Simplifying Sales Tax for E-Commerce: Guidance for Sellers and Marketplaces

SALES TAX INSTITUTE℠

Diane L. Yetter

- Strategist, advisor, speaker, and author
- President of YETTER
- Founder of the Sales Tax Institute
- Testified before Senate Finance Committee
- Accounting Today's 100 Most Influential People in Accounting for 8 times between 2011 and 2022
- Woman Business Owner of the Year 2020

E-Commerce Businesses

- Historically were B2C
- Movement towards B2B and even services
- Expansion of Marketplace Facilitators
- Added complexity with business models adds complexity to sales tax compliance
  - Nexus
  - Taxability
  - Exemption documentation
  - Registration
  - Who is responsible for tax collection and remittance

Physical, Economic and Marketplace Nexus

Physical Nexus

- Even though economic nexus has become the new law of the land, physical presence is still relevant post-Wayfair.
- It is still the first question you ask when determining if you have nexus in a state.
- If you have physical presence in a state, you have nexus and the economic nexus thresholds are irrelevant.
- Physical presence nexus starts on the first day of physical activity in the state.

SALES TAX INSTITUTE℠

Physical Nexus

- For e-commerce sellers, physical presence nexus in a state can be created in a number of different ways:
  - Main office
  - Remote employees
  - Seller-owned or 3PL warehouse where seller controls inventor
  - Inventory in a third-party warehouse where seller does not control inventory (FBA)
  - Traveling representatives or salespersons
  - Trade shows and special events

SALES TAX INSTITUTE℠

Physical Nexus

- Exceptions For Physical Nexus:
  - Inventory in a third-party warehouse where seller does not control inventory (FBA)
    - If only physical presence some states won't consider this to be nexus
    - AZ, AR, IL, IA, KS, NE, NV, NY, OK, PA, TX
  - Traveling representatives or salespersons
    - Depends on activity and length of visit
  - Trade shows and special events
    - Depends on activity, whether sales occur and length of event

