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Important Concepts in Sales Tax Adminstration

A YETTER Tax and Sales Tax Institute White Paper

READ THIS PAPER TO UNDERSTAND

- When and how to register for sales tax
- How sales tax amnesty programs work
- How to determine the sales tax base
- How to handle sales tax on customer returns
- How invoice presentation can impact sales tax determination
- How to handle administrative issues during sales tax holidays
- Know when you need to renew exemption certificates
- Learn the keys to successful sales tax compliance and remittance
- Understand concepts of consumer's use tax

SALES TAX INSTITUTE℠

Updated as of October 2018 to include Wayfair implications

INTRODUCTION

Attempting to navigate your way through the administration of sales and use tax isn't the easiest thing to do. There is a wide range of responsibilities and tasks, and let's not forget that sales and use tax law differs from state to state.

On top of all this, the U.S. Supreme Court issued a historic decision on June 21, 2018 in the South Dakota v. Wayfair case, which revolved around nexus for out-of-state sellers. In a 5-4 decision, the Court ruled in favor of South Dakota and overruled Quill Corp. v. North Dakota and National Bellas Hess, Inc. v. Department of Revenue of Ill. The Court concluded that "the physical presence rule of Quill is unsound and incorrect." Quill had been the law of the land since 1992 regarding nexus for out-of-state sellers and National Bellas Hess since 1967, so this is a big deal for sales tax nexus and administration.

Attempting to navigate your way through the administration of sales and use tax can be challenging due to the different state laws.

Businesses have relied on the previous Quill ruling for over 25 years as a somewhat bright-line test of their responsibility with the states. In decades past, physical presence has been the standard. If you had a store, significant inventory, leased tangible property, or employed sales people within a state, it was relatively simple to determine if you had physical presence. However, with the rise of technology and eCommerce, questions arose as to whether the time had come to reevaluate the nexus standards. This results in states initiating efforts to redefine what constitutes nexus and the states got more creative with the idea of what constitutes nexus within their borders which we will discuss below. For more in-depth coverage of the Wayfair case there is a Sales Tax Institute nexus whitepaper available **here**.

We know that it can be overwhelming trying to get a handle on all these issues. We hope this whitepaper helps you get started on the path to successfully administering sales and use tax. This whitepaper is a basic overview of sales tax administration, and each state will differ – so it is important to double check the state-specific rules. The information we are providing will help point you in the right direction and give you the general rules.

In this whitepaper, we'll cover the key concepts in sales tax administration, starting with when and how you should register to collect and remit sales tax. From there, we'll explore other important topics, including how to determine the tax base that sales or use tax applies to and more.

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WHEN AND HOW TO REGISTER FOR SALES TAX

The guiding principle in understanding when you are required to register to collect and remit sales tax is nexus. Nexus is the level of connection between a taxing jurisdiction, such as a state, and a business entity. Until this connection is established, the taxing jurisdiction cannot require you to collect and remit sales tax in that jurisdiction.

Nexus is primarily controlled by the U.S. Constitution under the Due Process Clause and the Commerce Clause. The Due Process Clause found in the 14th Amendment requires a definite link or minimal connection between a state and the entity it wants to tax. It is a two-prong test of showing that a seller is purposely making use of a state's economic market and also the seller somehow benefits from the amenities offered to others equally from the state within that market. Exceeding these tests may subject the business to a tax collection requirement.

The Commerce Clause requires substantial presence, and it is this test that prior to the SD v Wayfair decision was interpreted to mean substantial physical presence is what is required for a business to collect and remit sales and use tax. However, the Commerce Clause itself does not include "physical". Building upon that foundation, it is up to each individual state to define the specific activities conducted within their state that will establish nexus. Physical presence as a test hasn't been eliminated, it is still the first test. But if there isn't physical presence in a state, then the substantial presence test can be evaluated through economic or sales levels. After the SD v Wayfair decision, it is the combination of both of these concepts that is the new standard for determining when a business is required to register.

