

Administering the Sales Tax Function



On-Demand Webinar

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Trisha Davidson

- Manager with YETTER and Sales Tax Institute
- 29 years tax experience working in corporate and consulting services.
- Her experience focuses on tax compliance, consulting, and auditing throughout the U.S., with a specialty in sales tax.
- CMI-Sales Tax

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Diane L. Yetter

- Strategist, advisor, speaker, and author
- President of YETTER
- Founder of the Sales Tax Institute
- Accounting Today's 100 Most Influential People in Accounting for 2011, 2012, 2017, 2018 and 2019
- Woman Business Owner of the Year 2020

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Agenda

- When, Where & How to Register
- Maintenance of Registration
- Tax Base
- Consumer's Use Tax
- Holidays
- Exemption Certificates
- Invoice Presentation
- Customer Returns
- Compliance
- Staffing
- Training Non-Tax

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➤ When, Where and How to Register for Sales Tax

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Nexus

- Defines a level of connection between a taxing jurisdiction and an entity
- Controlled by U.S. Constitution under the Due Process Clause and the Commerce Clause
- Supreme Court has shaped the definition of Nexus
- “Substantial physical presence”
 - Activities of individuals or presence of property
 - Still relevant post Wayfair

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Nexus (cont.)

- 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

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Nexus (cont.)

- The U.S. Supreme Court's decision in *South Dakota v. Wayfair* struck down the physical presence requirement.
- Remote seller nexus legislation has proliferated in recent years:
 - Click-through nexus
 - Affiliate nexus
 - Economic nexus
 - Marketplace nexus
 - Notice and Reporting Requirements



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Nexus (cont.)

- Steps for Nexus Evaluation
 - Do I have physical presence in the state?
 - If yes, need to register for sales tax and maybe income tax
 - No physical presence then look for remote seller activities
 - Click Through
 - Affiliate
 - If yes, need to register for sales tax, likely not income tax
 - No remote seller activities, then economic
 - Sales Thresholds
 - Marketplace collection
 - If yes, need to register for sales tax, likely not income tax
 - No activities that require registration
 - Does the state have notice and reporting requirement?
 - Or is it easier to collect?

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Nexus Resources

- Remote Seller Nexus Chart
 - <https://www.salestaxinstitute.com/resources/remote-seller-nexus-chart>
- Remote Seller Resources Page
 - <https://www.salestaxinstitute.com/resources/remote-seller-resources>
- “Nexus After Wayfair – What You Need to Know” whitepaper
 - <https://www.salestaxinstitute.com/resources/five-things-to-understand-nexus-whitepaper>

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Registration

- Key questions to be aware of on application
 - Average annual liability
 - Used to determine filing frequency.
 - Read forms carefully.
 - Date business began
 - Used to determine if returns are due for prior periods
 - Tax Type
 - 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
 - If you're an e-commerce seller, you should be registered for seller's use tax.
 - Business acquired and prior registration

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Registration (cont.)

- Sign under penalty of perjury
- If there is a secretary of state line on the registration form, don't automatically assume that you need to register with the secretary of state.



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Registration (cont.)

- **Registration Process**
 - Online – preferred method; many states provide registration number immediately
 - Paper forms – may be necessary if can't skip questions online that don't apply (Secretary of State, SSN)
 - Streamlined Registration Process
 - How many SST states do you need to register in?
 - Benefits of SST?
 - Will you use a Certified Service Provider?
 - Future changes expected

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Registration (cont.)

- **Registration Certificate**
 - Number is used to complete resale certificates to provide to suppliers for inventory and items incorporated into property to be sold
 - Certificate is required to be posted in your physical location
 - Maintain original copies in a safe place in case you need to cancel registrations
 - Use this number for online marketplaces and tax engines to turn on the state

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➤ Updating Your Sales Tax Registration

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Things that can Trigger a Registration Change

- The following items require a complete change of registration:
 - Name change
 - FEIN change
 - Corporate entity change
 - Mergers & Sales of business units
- You may need to notify the Secretary of State before the registration change can happen if registered with Secretary of State.
- You may need to surrender your old registration certificate.