SALES TAX INSTITUTE℠

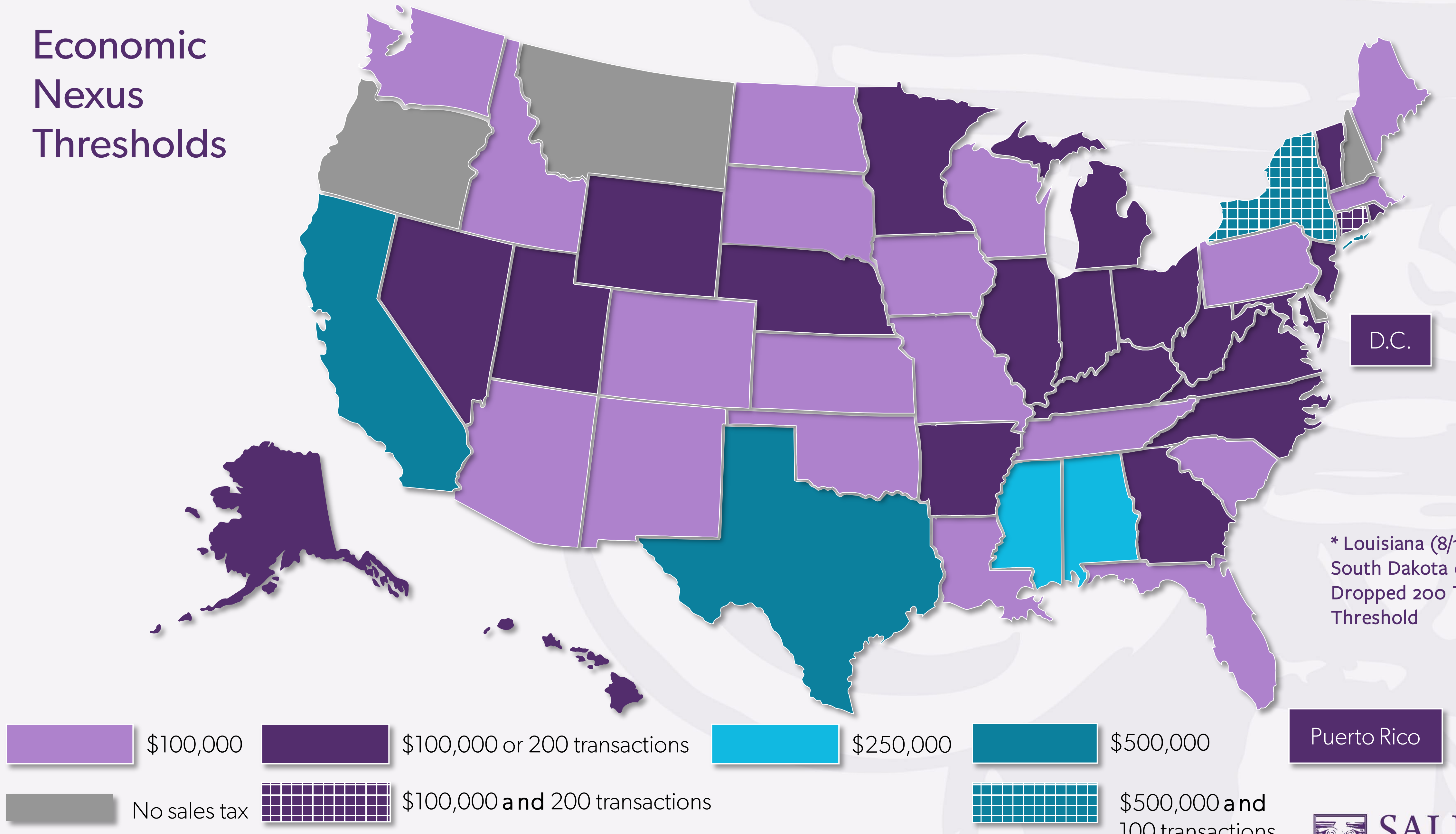
Economic Nexus

- Typical Attributes
  - Does not require physical presence
  - Applies only if there is NO physical nexus
  - Correlates with a set level of sales or gross receipts activity

Economic Nexus - Definitions

- Threshold: The amount of sales and/or number of transactions that determine when you have substantial nexus in the state.
  - The threshold may be dollar only or dollar with transaction count.
  - Increasing trend among states to not include or to remove the transaction count from the threshold

Economic Nexus Thresholds



SALES TAX INSTITUTE

Economic Nexus - Definitions

- Includable Sales: The specific sales to include when determining if you meet the economic nexus threshold.
  - Gross Sales (most typically used)
  - Retail Sales (excludes sales for resale)
  - Taxable Sales (excludes all exempt sales)
  - Marketplace sales may be included or excluded when calculating the threshold for individual sellers, depending on the state.
  - Do you include freight?
  - Do you deduct selling fees? (e.g. Amazon sellers)

Economic Nexus - Definitions

- Measurement Date: The time period for determining the amount of sales and/or number of transactions.
  - Typically the current or previous calendar year (most states), however some states have a different measurement date.
  - Previous calendar year (Alabama)
  - Preceding 12-month period (Illinois)
  - The 12-month period ending on the last day of the most recently completed calendar quarter (Minnesota)
  - Immediately preceding four sales tax quarters (New York)

Economic Nexus - Definitions

- When You Need to Register Once You Exceed the Threshold: How soon you need to register to collect and remit sales tax once the threshold is met.
  - Next transaction
  - Delayed
    - Example: January 1 following the year the threshold is exceeded (Rhode Island)
    - Example: The first day of the month that starts at least 30 days after you meet the threshold (Washington)

SALES TAX INSTITUTE℠

Economic Nexus State Guide

- The Sales Tax Institute's Economic Nexus State Guide contains all of the above plus additional helpful information for each state.
  - https://www.salestaxinstitute.com/resources/economic-nexus-state-guide
- The SST Disclosed Practice #8 also includes a wealth of information for remote sellers, marketplace sellers and marketplace facilitators.
  - New project to add additional questions for states to answer
  - https://sst.streamlinedsalestax.org/TAP