Because of this, a business must look at each state individually when determining if sales tax nexus exists and stay on top of frequently changing regulations and interpretations. Many but not all states have passed economic nexus rules. For a current status on each state visit our **Remote Seller Nexus chart**. Generally speaking, most states will include the following activities in their definition of "doing business" or nexus:

- "Maintaining, occupying, or using permanently or temporarily, directly or indirectly or through a subsidiary, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business"
- "Having a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary on a temporary or permanent basis"
- "Any seller, which does not have a physical presence in this state and shall remit sales or use tax, if the seller meets either in the previous: 1. Gross sales from the sale of taxable items delivered in this state exceed $100,000; or 2. The seller sold taxable items for delivery in this state in 200 or more separate transactions."

A business must look at each state individually when determining if sales tax nexus exists and stay on top of frequently changing regulations and interpretations.

Other states may determine their own economic nexus threshold, but it must prove to not impede on nor create an undue burden on interstate commerce. Therefore, it is unlikely a state would set a threshold below the $100,000 in sales or 200 separate transactions. Some have set a higher threshold.

Note that both temporary and permanent activities conducted by either a business' own employees as well as those performed by independent agents are included. Prior to the enactment of pure economic nexus legislation, states passed legislation that expands the definition of retailer doing business by passing click-through nexus, cookie nexus, and affiliate nexus. In an attempt to ease the collection burden on sellers that only sell through marketplaces, they have passed marketplace nexus provisions which shift the collection and remittance responsibility to the marketplace facilitator. And some states, following the Colorado lead and found constitutional in the Direct Marketing. Association v. Colorado Department of Revenue case have passed notice and reporting requirements legislation. These different types of nexus legislation apply to remote sellers making sales within a state.

"Click-through" nexus is created if compensation or commission payments are made to an in-state resident for referring a customer to the retailer's website resulting in a sale. Note that a minimum sales threshold in the state normally applies before "click-through" nexus is created (many states are $10,000 of annual referred sales but can be higher).

Affiliate nexus is created if a remote retailer holds a substantial interest in, or is owned by, an in-state retailer and the retailer sells the same or a substantially similar line of products under the same or a similar business name, or the in-state facility or agent is used to advertise, promote, or facilitate sales to an in-state consumer. An example of this would be a website store which is a separate legal entity yet sells the same products and has the same branding as the brick-n-mortar store. The California Board of Equalization determined Borders.com and Borders Books were in substance the same company while in form they were separate legal entities. Sales by the website into the state needed to be taxed. More recently the affiliate legislation passed by the states do not require the common ownership for affiliate nexus to apply.

The Wayfair decision has turned sales tax upside down and sideways. Everything we've relied on for determining sales tax nexus has changed. Companies today need to evaluate their activities – physical and economic – to determine where they have an obligation to collect.

Under economic nexus statutes and/or administrative actions, if a remote retailer exceeds a specified economic threshold in the state, then the retailer has nexus and must collect and remit sales tax in that state. The economic threshold may be based on a set amount of sales made in the state, gross income in the state, or other thresholds. The South Dakota threshold, upheld by the U.S. Supreme Court, is $100,000 of gross sales or 200 transactions within a year into a given state will give you economic nexus. This amount will vary by state as well as how the state measures the threshold. Most states are using gross sales however some are using retail sales and a few are using taxable sales. None of the states have thresholds that are tied to an inflationary index nor proportional to a state's population, so the thresholds may evolve over time and the full impact can be analyzed.

Under marketplace nexus legislation, if an online marketplace (e.g. Amazon) operates its business in a state and provides e-commerce infrastructure as well as customer service, payment processing services or marketing, the marketplace facilitator is required to register and collect tax as the retailer rather than the individual sellers. This type of legislation could also impose reporting requirements on the marketplace facilitator.

Under notice and reporting requirements legislation, remote retailers who are not required to register and collect sales tax are obligated to notify their customers of their use tax obligation on their purchases. Retailers may also be required to send purchasers an annual statement of all of their purchases from the retailer as well as an annual list of customers to the state.

To stay up-to-date on the which states have enacted the above types of nexus legislation, visit our **Remote Seller Nexus Chart**.

