

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

tion services in the taxing state; it was measured by the corporation's gross receipts from the service. The appropriate concern, the Court wrote, was to pay attention to "economic realities" and to "address the problems with which the commerce clause is concerned."¹¹⁰¹ The standard, a set of four factors that was distilled from precedent but newly applied, was firmly set out. A tax on interstate commerce will be sustained "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State."¹¹⁰² All subsequent cases have been decided in this framework.

Nexus.—"The Commerce Clause and the Due Process Clause impose distinct but parallel limitations on a State's power to tax out-of-state activities. The Due Process Clause demands that there exist some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax, as well as a rational relationship between the tax and the values connected with the taxing State. The Commerce Clause forbids the States to levy taxes that discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation."¹¹⁰³ "The broad inquiry subsumed in both constitutional requirements is whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state—that is, whether the state has given anything for which it can ask return."¹¹⁰⁴

¹¹⁰¹ 430 U.S. at 279, 288. "In reviewing Commerce Clause challenges to state taxes, our goal has instead been to 'establish a consistent and rational method of inquiry' focusing on 'the practical effect of a challenged tax.'" *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 615 (1981) (quoting *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 443 (1980)).

¹¹⁰² 430 U.S. at 279. The rationale of these four parts of the test is set out in *Quill Corp. v. North Dakota ex rel. Heitkamp*, 504 U.S. 298, 312–13 (1992). A recent application of the four-part *Complete Auto Transit* test is *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995).

¹¹⁰³ *Meadwestvaco Corp. v. Illinois Dept. of Revenue*, 128 S. Ct. 1498, 1505 (2008) (citations and internal quotation marks omitted). "[T]he due process nexus analysis requires that we ask whether an individual's connections with a State are substantial enough to legitimate the State's exercise of power over him. . . . In contrast, the Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy." *Quill Corp. v. North Dakota ex rel. Heitkamp*, 504 U.S. 298, 312 (1992).

¹¹⁰⁴ 128 S. Ct. at 1505 (internal quotation marks omitted). It had been thought, prior to the decision in *Quill Corp. v. North Dakota ex rel. Heitkamp*, 504 U.S. 298, 305 (1992), that the tests for nexus under the Commerce Clause and the Due Process Clause were identical, but the Court in that case, although stating that the two tests "are closely related" (citing *National Bellas Hess, Inc. v. Dept. of Revenue of Illinois*, 386 U.S. 753, 756 (1967)), held that they "differ fundamentally" and found a state tax to satisfy the Due Process Clause but to violate the Commerce Clause.