SALES TAX INSTITUTE℠

Nexus Determination Examples

Nexus Determination – State Example 1

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
Idaho	June 1, 2019	$100,000	Previous or current calendar year	Gross sales Marketplace sales included towards the threshold for individual sellers	Next transaction (state doesn't specify)

- A remote seller with no physical presence in Idaho made gross sales of $196,000 in Idaho in 2022.
- Are they required to collect and remit sales tax in Idaho?
- If yes, when should they register to collect and remit sales tax?
- Yes – required to register on next transaction after reaching $100,000 in sales

SALES TAX INSTITUTE

Nexus Determination – State Example 2

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
South Dakota	November 1, 2018	$100,000 or 200 or more separate transactions * South Dakota transaction threshold dropped as of July 1, 2023	Previous or current calendar year	Gross revenue Marketplace sales included towards the threshold for individual sellers	Next transaction

- A seller with its main office in South Dakota made gross sales of $35,000 (in 185 sales transactions) in South Dakota in 2022.
- Are they required to collect and remit sales tax in South Dakota?
- If yes, when should they register to collect and remit sales tax?
- Yes – physical presence so need to be register from date of 1st sale

SALES TAX INSTITUTE℠

Nexus Determination – State Example 3

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
New Mexico	July 1, 2019	$100,000	Previous calendar year	Taxable sales Marketplace sales excluded from the threshold for individual sellers	January 1 following the year the threshold is exceeded

- A remote seller with no physical presence in New Mexico made gross sales of $125,000 in New Mexico in 2022.
  - $20,000 of the gross sales are Marketplace sales. $30,000 of the gross sales are sales for resale
- Are they required to collect and remit sales tax in New Mexico?
- If yes, when should they register to collect and remit sales tax?
- No –below threshold since exclude marketplace and resale sales.

SALES TAX INSTITUTE℠

Marketplaces

Marketplace Nexus

- Requires online marketplace facilitator to collect and remit tax on behalf of sellers selling through their platform
- Typical requirements include that the marketplace facilitator collects revenue from the customer and manages multiple activities related to the selling process
- Key provisions relate to collection of sales revenue from customer
- Number and type of marketplaces are growing