Temporary nexus-creating activities such as traveling employees and independent contractors working within a state can also create nexus under the physical nexus rules. Be aware of all commissioned agents you have working for you and where they have authority and conduct business on your behalf. Other temporary activities that can create nexus include exhibiting at a trade show, maintaining consigned inventory in a state or using independent service representatives to provide services to your customers.

If you have created nexus within a state or other jurisdiction, you are required to register as a retailer and collect and remit sales tax on all taxable sales into that jurisdiction. In order for any sales to qualify as exempt, you must obtain exemption certificates from those customers. Nexus is also relevant to purchasers. If you have nexus in a jurisdiction and the seller didn't collect tax, you are required to remit use tax on taxable purchases delivered within that jurisdiction.

In addition to determining where to register, a taxpayer must determine how to register. The taxpayer needs to determine which taxes it will be required to collect or pay. Some states differentiate between sales tax, seller's use tax and consumer's use tax on both their registration application and return. How the taxpayer registers can impact the return they are required to file and the rate they are required to collect. Sales tax will typically apply in states where the taxpayer maintains a physical location such as a store. Seller's use tax applies on interstate sales into states where the retailer has established nexus.

Many application forms request an average annual liability. This information is used to determine filing frequency. Some states permit less frequent filing if the liability is small. Large liabilities may require more frequent filing or prepayments.

But the most challenging question that is on the registration application is the date that business began in the jurisdiction. This is used to determine if returns are due for prior periods. If a prior period is listed, expect to receive a request to file these prior period returns which will likely include interest and penalty notices. If a registration form is being filed for a business that has had nexus for some period of time, careful attention must be given to answering the date question. Most forms are signed under penalty of perjury, so an inaccurate date could cause problems.

Registration application forms can be obtained from the Department of Revenue of the jurisdiction. Additionally, most states now have online registration and my not accept a paper application.

HOW SALES TAX AMNESTY PROGRAMS WORK

In order to address the pesky "date began business" in a state, a taxpayer should consider either a voluntary disclosure or amnesty application if there is material prior period liability. A business that has nexus in a jurisdiction but has not registered to collect and remit sales tax may be able to enter into a voluntary disclosure agreement. Many jurisdictions offer a voluntary disclosure program whereby a business that approaches the jurisdiction before being contacted by the state can enter into an agreement. This agreement usually limits the number of years that jurisdiction will go back (usually their normal statute of limitation for registered businesses). In addition, penalty and interest concessions may be included. This option generally only applies to unregistered taxpayers and should be considered PRIOR to registering. It is normally initiated on an anonymous basis in order to negotiate the best terms.

Another option to monitor – whether you are registered or not - is state amnesty programs. Amnesty for uncollected or unpaid sales taxes is available periodically as states may offer legislatively. As with voluntary disclosure agreements, tax amnesty programs often limit the number of years that jurisdiction will go back, and penalty and interest concessions may be included. It is important to track these opportunities as they become available. It is important to consider all amnesty programs as they are offered – even if you are registered. Most states include additional penalties that apply if an audit results in a liability for years that were covered under an amnesty program. You can find a list of amnesty programs – current, future and past, which includes details on the programs **here**.

HOW TO DETERMINE THE SALES TAX BASE

The first step in determining the tax base is understanding if there is a sale subject to tax. Most states define a sale as transfer of title or possession and include a lease or rental. Illinois and Maine are two states that only include transfer of title in their definition of sale and therefore rentals are excluded from sales tax.

Historically, sales and use tax applied only to the purchase or sale of tangible personal property. Tangible personal property is personal property that can be seen and touched – something you can pick up and run away with – even if you need a forklift. Normally, intangible items are not subject to sales and use tax (i.e., stocks, bonds, goodwill). However, this issue has been the subject of much litigation, particularly related to software.

Personal property is typically movable and not affixed to the land. Controversies arise with respect to fixtures and leasehold improvements. Even where machinery and equipment is embedded in or bolted to a concrete floor, the state may assert that the property is personal property subject to sales tax.