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Things that can Trigger a Registration Change (cont.)

- Other updates to keep current on – the following just require an update to the existing registration, not a whole new registration:
 - Address changes
 - Officer changes – states are getting strict on this so keep this current
 - Preparer changes
- If a registration is closed due to the sale or merger of an entity, you will be required to file a final return and return your license.
- States are beginning to cross check information.
 - Illinois has a power of attorney (POA) form and process. If the person that signs the POA is not listed as a responsible party on mytax.illinois.gov, the state rejects the POA.

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Alabama Tax Licenses Must Be Renewed Annually

- Effective November 1, 2020, taxpayers are required to renew their Alabama tax licenses on an annual basis.
- Licenses for the following tax types will need to be renewed annually: Sales tax, Rental tax, Sellers use tax, Lodgings tax, Utility gross receipts tax, and Simplified Sellers Use Tax
- The taxpayer's business information will need to be verified and/or updated annually.
- Additionally, taxpayers will need to verify that the business continues to operate in the same business entity type. If the entity type changes, taxpayers will need to apply for a new license.
- If a taxpayer fails to renew their tax license, the previously issued license will be cancelled, and the taxpayer will no longer be able to use the license in order to make tax-exempt purchases.
- (Notice of Annual Renewal of Alabama Tax Licenses, October 1, 2020, Alabama Department of Revenue)

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➤ Determining the Tax Base

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Tax Base

- The value of items that are subject to sales or use tax.
- Total amount of sales price without any deduction for cost of goods sold, interest paid, other expenses and transportation
- SSTP has no uniform definition of Tax Base, but does for Retail Sales Price
- Under SSTP, all local jurisdictions must have uniform tax base with their state

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Tax Base (cont.)

- Tax base is adjusted for exemptions
 - Based on who or how used (certificate required)
- Items excluded from tax base
 - Statutory exemptions (no exemption certificate required)
- Review each state's definition of sale

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Items Subject to Tax

- Sales of Tangible Personal Property
 - Tangible or Intangible
 - Personal or Real
- Sales of Real Property



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Items Subject to Tax (cont.)

- Sales of Services
 - Normally not taxable unless specifically taxed within a state's statute
 - True object test
 - Resale of services and related materials



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Items Subject to Tax (cont.)

- Lump Sum versus Separated
 - Taxable and nontaxable components
 - Predominant cost
 - Percentage of taxable items
- Burden of proof on taxpayer

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Items Subject to Tax (cont.)

- Freight
 - Postage
 - Shipping & Handling
- Installation Charges
- Restocking Charges
- Deposits



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Items Subject to Tax (cont.)

- Cash Discounts
- Trade-ins
- Returns and Allowances
- Other taxes
 - Excise and property taxes
 - Bad Debts

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Items Subject to Tax (cont.)

- Other Exemptions & Exclusions
 - Sales for Resale
 - Occasional Sales
 - Bulk Sales
 - Interstate Commerce
 - Tax-exempt Purchasers
 - Exempt Uses (Manufacturing, R&D, Agriculture)



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Items Subject to Tax (cont.)

- Gifts and Donations
- Related Entity Transfers
 - Intracompany vs. intercompany



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➤ Consumer's Use Tax

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Consumer's Use Tax

- Tax on storage, use, or consumption of a taxable item or service on which no sales tax has been paid
- Complementary to sales tax
- Purchases made outside the taxing jurisdiction, but used within

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Consumer's Use Tax (cont.)

- **Payment of Consumer's Use Tax**
 - Tax on purchaser, self-assessed
 - Due by the purchaser when the vendor didn't collect sales tax
 - Local rate generally follows seller's use tax rules
 - Some localities impose consumer's use but not seller's use tax
 - Minimum dollar threshold

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Exemption Certificate Issuance Best Practices

- **Keep track of who you have issued exemption certificates to.**
 - If the law changes, and you need to rescind or modify your exemption certificate, you'll know who to contact.
 - This can also help you get out of an audit assessment.
- **Post-Wayfair, it is important to do a thorough review of your purchases from suppliers and to continue to monitor this.**
 - Companies may now be collecting tax because you haven't issued them an exemption certificate since they weren't charging tax pre-Wayfair.
 - Make sure all exemptions you're entitled to are being honored.

