# What Effect Does Nexus Have on Clients?


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In *South Dakota v. Wayfair*, the U.S. Supreme Court eliminated the physical presence rule within the Commerce Clause as the standard for creating nexus in a jurisdiction. However, physical presence will still create nexus and is the first consideration in determining nexus.

In the lead-up to the Court's decision, many states enacted new types of economic nexus legislation to address how sellers conduct business.

However, there is no specific shared definition of nexus across the 50 states. Moreover, the definitions and rules for determining nexus change constantly, and most states are careful to give themselves room to maneuver in their definitions. This means a business must look at each state individually when determining sales tax nexus and stay constantly on top of changing regulations and interpretations.

Here's how nexus impacts your clients and what you can do to keep them compliant.

## Implications of Nexus: What are the Obligations?

First, clients must register as a retailer and collect and remit tax on all taxable sales into that jurisdiction, as well as obtain any necessary exemption certificates.

Nexus is also relevant to purchasers. If your clients have one in a jurisdiction and the seller didn't collect tax, the client is required to remit use tax on taxable purchases delivered within that jurisdiction. This includes taxable advertising and promotional items, such as trade show giveaways and in-store handouts.

## Nexus Enforcement

With federal funding to states diminishing and changes happening in how companies transact business, states have become much more aggressive in identifying and collecting all the tax revenue they can. They are looking harder for transgressors, hiring more tax auditors and sending these professionals out more frequently.

The auditors are no longer restricted to just in-person audits, since documentation can easily be sent across the internet and secured state networks. They are also relying on upgraded internal systems that allow them to compare registrations across tax types and even check registrations against companies that have contracts with the state or its agencies.

Furthermore, states are using their subpoena powers more frequently to obtain information about business partners of companies they are auditing, as well as purchasing third-party data for targeted industries.

Here are some of the tools and tactics used to determine who to pursue and audit:

1. **Nexus Questionnaires:** States periodically send out mass mailings indicating that the receiving company may be subject to reporting and collecting sales tax in the state. These typically include nexus questionnaires that must be completed and returned promptly. Ignoring is not an option; doing so can eliminate potential settlement options down the road. Nexus questionnaires are designed to ferret out activities your clients may be engaging in within the state, and their answers can trigger further inquiries. Therefore, extreme care should be taken when responding to their questions. Your professional tax help is important because simply checking "yes" to some questions can easily lead to a determination of nexus. If your clients' activities in the jurisdiction are limited, it might be better to respond with a letter in lieu of completing the questionnaire.
2. **Nexus Task Forces:** Their hunting grounds include truck weigh stations, trade shows, large construction projects, airports, harbors and even marinas. Task forces don't even have to be out patrolling; they can simply sit back and conduct highly fruitful website and phone directory research.
3. **Multi-State Tax Commission Audits:** The Multi-State Tax Commission has a joint audit program open to participating member states. These nominate and vote on which companies to target, and the commission then conducts an audit on behalf of all the states concurrently. If clients are registered in one or more of the participating states but not in all, this is a trigger to do a nexus audit for the unregistered states.
4. **Audits of Your Clients' Customers and Vendors:** During an audit of their customers, your clients' supplier invoices will be reviewed as part of their use tax audit. Charges for on-site services, such as installation, consultation, training or repair work, serve as proof that the vendor had an in-state presence.

In fact, a nexus questionnaire might not even be sent; just a notice of an audit appointment. This could trigger nexus, even if there isn't a separate charge for the services. These audits can identify the number of transactions that occurred in the state across different customers, which may trigger an inquiry under economic nexus transaction threshold rules.

5. **Marketplace Platforms:** Some states, including California and Washington, contacted sellers who make sales through Amazon, eBay and Etsy regarding their tax obligations. A marketplace facilitator such as Amazon may hold your clients' inventory in their warehouse in a state that will trigger nexus and a requirement to register there. Generally, items can be transferred from one warehouse to another to fulfill stock needs without notice forwarded to the seller, which can cause a nexus issue.

## Moving Forward with Nexus

While this information doesn't cover everything in regard to nexus impacts on your clients, it's a good starting point. When moving forward, continue to stay on top of every developing change. Being proactive and strategic with nexus will not only help keep your clients out of danger, but also build your reputation as a trustworthy advisor.