In the construction of real property, the contractor is normally considered the consumer of the personal property incorporated into the real property. The contractor, therefore, pays tax on the personal property at the time of purchase and includes the cost in the sales price of the real property. The sale of real property, as realty, is not typically subject to sales tax. Remodeling, repair and restoration of real property can be taxable. Criteria that often come into play is the nature of the property, residential or commercial, and the nature of the contract, lump sum or time and materials. Most often we see states taxing services to commercial property particularly if it is a time and material contract.

Over the past several decades, states have expanded the tax base to include various services. Services are normally exempt unless specifically taxed under a state's statute. Some of the services states have taxed are amusements, telecommunications, repair and maintenance of tangible personal property, parking fees, cable television, information services, remodeling of real property, and data processing. Of course, there are exceptions and you can find a myriad of other services taxed across the states.

If tangible personal property is conveyed with services, some states may construe the transaction as a sale of property thereby transforming a nontaxable service into taxable tangible personal property. When a single price is charged for a bundle of taxable and nontaxable goods and services, the state may attempt to impose tax on the entire sales price. The taxpayer, therefore, is left with the burden of proving a dollar amount for each of the bundled items, the intention of the parties and the predominant purpose or true object of the transaction. This burden of proof can be overcome if the bundled items are stated separately on the invoice or contract. Examples of potentially nontaxable components are training, installation, maintenance, shipping, and handling.

When services are commingled with tangible personal property, the true object test is often used. The true object test looks at the intent of the transaction. Was the intent to receive tangible personal property or was the intent to receive a service and the transfer of tangible personal property was incidental to the delivery of the service? The answer to this question will generally guide you to the proper sales tax classification. For a helpful tool on the **true object test**, check out our infographic. Other states will use a de minimis test which looks at the components in relative value to each other. If the bundle includes a taxable and an exempt item, if the taxable item is less than the de minimis percent, often 10%, then the exempt characteristic is maintained. But if the taxable component is greater than the threshold, this becomes the true object and the bundle is tainted.

Once the determination is made that there is a transaction subject to sales tax, the value of the taxable transaction must be calculated. This is referred to as the tax base. Most states define the tax base using a cost accounting concept, as the total amount of the sales price, without any deduction for the cost of the goods sold, interest paid, other expenses or transportation.

The tax base is adjusted for exemptions, exclusions, or deductions that are determined by a state's specific statutory authority. Examples of the types of items which may be excluded or exempted from the tax base include bad debts, discounts, trade-ins, freight and transportation charges (freight out), installation, interest, finance or carrying charges, refunds and returns, and other taxes and licenses. These will vary by state and must be reviewed in detail.

Note that there are a number of other items that may or may not be included in the tax base depending on the individual state's tax statutes.

HOW TO HANDLE SALES TAX ON CUSTOMER RETURNS

If a customer makes a purchase and later returns an item on which sales tax was charged, the sales tax should also be refunded. The tax should be refunded at the rate and for the jurisdiction which were charged on the original sale. And make sure that a company policy is in place in case customers make returns without the original receipt. If the tax is refunded to the customer, the retailer is eligible for a refund from the state – but only after you have refunded it to the customer. If the retailer assesses a restocking charge – this is normally taxable and should reduce the tax refunded on the returned item.

Credit for returned merchandise should be taken on the sales tax return in the period in which the items was returned. If there was a rate change from the original sale, be sure to report the return appropriately using the original rate. Many state returns have a line for transaction at a prior rate.

Tax only debits and credits occur when taxability errors were made on the original transaction. The most common is that the customer didn't provide an exemption certificate for the invoice that was issued. In some cases, a customer may not realize this for some period of time and submit a refund request covering multiple invoices across years. As long as the exemption should have applied at the time of the original transaction and the invoices on which a refund is requested are within the state's statute of limitation, the tax refund can be paid. However, this can be a significant burden on the retailer as a significant refund claim can trigger an audit. In these situations, amended returns should be filed rather than taking the full amount on a current return. Some states allow the retailer to assign their right to file the refund to the customer and this may be more appropriate if it is an option.

Another administrative issue to consider is amended returns. Reasons for a business to file an amended return can include excess credits, reporting errors, tax rates changes that were not timely incorporated, and over collection of taxes. Excessive amended returns could trigger an audit. So, some companies prefer to adjust current period returns. However, if the adjustment will result in a negative return or require significant time to absorb the credit, it may be advisable to prepare the amended returns.