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➤ Sales Tax Holidays

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Administrative Issues During Sales Tax Holidays

- Holiday Date – based on the time zone of the state for the holiday dates
- Layaway sales - Eligible items generally qualify for the exemption if the customer (IA example):
 - 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

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Administrative Issues During Sales Tax Holidays (cont.)

- Deliveries - Eligible items purchased by mail order, catalog, or Internet are 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



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Administrative Issues During Sales Tax Holidays (cont.)

- Rain-checks
 - 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.



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Administrative Issues During Sales Tax Holidays (cont.)

- Returns - When a customer returns an eligible item purchased during the exemption 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.
- AR Return Rule requires receipt to show proof of tax for all returns within 60 days of a holiday for refund of tax

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Administrative Issues During Sales Tax Holidays (cont.)

- Other Challenges
 - Tax category mapping that might differ from your standard categories
 - POS register updating
 - Internet and mail order sales
 - Documentation
- Sales Tax Holiday Chart
 - <https://www.salestaxinstitute.com/resources/sales-tax-holidays>

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➤ Exemption Certificates

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Exemption Certificates

- As companies have nexus in more states, obtaining and maintaining customer exemption certificates becomes critical
- For companies that exceed economic thresholds for gross sales but have little to no taxable sales, the decision as to whether to register should be based on the exemption certificate compliance and process

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Exemption Certificates

- The renewal period of exemption certificates varies by state and by type of exemption.
 - Exemption certificates expire more often than resale certificates
 - Arkansas – no stated expiration period for either
 - Connecticut – 3 years for both types
 - Maryland – 5 years for exemption and indefinitely for resale
 - Missouri - 5 years for exemption and indefinitely for resale



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Exemption Certificates (cont.)

- Recommended to update all certificates that don't otherwise expire every 3-5 years
- Retain all prior certificates that could be required under audit
- Electronic data accepted in SST states
- Scanned certificates must be readable and unchangeable
- Ensure certificates are valid for the ship to state
 - For drop shipment transactions understand what is acceptable alternative documentation if not registered in ship to state

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Exemption Certificate Maintenance Best Practices

- Get certificates for all claimed exemptions including in states where you aren't registered to ensure you don't incur liability if you exceed economic nexus thresholds
- Match customer names in your system with customer names on the certificates
- At a minimum, confirm the right number format for the exemption number
- Some states provide ability to validate certificates, or require it
- Maryland, Kansas and North Carolina provide online verification tools.

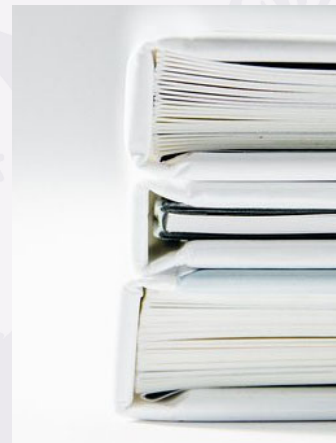
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Implications for Drop Shipments

- What is the appropriate documentation to support the exempt transaction?
 - Some jurisdictions allow alternate documentation
 - Some states require their own registration number
 - Some states accept a pass-through exemption



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Additional Learning Opportunities

- “The Great Exemption Adventure” webinar on-demand
 - <https://www.salestaxinstitute.com/sales-tax-education/great-exemption-adventure-on-demand-webinar>
- “Drop Shipments: What Are They and What’s New Post-Wayfair?” webinar on-demand
 - <https://www.salestaxinstitute.com/sales-tax-education/drop-shipments-post-wayfair-on-demand-webinar>

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➤ Invoice Presentation

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Invoice Presentation

- Generally items must be separately stated on the invoice provided to the customer for any exemption or exclusion to apply
- SST introduced the concept of “books and records” where a bundled amount can appear on the invoice, but the seller can tax the components
- Unless state has a specific “books and records” provision this only applies to telecommunication service, ancillary service, internet access, or audio or video programming service as defined under SST.

