

REMOTE SELLER NEXUS LEGISLATION

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Nexus

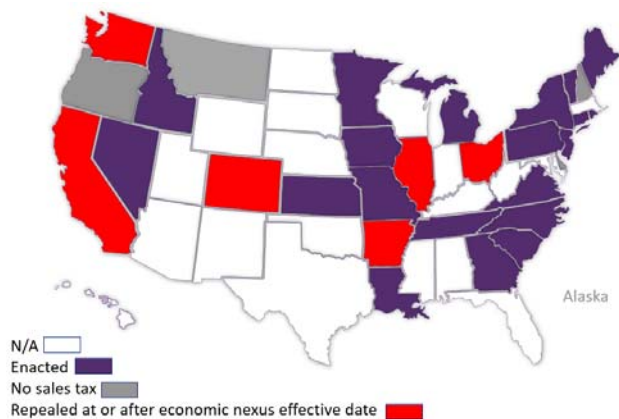
- Physical presence is the first evaluation to be done to identify where nexus is established
- If there is no physical presence, then economic nexus needs to be evaluated
- If no nexus, then notice and reporting may apply
- Nexus is determined at the state level but there is pending federal legislation

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Click-Through Nexus

- Typical Attributes
 - Minimum sales threshold into state (typical is \$10,000)
 - Commission payment to in-state resident
 - Commission payments for successfully completed orders
 - Applies for online and offline activities
- Is NOT:
 - Click advertising
 - Banner ads

Click-Through Nexus: Enacted and Proposed Legislation

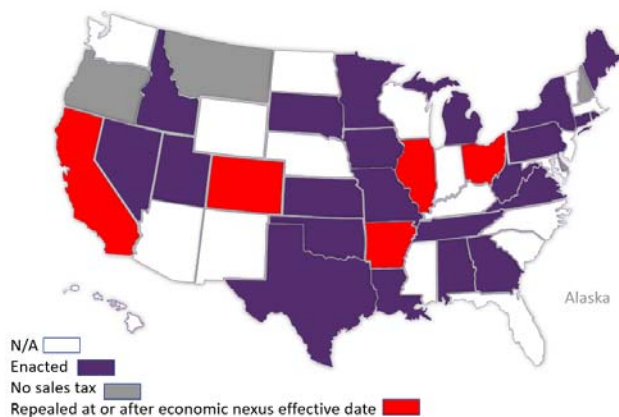


As of 9/16/2019

Affiliate Nexus

- Typical Requirements
 - 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
 - In-state facility/employee used to advertise, promote, or facilitate sales to an in-state consumer
 - May not require common ownership
 - May include activities in the state on behalf of the out of state business to benefit the out of state business' customers
 - Shares management, business systems, business practices, or employees with the retailer, or engages in intercompany transactions with the retailer

Affiliate Nexus: Enacted and Proposed Legislation



As of 9/16/2019

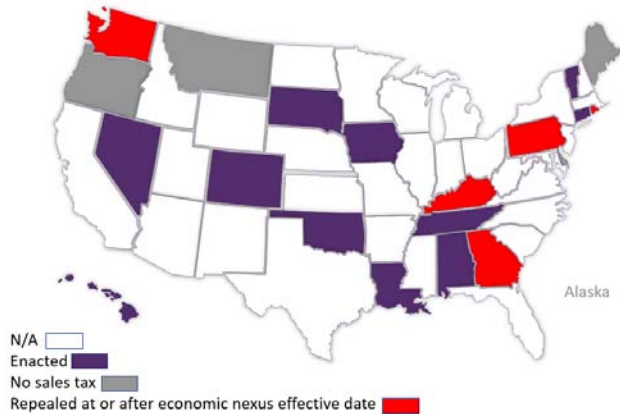
Notice & Reporting Requirements

- Typical Attributes
 - Prohibits advertising no tax applies
 - Retailer must notify customers of use tax obligation
 - Retailer may be required to send purchasers an annual statement of their purchases
 - Retailer may be required to send an annual report to state DOR
 - Thresholds may apply
 - Penalties may apply

Reporting Requirements (cont.)