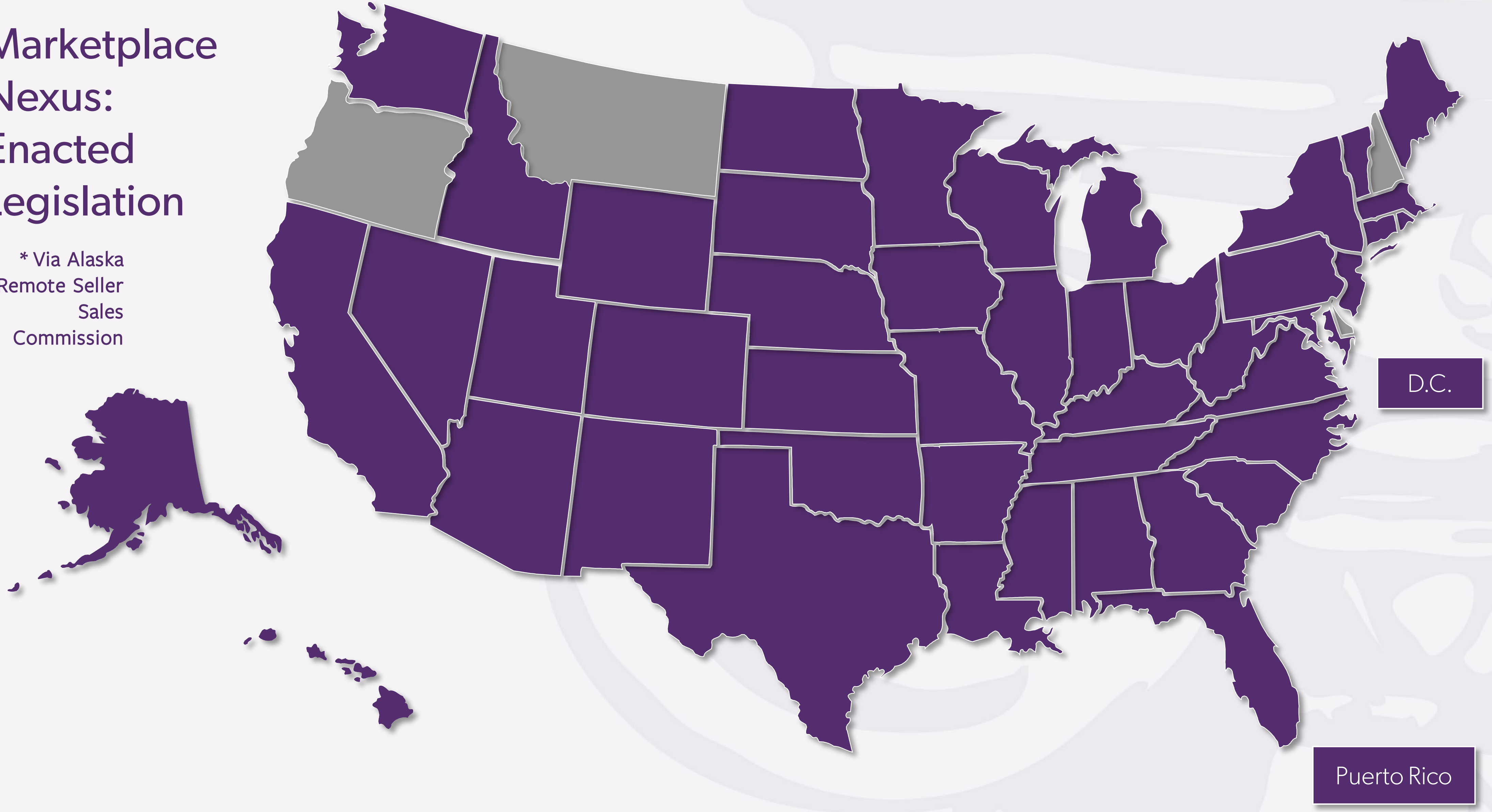
Marketplace Nexus

- Exceptions exist for specialty marketplaces such as food delivery, lodging, amusement and others
- Some states allow marketplace facilitator and marketplace seller to agree to have seller collect and remit
- MTC Whitepaper
  - https://www.mtc.gov/wp-content/uploads/2023/02/Wayfair-and-Marketplace-White-Paper-FINAL-7-8-2021.pdf

SALES TAX INSTITUTE℠

Marketplace Nexus: Enacted Legislation

* Via Alaska Remote Seller Sales Commission



Enacted

No sales tax

SALES TAX INSTITUTE℠

Double Taxation

- For some industries, the implementation of marketplace collection laws has been more challenging.
- These industries often facilitate sales for in-state retail businesses (e.g., hotels, restaurants, grocery stores, big-box retailers).
- Some in-state businesses have struggled to comply with the marketplace facilitator laws since they were already collecting and remitting sales tax.
- Under marketplace facilitator laws the obligation has been shifted to the marketplace facilitator.

SALES TAX INSTITUTE℠

Double Taxation

- This has created implementation challenges:
  - Marketplace sellers refusing to stop collecting and remitting sales tax.
  - Marketplace facilitators getting assessed by states for sales tax that has already been collected and remitted by the marketplace seller.
  - Confusion regarding sourcing
- The risk of double taxation increases as the marketplace facilitator and marketplace seller may both remit tax.
  - E.g. A marketplace facilitator sends a sales report to a marketplace seller who then remits tax on those sales even though the facilitator already remitted tax.
  - In this case, how can the seller prove that the facilitator remitted tax so they can get a refund of tax paid?

Exemption Certificates

- Since marketplace facilitators are facilitating transactions but not buying and reselling goods or services, exemption certificates have not generally been applicable to marketplace transactions.
- Some marketplace sellers have demanded that marketplace facilitators provide exemption certificates.
  - Sellers are looking for reassurance that they are no longer required to collect and remit sales tax.
  - Marketplace facilitators are reluctant to provide exemption certificates since they are not buying and reselling.