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Invoice Presentation (cont.)

- Line item terminology could affect the taxability of the item.
- Examples include:
 - Repair vs. Maintenance
 - Installation vs. Fabrication
 - Delivery charges, freight, shipping and handling



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Invoice Presentation (cont.)

- Invoice presentation of tax
- No specific rules in the U.S. but there are rules in other countries
- Consider customer service when determining company policy
 - State, county, city
 - Labeling the jurisdiction name
 - Taxability indicators on the lines (marking each line as taxable or exempt)

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Invoice Presentation (cont.)

- Multiple ship-to's on an invoice can add complexity
- Sold-to, bill-to, and ship-to names
 - Ensure that the sold to name on the invoice matches the name on the exemption certificate.
 - Include the drop-shipment party on the invoice for the ship-to.
 - Export transactions sent to freight forwarder should include the freight forwarder information.

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➤ Handling Customer Returns and Other Issues

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Customer Returns

- Refund the tax at the rate and jurisdiction which were originally charged
 - Company policy if no receipt
- You'll need proof of the refund of tax to customer before you can get your refund from the state



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Amended Returns

- Reasons for filing 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.

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California Disallows Taxpayer's Claimed Credit for Overpayment in Previous Period

- An out-of-state taxpayer was properly disallowed self-help credits that it claimed on California sales and use tax returns for amounts overpaid in the previous quarter.
- Instead of filing an amended return or filing a claim for refund, the taxpayer took a self-help credit.
- In order to obtain a refund of an overpayment, a taxpayer must file a timely claim for refund.
- A self-help credit fails to put the CDTFA on notice of any alleged overpayment and, in effect, allows a taxpayer to grant its own claim for refund. There is no statute permitting a taxpayer to grant itself a refund.
- Taxpayers should review all prior returns to determine if they had made self-help credit adjustments and file appropriate amended returns or refund claims before the statute of limitations closes.
- (*M.A.C. Cosmetics, Inc.*, California Office of Tax Appeals, No. 19014177, April 3, 2020, released August 2020)

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Amended Returns (cont.)

- Credit for returned merchandise should be taken on the return. An issue with returns relates to cross period returns when there has been a rate or taxability change.
- Tax only debits and credits occur when taxability errors were made on the original transaction. As long as the tax was appropriately recalculated, the adjustment should be taken.
 - Technically these should be reflect on amended returns.
 - If there are minimal adjustments, you might consider putting on current return but these could be disallowed under audit.

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How to Prepare Amended Returns

- 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.

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Credit for Tax Paid

- One item that states handle differently is how the credit is applied when a purchaser pays sales tax on an item in one state, then brings it to their home state and owes use tax but is eligible for a credit for the sale tax paid.
- This issue has been addressed in the SST states

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Credit for Tax Paid (cont.)

- SST Requires the states to publish their policy:
 - AR – provides credit against AR use tax but not against AR sales tax. The credit provided for is for the combined amount of state and local “tax paid” to another state or local jurisdiction against both the state and local taxes due to the State.
 - WV - provides credit against both WV sales tax and use tax. The credit is for only the state “tax paid” to another state against the taxes due to the State (*i.e.*, no credit for local tax against state tax). If the State has local sales or use taxes, it only provides credit for state tax against state tax and local tax against local tax.

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Credit for Tax Paid (cont.)