- 3 Different categories of legislation
 - Retailers aren't allowed to advertise that no sales tax is due
 - Retailers must notify purchasers of their use tax obligation, but no penalties for non-compliance
 - Retailers must notify purchasers of their use tax obligation, send annual summaries of customer purchases to customers, and file customer information reports with the DOR and penalties apply for noncompliance

Reporting Requirements: Enacted and Proposed Legislation



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Economic Nexus

- Typical Attributes
 - Does not require physical presence
 - Correlates with a set level of sales or gross receipts activity
 - Many states set threshold at \$100,000 or 200 transactions but seeing a trend to have a flat dollar threshold (CA, CO, IA, MA, ND and WA have removed transaction counts)
 - Threshold is most often gross sales but some states have retail sales and a few have taxable sales

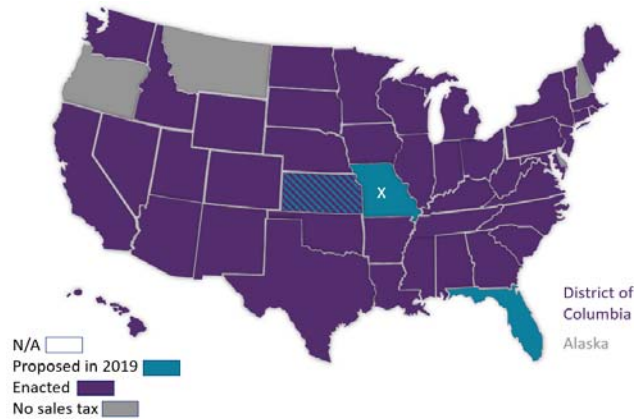
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Economic Nexus: Enacted and Proposed Legislation

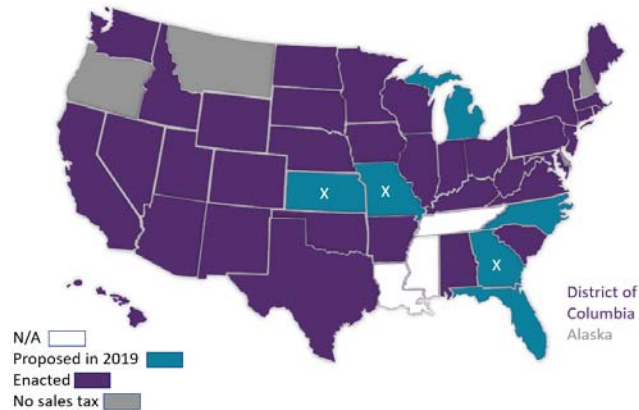


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Marketplace Nexus

- Requires online marketplace facilitator to collect tax on behalf of sellers operating through their systems
- Typical requirements include that the marketplace facilitator collects revenue from the customer and manages multiple activities related to the selling process

Marketplace Nexus: Enacted and Proposed Legislation



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Federal Legislation

- Stop Taxing Our Potential (STOP) Act of 2019 (S. 128) re-introduced on January 5, 2019
 - Would establish physical presence requirement
 - Would take effect August 1, 2019
- Protecting Businesses from Burdensome Compliance Cost Act of 2019 (H.R. 379) re-introduced on January 9, 2019
 - Would limit the authority of a state to require remote sellers to collect taxes owed by purchasers located in the state
 - Would take effect January 1, 2020

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Federal Legislation

- Online Sales Simplicity and Small Business Relief Act of 2019
 - Limit states ability to impose a sales tax collection duty on remote sellers to sales after January 1, 2019
 - Small seller threshold of \$10M
 - Require states to join an interstate compact similar to SST

