurisdiction over the company, by asserting the same reasoning used by the Seventh Circuit in *Hemi* to claim such jurisdiction exists. While the Commerce Clause can still be used as a shield in many cases (such as in sales tax situations) against certain extensions of state jurisdiction, the *Hemi* decision that due process nexus is created by merely having an interactive website and agreeing to ship product to a state appears to lower the threshold of "minimum contacts" with a state for it to claim at least due process personal jurisdiction over an Internet retailer.

It is important to note that the *Hemi* court left open the issue of whether Hemi was actually required to comply with Illinois' request to file monthly reports of sales. Thus, it is up to the district judge to decide that issue by employing so-called other mechanisms "to balance the various competing interests in this litigation." What this means is unknown at this time, but the potential scope of this decision indicates that Internet retailers may now have to be concerned about the reach of every state to which they make sales for delivery to customers.

For Further Information

If you would like more information on how this may affect your company, please contact [Stanley R. Kaminski](#), any other [member](#) of the [State and Local Tax Practice Group](#) or the lawyer in the firm with whom you are regularly in contact.

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