- Texas – which is not an SST state – has also outlined their process for tax credits:
 - The credit is applied first against the amount of any state use tax due. Any remaining credit is then applied against the amount of local use tax due in a specific order against taxes such as transit use tax and special purpose district use tax



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➤ Sales Tax Compliance and Remittance

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Return Filing

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

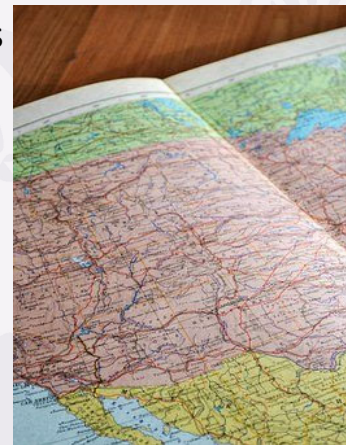
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Return Filing (cont.)

- 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
 - States do not allow consolidated sales and use tax returns
- If a company has more than one location in a state, that state may require a list of the various locations with the tax information detailed by location.



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Return Filing (cont.)

- Due Dates
 - Sales tax returns are generally due in the month following the taxable event
 - Return due dates vary by jurisdiction. Common due dates are the 15th, 20th, 25th and end of month
 - Some states consider the return filed based on the received date (for paper filing) while others use the mailing date
 - In-house postal meter
 - Certified mailing
 - Private delivery service vs. USPS
 - Different due dates may apply for electronic filers than for paper filers. Usually a return is also required to be filed to substantiate the payment.

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Electronic Filing and Payment

- EFT pays the tax
- EDI or Web File submits the return
- Some jurisdictions require payment via EFT if the liability exceeds certain thresholds

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Arizona TPT Electronic Filing Threshold Lowers on January 1, 2021

- Effective January 1, 2021, Arizona's threshold for TPT electronic filing and paying lowers to \$500.
- Businesses with an annual TPT and/or use tax liability of \$500 or more during the prior calendar year will be required to file and pay electronically starting February 2021 for the January 2021 filing period.
- This is part of a planned lowering of the electronic filing threshold.
- Taxpayers filing TPT electronically during a calendar year may claim a credit of 1.2% of state tax due, with a total calendar year credit limit of \$12,000.
- Note that Arizona imposes penalties for not filing and paying electronically.
- (*News & Notices*, October 6, 2020, Arizona DOR website)

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Electronic Filing and Payment (cont.)

- States are starting to tighten up granting access to account information and being willing to talk to people.
 - Make sure that your online portal is up to date with your current people who are using it.



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Notices

- Generated by taxing authorities when errors occur
- Many notices have short response times associated with them and require prompt attention.
- When responding to notices, it is important to provide all the documentation to the taxing jurisdiction.
- Once a response to a notice has been sent, it should be tracked until resolution has been confirmed.

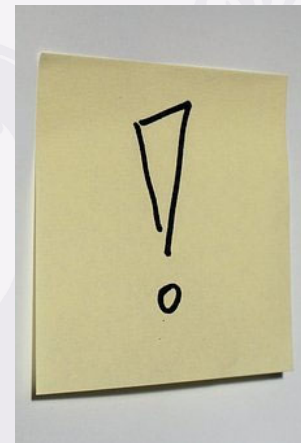
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Notices (cont.)

- Many states are no longer sending notices out via paper, instead just posting them to your account.
 - Make sure to proactively check for notices in your online account.
 - Sign up for state emails as this may be the only way they communicate changes to you



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➤ Staffing the Sales Tax Department

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General Considerations for Staffing the Sales Tax Department

- The size of the sales tax department can vary depending on the industry.
- For example, retailers typically have a much larger sales tax function than manufacturers.
- Special projects - such as implementing a system - might make more sense to outsource if you don't need to do them repeatedly.
- Even if you outsource some of the tax functions, you'll still need someone in your company to liaison with them.

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Considerations for Retailers

- Retailers need to ensure that their tax calculation is timely updated for rate changes and their product taxability is up to date.
- If you sell to exempt customers, ensure that you have a process in place to acquire and store exemption certificates.
- Consumer's Use tax is often less of a concern for retailers.

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Considerations for Manufacturers

- The big issue for manufacturers is what you purchase and how you contract and purchase items.
- Make sure that you have a good use tax accrual process in place.