Federal Legislation

- Prior bills that did not pass:
 - Marketplace Fairness Act (MFA) of 2017
 - Remote Transactions Parity Act (RTPA) of 2017
 - No Regulation Without Representation Act of 2017
 - Stop Taxing Our Potential Act of 2018
 - Online Sales Simplicity and Small Business Relief Act of 2018

IMPACT TO P2P PROFESSIONALS

Use Tax & Nexus

- Use tax is due in states where the company is deemed to have nexus.
- With economic nexus, the states where use tax is due has expanded and can now require use tax accrual on items such as:
 - Marketing/Direct mail
 - Samples sent to prospects/customers
 - Other promotional materials
 - Inventory withdrawals

Vendor Paid vs. Self-Assessed Use Tax

- Overpayments are related to either vendor paid use tax or self-assessed use tax.
- Accrued use tax often relates to situations where the vendor never charged the tax – likely because they were not registered.
- This will likely change moving forward as more companies are registered to collect tax.

Vendor Tax Validation

- While accrued use tax is often the easiest way to review and identify use tax overpayments, it is likely that more dollars can be found in vendor paid tax transactions.
- As more suppliers start charging tax, the amount of vendor paid tax will increase and in our opinion the opportunity for reverse audits.
- This is an area of opportunity for refunds.

Vendor Tax Validation (cont.)

- To the extent that you're using a managed compliance rate or you're not doing detailed transaction reviews, it is very likely more vendors will be charging you tax. So you'll need to go in and review those items if you see vendors charging you tax.
- You'll need to monitor for vendors that you buy exempt items from to make sure you've issued the right exemption certificates to them.

Reasons for Overpayments and Reverse Audits

- Clients have a variety of reasons that use tax overpayments occur which can be identified and recovered through a reverse audit.
- A common theme is around process or people limitations.
 - This includes clients that have tax automation solutions.
 - It is virtually impossible to automate use tax determination to a 100% level.
- The next most common reason is that the law requires the tax to be paid up front and then a refund claim is required to claim back the tax.
- The other main reason is due to law changes or incorrect interpretation of the law to the company's specific situation.
- With the Wayfair decision, more sellers will be collecting tax and if exemption certificates haven't been issued, this will result in overpayments

Reasons for Overpayments and Reverse Audits

- Often there are a mixture of reasons based off the type of Accounts Payable system used, the state, or process of accrual.
 - When a tax automation system is in place, it can be set up without the correct details in place and many tax details can be missed.
 - Employees are often not trained well enough on implementing the system, or it takes too much time to manually review everything.
 - Other times, a client simply doesn't interpret the law correctly.

Refunds from Vendor vs. State

- Sales and use tax refund claims must typically be filed with the entity to whom the tax was paid.
- Sales tax paid to vendors generally requires the claim to be filed with the vendor and use tax paid to the state can be filed with the state.
- A number of states including Texas permit vendors to assign their right to file the refund claim to their customer. This is referred to as a vendor assignment.
- But there are states where this isn't permitted, and this can result in lower recovery of the refunds.

Refunds from Vendor vs. State

- Very few buyers have a formal regular process of reviewing tax paid to vendors.
- In many cases, the tax department does a review of transactions identified for use tax accrual but no review at all of invoices where the vendor charges tax.
- As more vendors charge tax, this is a concern.
- However, process and systems limitations make this difficult.

Process Changes to Implement

- Buyers should have a formal regular process of reviewing tax paid to vendors.
- Review or implement a vendor tax validation process.
- If you're using a managed compliance rate, review to see if vendors are charging you tax.
- Monitor for vendors that you buy exempt items from to make sure you've issued the right exemption certificates to them.
- Evaluate where use tax is due on self consumed or promotional items
- As more suppliers start charging tax, the opportunity for reverse audits will increase. This is an area of opportunity for refunds.

Sales and Use Tax Whitepapers

- Visit www.salestaxinstitute.com/iofmap2019
 - Nexus Whitepaper
 - Sales Tax Administration Whitepaper
 - Remote Seller Resources

Q & A

- Questions?

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