SALES TAX INSTITUTE℠

Exemption Certificates

- Many states have not issued guidance on whether resale exemption certificates can or should be issued by marketplace facilitators to marketplace sellers.
- Some states have marketplace certification forms that are provided to the seller to indicate that the marketplace is collecting and remitting sales tax.
  - IL CRT-63
  - NY ST-150
  - SST Disclosed Practice #8.3.b

Exemption Certificates

- SST Disclosed Practice 8.2.d
  - Does the State require a Marketplace Seller to maintain exemption documentation only for its direct sales, and not for sales made through a Marketplace Facilitator/Provider?
- SST Disclosed Practice 8.2.f
  - Can a Marketplace Seller that is not registered or not required to be registered in any State issue an exemption certificate to a Seller located in this State claiming sale for resale and can that Seller accept that exemption certificate?

SALES TAX INSTITUTE℠

Practical Issues for Marketplace Sellers

- Potential issues may exist for the marketplace seller regarding whose responsibility it is to collect and remit sales tax.
  - What if the marketplace facilitator doesn't collect tax?
    - SST Disclosed Practice 8.3.m – Shifting Liability to Seller
  - Recordkeeping: Sales made on or off the marketplace are included in total revenue and it is imperative to have adequate records in case of an audit.
  - Some states have laws in place that require marketplace sellers to monitor and report their marketplace sales.
  - Some states require marketplace sellers to report sales across all sales channels, including marketplaces.

SALES TAX INSTITUTE℠

Practical Issues for Marketplace Sellers

- Potential issues may exist for the marketplace seller regarding whose responsibility it is to collect and remit sales tax.
  - Some states require marketplace sellers to register and file, even if 100% of their sales occur on a marketplace platform.
    - SST Disclosed Practice 8.2.a
  - How do marketplace sellers manage challenges when they cannot control the taxability of the products, especially if they can be jointly liable for tax remittance?
  - What if the marketplace seller was collecting prior to the marketplace facilitator relationship and does not want to shift the tax collection/remittance to the marketplace facilitator?
    - SST Disclosed Practice 8.3.c (Waiver of Facilitator)

State-Specific Guidance for Sellers and Marketplace Facilitators

Louisiana Clarifies Treatment of Marketplace Sales for In-State Businesses

- The Louisiana Sales and Use Tax Commission for Remote Sellers has provided guidance to marketplace facilitators and sellers about each's responsibility for sales tax, specifically focusing on businesses with a presence in the state.
- Louisiana merchants may rely on marketplace facilitators to collect and remit sales taxes on their behalf for sales made through marketplaces.
- Though marketplace sales are always considered remote sales, selling on a marketplace does not make the rest of a business' sales classified as remote sales reportable to the Commission for Remote Sellers.

Louisiana Clarifies Treatment of Marketplace Sales for In-State Businesses (cont.)

- If a Louisiana seller makes their own sales into Louisiana directly to customers, they are responsible for registering and remitting any tax due on their sales to the DOR and any required home rule authorities unless qualify as a remote seller and can then report through the Commission for Remote Sellers.
- Marketplace facilitators must report sales to the Commission for Remote Sellers, regardless of whether they have a physical presence in Louisiana.
- Marketplace facilitators must keep documentation of seller information and exemption certificates to support the taxability of their sales.
- (Louisiana Sales and Use Tax Commission for Remote Sellers, Remote Sellers Information Bulletin No. 23-001, September 8, 2023)

California Adopts New Regulations to Clarify Marketplace Facilitator Responsibilities

- Effective August 28, 2023, California has added additional language to its Code of Regulations to clarify which businesses have responsibilities under their marketplace facilitator laws.
- The new rules include a detailed definition of a Marketplace Facilitator as any business that handles payment, fulfillment, or storage of products for sale, lists products and sets prices, takes orders, or provides customer service on behalf of a marketplace seller.
- Marketplace Facilitators also include businesses that transmit offers and acceptance of orders between buyers and sellers, operate the infrastructure of a marketplace website, or provide virtual currency to buyers to make payment to sellers.