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Considerations for Contractors

- Consumer's use tax is a concern for contractors since generally they are the party responsible for paying tax on materials incorporated into the real property.
- Contractors should ensure that the Tax Department is involved in the bidding process and contracts.

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Considerations for Professional Services Providers

- Use tax is also a concern for providers of professional services.
- If you have individuals traveling to different states, you may be creating nexus in those states.
- There are special considerations for providers of computer services and B2B services as well since some states tax these service.

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Best Practices for Setting Up Policies and Procedures

- If you are a public company and subject to SOX rules, documentation of your policies is critical.
- This is a team sport! Whether each department is comprised of one person or many people, document what you're doing!
- Good documentation can support audit penalty abatements.
- It can also help tremendously when managing issues with staff turnover.

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➤ Training Non-Sales Tax Staff

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General Considerations for Training Non-Sales Tax Staff

- Responsibility for administering the sales tax function doesn't rest solely with the Tax Department.
- Other departments are needed to support sales tax compliance efforts.
- Training will likely be required for non-Tax Department staff to educate them on how they can assist with sales tax compliance.
- Following are items to take into consideration when training different departments in the company.

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Purchasing Department

- Bundling vs. separately stating items on invoices and contracts.
- For manufacturers: Knowing the beginning and end of the manufacturing process.
- For construction contractors: Knowing when items are attached to real property.



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IT Department

- Understanding the taxability of IT contracts
- Delivery method: Tangible vs. Electronically delivered vs Remotely Accessed
- Unbundling services from software
- Mandatory vs. optional maintenance agreements

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Customer Service Department

- Setting up new customers correctly for taxable/exempt status
- Acquiring exemption certificates from exempt customers.
- Having the correct customer name in the system for exemption purposes



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Accounts Receivable Department

- Understanding the importance of line-item detail for invoices
- Handling exemption certificates
- Dealing with short pays of tax

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Accounts Payable Department

- Understanding the correct amount of tax that vendors should be charging
- Understanding how to accrue tax
- Understanding how to separate the voucher entry in the A/P system

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Accounting and H/R Departments

- Accounting Department
 - Fixed Assets
 - Setting up contracts advantageously to minimize taxes
 - The impact of equipment location on nexus
 - Equipment moves
- HR/Payroll Department
 - The impact of employees/others on nexus

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Bonus Tool for Attendees!

- Sales Tax Administration Checklist
- Emailed to you with the course materials PDF

Sales Tax Administration Checklist

What to do when you make a sale into a new state or enter a new state or create a new entity:

- Find out what type of activity and frequency or duration
- Determine if you have established nexus in the state
 - Physical Nexus
 - Remote Seller Nexus (Click-Through or Affiliate)
 - Economic Nexus
 - Marketplace Nexus
- Refer to www.salestaxinstitute.com/resources/remote-seller-nexus-chart
- If you have nexus, register to collect and remit sales tax
 - Determine which taxes the company will be required to collect or pay
 - Read forms carefully when answering the average annual questions. Some forms ask for tax liability, others ask for sales
 - Figure out the taxability of the items you sell
- Determine if you need to be registered with the Secretary of State
- Determine if there are local business licenses required based on your activity
- If no nexus, are you subject to notice and reporting requirements?

What to do when you change your business entity:

- A complete change of registration is required if any of the following happen:
 - Name change
 - FEIN change
 - Corporate entity type change
 - Merger or sale of business units
- You may need to notify the Secretary of State before a sales/use registration change can happen
- You may need to surrender the old registration certificate
- If a registration is closed due to the sale or merger of an entity, file a final return and return your license.

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Questions/Comments

Diane Yetter
Sales Tax Institute
diane@salestaxinstitute.com
(312) 701-1800, ext. 2

Trisha Davidson
Sales Tax Institute
trisha@yettertax.com
(312) 701-1800, ext. 6

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Sales Tax Institute
910 W. Van Buren, Suite 100-321
Chicago, IL 60607
(312) 701-1800

webinars@salestaxinstitute.com

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