So how do you prepare an amended return? In some states, it is as simple as preparing a standard return with the corrected values and marking it as AMENDED. In this case, the amended return should include the new correct amounts on each line. In other states, there are special forms where you must report the original amounts, revised amounts and calculate the difference. Amended returns must be filed within the open statute of limitations.

HOW INVOICE PRESENTATION CAN IMPACT SALES TAX DETERMINATION

As discussed above in the tax base section, items must be separately stated on the invoice provided to the customer for any exemption or exclusion to apply. This is a best practice to follow to minimize risk to both the retailer and the customer. However, this is not always feasible, and the Streamlined Sales Tax Agreement introduced the concept of "books and records"

where a bundled amount can appear on the invoice, but the seller can tax the components. To qualify, the retailer must have documented the apportionment of the bundled charge between the components and be willing to provide this apportionment to the customer upon request. Unless a state has a specific "books and records" provision, this only applies to telecommunication items as defined under the Streamlined Sales Tax Agreement.

Another area where this concept has been applied by a number of states is in the taxation of maintenance agreements. Some states have realized that a software maintenance agreement includes taxable software and exempt services and have determined a proportional tax basis. California, Georgia, Idaho, Iowa, Kansas, Massachusetts, Minnesota, Utah, and Virginia, recognize that there is a portion of the charge that is taxable and tax only a portion of the charge. The states listed above other than Minnesota and Utah generally tax 50 percent of the maintenance contract and Minnesota taxes 20 percent when maintenance or support services are bundled with taxable personal property for optional maintenance contracts on pre-written software. In Utah, optional computer software maintenance contracts with respect to prewritten software that provide the following items are 40% taxable: updates or upgrades and support services; updates and upgrades delivered electronically and support services to the software; updates and upgrades delivered via load and leave and support services to the software; and only support services.

The terminology used for each line item on an invoice can have an impact on the taxability of the items. States may tax certain services or other items differently based on what they are called on the invoice. Examples of this include repair vs. maintenance and installation vs. fabrication. Depending on the state, calling a service one of the above as opposed to the other may result in a different taxability determination.

States may tax certain services or other items differently based on what they are called on the invoice.

There are no specific rules in the United States regarding how you present tax on an invoice, but there are rules in other countries. When determining the company policy for how to present the tax on an invoice, you should consider customer service issues. Should you break the tax amount down to the state, county and city levels on the invoice? Should you label the name of the taxing jurisdiction? Should you include taxability indicators (i.e. taxable/exempt) for each line item on the invoice? These are good questions to ask when determining the company policy on invoice presentation.

HOW TO HANDLE ADMINISTRATIVE ISSUES DURING SALES TAX HOLIDAYS

There are a number of special administrative issues that arise for retailers when a state holds a sales tax holiday. Retailers and purchasers alike should know that the start and end dates for a sales tax holiday are based on the time zone of the state in which the sales tax holiday is being held. For a current list of sales tax holidays, visit our **Sales Tax Holiday Chart**.

For layaway sales during sales tax holidays, the rules may vary from state to state. But generally, eligible items will qualify for the sales tax holiday exemption if the customer takes delivery of the merchandise during the exemption period or puts the merchandise on layaway during the exemption period, even if final payment and delivery is not made until after the sales tax holiday.

> **There are a number of special administrative issues that arise for retailers when a state holds a sales tax holiday.**

In regards to deliveries, eligible items purchased by mail order, catalog, or Internet during a sales tax holiday are generally exempt if they are delivered during the exemption period, or ordered and paid for during the exemption period, even if delivery is made after the sales tax holiday.

Generally, eligible items sold and delivered during the exemption period using a rain check qualify for the exemption, regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually sold and delivered after the exemption period.

When a customer returns an eligible item purchased during the holiday period, the retailer should refund tax only if the customer produces a receipt or invoice showing tax was paid on the item, or the retailer has sufficient documentation to show that tax was paid on the specific item.

