



Everything You Wanted to Know About Sales Tax

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About Me

- 10 + years of sales and use tax experience
- Worked in consulting with projects in many different industries and states
- Did industry work in the restaurant and e-comm businesses
- I love sales tax!

What We'll Be Covering

- Physical and Economic Nexus
 - Remote Employees
 - Marketplace Facilitators
- Use Tax
- Exemptions
- Sourcing
- Your Questions



The Basics

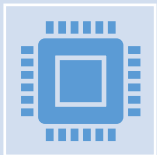
- “It depends...”
- Sales tax vs. use tax
- Not all sellers will have a sales tax obligation
 - Services are largely exempt
 - Manufacturers will likely be exempt as wholesalers
 - Retailers selling exclusively on marketplaces (i.e., Amazon)
- Nexus establishes the connection that allows a taxing jurisdiction to impose its sales tax

Types of Nexus



Physical

Business locations
Remote employees/agents
Property



Economic (remote seller)

Based on sales dollars and/or transaction count
No physical presence required

Remote Employees and Nexus

- Covid-19 has changed the way we work
 - Waivers for covid related remote employees establishing nexus have expired
 - Most states took no position, leaving the door open to establish nexus
- Remote workers won't automatically establish nexus
 - Sales and service staff will typically establish nexus
 - Some states extend that to include administrative functions
- Contract employees can also create nexus

The Definition of Property is Expanding

- Software on servers in a state can create nexus, even if the servers are not owned by the company
- Property rented or leased to others in a state
- Property rented or leased by the company in a state
- Delivering property on company owned vehicles in a state



Economic Nexus Post *Wayfair*

- *South Dakota v. Wayfair*
 - All 45 states that impose a sales tax, Alaska locals and Puerto Rico have enacted economic nexus rules
 - Threshold is typically \$100k or 200 transactions
 - NY - \$500k AND 100 transactions
 - CA and TX - \$500k, no transaction requirement
 - CA threshold applies to in state sellers as it creates local use tax nexus
 - WA - \$100k, no transaction requirement
 - First enforcement was June 2018 (NY)
 - Final state goes live January 2023 (MO)
- Compliance is complex!

Marketplace Facilitators

- Think Amazon, Etsy and eBay, but even smaller platforms can be marketplace facilitators
- Like economic nexus, all states with a sales tax have marketplace facilitator rules (MO goes live 1/1/23)
 - Thresholds mirror the economic nexus numbers
 - CT threshold for facilitators is higher than economic, at \$250k
- If a facilitator meets the threshold, they are required to collect tax on sales made by or on behalf of their third-party sellers

Use Tax

- Use tax, often referred to as “consumers use tax”, needs to be reported to the state when a taxable item is purchased and there was no sales tax paid at the time of purchase
- Examples:
 - Items removed from inventory for internal use
 - Free samples given away to clients
- The burden is on the taxpayer to know what is taxable

Exemptions

- Common exemptions:
 - Manufacturing equipment and materials
 - Items that become part of a final product
 - Certain medical supplies and devices
 - Services
 - Software and digital intangibles (varies by state)



CA Manufacturing/R&D Exemption

- Enacted 1/1/14, extended through 6/30/30
- Current exemption of 3.9375 of state portion, buyer is still responsible for locals
- To qualify, the buyer must be in certain types of business
 - NAICS - 3111 to 3399 (manufacturing)
 - NAICS - 541711 or 541712 (R&D)
- Property must be qualified TPP and used in a qualified manner
 - Exempt: machinery, equipment, parts, computers used to control equip.
 - Taxable: extraction process equip., computers used by accounting staff

Sourcing for Remote Sellers

- Items mailed or received at locations other than your business location should be taxed at the rate where the item is received (destination-based sourcing)
- Software sourcing is more complex; there is hierarchy of how such sales should be sourced:
 - Where the end users are located; ***the gold standard***
 - If the end user location is unknown, where the buyer receives the digital product (i.e., ship-to address);
 - If the ship-to address is known, purchaser's address available in the seller's business records;

Origin vs. Destination Based Sourcing

- For intrastate sales, most states use destination-based sourcing
- Origin-based states require you to use the rate at the origin for intrastate sales
 - States: AZ, IL, MS, MO, OH, PA, TN, TX, UT, VA
- California is a **mixed sourcing** state
 - The statewide sales tax is based on the origin of the sale. However, district taxes (levied within cities or countywide) are generally based on the destination of the sale (the delivery address).

Participant Questions

Resale Certificate Pushback

- The taxpayer makes test systems for their clients
- Component parts are for resale, final product is taxed
- A distributor is asking for a separate resale certificate for each individual part they purchase
 - *Per CA Publication 103, “Sales for Resale”, a list of items purchased or a general description of items for resale is an appropriate way to complete the resale certificate. I would point the vendor to the Publication and prepare a spreadsheet with the item numbers being purchased. Fill out a resale certificate with “see attached item list” in the “Description of property to be purchased for resale” field.*

Temporary Tent Rental

- The taxpayer rents a tent for 10 days every year for an RV show – why is this rental taxable?
 - *Rentals and leases are treated the same as an outright sale. If the item is subject to tax, tax will be collected for a rental the same as a sale.*
- If they get the tent from out of state and use local vendors to install it would sales tax be charged?
 - *Assuming this is not the first time the tent has been assembled; it would be exempt as charges for reassembly of items are not taxable. The tent rental would be subject to use tax if the out of state vendor did not collect sales tax.*
- This same taxpayer also helps with the tent rental company. If their jobs are performed in another state, would they need to register in that state for sales tax?
 - *The presence of the tents, of which the company retains ownership, are likely enough to create nexus.*

How Can SSF Help?

- Nexus Studies
 - Analyze client data to determine where sales tax nexus exists
 - VDA's/Registration
- Audit Representation
- Item Master Review
 - Review purchase catalog for tax flag accuracy
- Overpayment Recovery
- Exposure Review

Contact



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Thank You!