Note: Sales Tax Holidays can be tricky for retailers who are located in multiple locations across the country who sell a variety of products and services. The holiday may only cover specific items and only up to a specific price. A robust automation system that is properly configured may help a business get through a sales tax holiday with ease. The key is to plan ahead and analyze your process to assure compliance.

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KNOW WHEN YOU NEED TO RENEW EXEMPTION CERTIFICATES

Exemption certificates vary not only by state but also based on the reason for the exemption. In some states, there is one form that covers every exempt reason while in others there is a separate form for each type of exemption (like in New York). States will typically require their own state's form or an authorized generic or multijurisdictional form such as the **MTC** or **SSTP** Exemption form. Other than for resale, the delivery state's exemption number and reasons will apply. For resale and drop shipments, many of the states will accept alternative documentation such as a home state certificate or resale number. But not every state. For more information about drop shipments, check out the **CCH book on Drop Shipments**.

It's important to remember that, in many states, an exemption certificate doesn't last forever. The renewal period of exemption certificates varies by state and by type of exemption. Exemption certificates expire more often than resale certificates.

States vary in their policy for exemption and resale certificates. Arkansas has no stated expiration period for exemption or resale certificate. In Connecticut, exemption and resale certificates are valid for 3 years. In Missouri, exemption certificates are valid for 5 years and resale certificates are valid indefinitely (if there is no change in character of purchaser's operation, and the purchases are of tangible personal property or taxable services of a sort that the purchaser usually purchases for resale).

There are a few best practices to follow with exemption and resale certificates. It is recommended to update all certificates that don't otherwise expire every 3-5 years. You should retain all prior certificates that could be required under audit. Electronic data is accepted in Streamlined Sales Tax states. And scanned certificates must be readable and unchangeable.

It's important to remember that, in many states, an exemption certificate doesn't last forever.

Keep in mind that a business or organization may be exempt in one or many states but may not be exempt in all states. Non-for-profit organizations are generally exempt for federal income tax purposes, but they may be taxed at the state or local level. In some states there is a specific list of organizations that have been previously approved by the state and must be listed in order for that organization to qualify for an exemption. Local taxes must also be considered in states which allow local administration of taxes. An organization may be exempt for the sales tax at the state level but be assessed on a non-sales tax like a local entertainment tax.

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BUT THEY DIDN'T CHARGE ME SALES TAX: USE TAX ON YOUR UNTAXED PURCHASES

Although there has been significant changes in recent years to the sales tax, there is still the issue of use tax on untaxed purchases. When sales tax was originally enacted it was only imposed on sales made within the state. If you lived in a place where you were close to a state border it was simple to cross the state line, make your purchases and evade your local sales tax obligation. States noted this discrepancy and were losing out on tax revenue. The complementary use tax was enacted to combat this tax loss and attempt to level the playing field between instate and out-of-state retailers.

Generally, there is no significant difference in the definition of sales or use tax other than who has the onus of responsibility.

Generally, there is no significant difference in the definition of sales or use tax other than who has the onus of responsibility. Additionally, the sales tax and the use tax are "mutually exclusive", which means either sales tax or use tax applies to a single transaction, but not both. In most states the use tax is typically known as Consumer's Use Tax. The responsibility or reporting and remitting of the tax to the state is on the purchaser of items purchased without tax. There is the Seller's Use Tax which applies to sales into a state from an out of state seller who is registered to collect the tax. Seller's use tax is also known as Vendor's Use Tax, Collector's use tax, etc.

The administration of the use tax can vary by state and can be reported on the sales tax return, a separate use tax return or on a personal income tax return. For businesses, use tax is typically reported and paid as part of a standard sales & use tax return. The total amount of purchases is listed by jurisdiction and multiplied by the appropriate use tax rate. In a few states, like Ohio, a separate consumer's use tax permit number is required, and a separate consumer use tax return is filed each period. There is typically not a preparer discount on the consumer's use tax portion of the return.

Items taken out of inventory and used by the business may also be subject to use tax. It may be easier for a grocery store to take a bottle of glass cleaner off the shelf than to order a bottle from a retail supplier. The cost (not sales price) of the product is the tax base for use tax. Also, if you scrap or toss out inventory that may also be subject to use tax at the cost of the items discarded or destroyed. There are some provisions within state laws which will allow a donation of items to charity may qualify for a use tax exemption but that will vary by state.

Items that are purchased in one jurisdiction and then moved to another jurisdiction can incur a use tax if the second location has a rate that is higher than the initial state of use. In this case, the incremental difference of tax is due. If the property was used in the first location before being moved, most states permit a depreciation adjustment before applying the rate differential. If the property is moved from a higher rate state to a lower rate state, no refund of the original tax paid is allowed (unfortunately).

LEARN THE KEYS TO SUCCESSFUL SALES TAX COMPLIANCE AND REMITTANCE

Once a taxpayer is registered to collect or pay sales and use taxes in a jurisdiction, returns must be filed on a timely basis. Upon registering with a taxing jurisdiction, the jurisdiction will inform the taxpayer of their filing frequency and due date. Note that the due date applies to both filing of the return and payment of the tax.

Each legal entity is required to file its own sales and use tax return for each state where it is registered. Some states may require separate returns by location, even if the different locations are part of the same legal entity. States do not allow consolidated sales and use tax returns by related entities, even though some allow consolidated income tax returns.

There are a handful of states that authorize their local authorities to self-administer their tax. These are referred to as "home-rule" authorities. States that permit this for general sales and use tax are Alabama, Alaska (although there is no state tax there are local taxes), Colorado and Louisiana. For these home rule authorities, a separate registration, compliance and audit process will apply. In Alaska, Colorado and Louisiana they can also have unique taxability rules that differ from the state.

Effective January 1, 2017, the Arizona Department of Revenue (DOR) became the single point of administration and collection of the state's transaction privilege tax (TPT). The transition to centralized licensing, reporting, and payment of state and city TPT to the DOR began with the January 2017 tax return. All activity needs to be filed on a single return with the DOR regardless of where the taxable activity is located in Arizona. This results in a broadening of local nexus in Arizona since many cities previously were considered home rule authorities.

Previously, businesses may have filed two or more TPT returns, one with the DOR and another with the city or cities where taxable activity occurred.

Sales tax returns are generally due in the month following the taxable event. For example, tax collected during the month of January is due on the January sales tax return which is due during the month of February.

Return due dates vary by jurisdiction. Common due dates are the 15th, 20th, 25th, and end of month. There are a few jurisdictions that have alternate due dates. Some states consider the return filed based on the received date while others use the mailing date. For states that use the mailing date, if the date is metered by a company postage meter, it may resort to the received date. It is important to know not only the due date for the return but also how the jurisdiction defines that date. It may be advisable to send the returns certified or registered to obtain proof of mailing and received date if they are not filed electronically. Most states offer and may require online filing of the tax returns. This could have an earlier due date than postal mailing.

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Most jurisdictions require payment via Electronic Funds Transfer (EFT) if the liability exceeds certain thresholds. If this is required and payment is sent by check, penalties and interest may apply. In some states, the threshold test is based on all taxes, rather than just sales tax. Additionally, in some states if you are required to pay via EFT for one tax, you are required to pay via EFT for all taxes. EFT thresholds are decreasing to levels that many taxpayers will be required to pay via EFT.

Different due dates may apply for EFT filers than for check payment filers – typically one day earlier by a specific time in the state's time zone. Usually a return is also required to be filed to substantiate the payment.

To learn more about sales tax administration or to get assistance with managing sales tax issues, we encourage you to contact us.

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About the Sales Tax Institute

The Sales Tax Institute is your destination for any sales and use tax training and education — along with assistance in career development for sales tax professionals.

Founded in 1996 by sales and use tax expert, Diane Yetter, the Sales Tax Institute has been helping tax, finance, and accounting professionals learn about the varied and nuanced world of sales and use tax.

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About YETTER Tax

YETTER is a sales and use tax consulting firm that offers clients the highest quality sales and use tax guidance by understanding their needs, increasing awareness of current tax issues and trends, and providing effective tax-related solutions

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