California Adopts New Regulations to Clarify Marketplace Facilitator Responsibilities (cont.)

- Marketplace Facilitators are not considered the sellers or facilitators of sales where their only involvement in the transaction is a link, advertisement, or direct referral of the seller to the purchaser.
- Delivery network companies that provide websites or applications that facilitate local deliveries and otherwise meet the definition of a marketplace facilitator can elect to be treated as a marketplace facilitator for sales and use tax purposes.
- (Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales, Cal. Dept. of Tax & Fee Admin, August 28, 2023)

Texas Comptroller Explains Remote Seller, Marketplace Tax Policies

- The Texas Comptroller of Public Accounts has offered new guidance and answers to FAQs for remote and marketplace sellers and marketplace providers.
- If a remote seller is below the state's $500,000 economic nexus threshold, tangible personal property stored in a marketplace provider's Texas warehouse does not require the remote seller to get a permit if the marketplace has certified it will act as the seller for tax collection.
- Remote sellers selling through marketplace providers should collect sales and use tax until certification is received from the marketplace provider that it will collect the tax. This certification is required by Texas. Sellers must maintain it for tax and audit records.

Texas Comptroller Explains Remote Seller, Marketplace Tax Policies (cont.)

- Remote sellers who only sell through a marketplace provider do not need to register for a tax permit as long as they have received and accepted a certification from the marketplace provider that it will collect tax. However, sales records for all marketplace sales must be kept and maintained for four years.
- Marketplace providers are required to provide sellers with certification they are collecting and remitting tax. There is no specific form, and it can be part of the terms and use or any other agreement between sellers and the marketplace provider. The marketplace seller must keep the record of certification of tax collection and payment provided by the marketplace provider.
- Both marketplace sellers and marketplace providers are subject to audit.
- (Remote Sellers and Marketplace Frequently Asked Questions, Texas Comptroller website, updated January 2023)

Kansas Guidance for Marketplace Facilitators

- Kansas authorizes the DOR to waive the obligation of a marketplace facilitator to collect and remit taxes if the marketplace facilitator shows that substantially all of its marketplace sellers are already collecting and remitting all applicable taxes.
  - For purposes of obtaining a waiver from the DOR, the phrase "substantially all" means 95% or more.
- Kansas also allows marketplace facilitators to contract with marketplace sellers that have at least $1 billion of annual gross sales in the United States to require the marketplace seller to collect and remit all applicable taxes and fees.
- (Notice 21-14, Marketplace Facilitators – Products, Kansas Department of Revenue, November 1, 2021)

Illinois Releases Answers to 2022 Sales and Use Tax Issues Survey

- Illinois has published guidance that clarifies the state's treatment of marketplace sellers.
- Marketplace Sellers who only make sales on a marketplace may still have a filing obligation for tax types other than Retailer's Occupation Tax (ROT) if they meet the economic nexus threshold.
- A Marketplace Facilitator that does not have physical or economic nexus does not qualify as a marketplace facilitator in Illinois if they register voluntarily, and marketplace sellers may still have a requirement to collect and remit tax for sales on such marketplaces.
- Marketplace facilitators should make arrangements to remit taxes other than ROT to marketplace sellers if they are collected on orders, so marketplace sellers may remit the tax.
- (Illinois Department of Revenue, General Information Letter ST 22-0020-GIL)

Taxpayer Doesn't Meet Definition of Marketplace Facilitator in North Carolina

- A North Carolina taxpayer who is an affiliate of original equipment manufacturers (OEMs) does not meet the definition of a "marketplace facilitator" per a private letter ruling from the NC DOR.
- The taxpayer owns and administers the electronic infrastructure of a platform on which marketplace sellers make sales.
- North Carolina defines "marketplace facilitator" as a person that, directly or indirectly and whether through one or more affiliates, does both of the following:
  - Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator; and
  - Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment, or makes payment processing services available to purchasers for the sale of a marketplace seller's items

Taxpayer Doesn't Meet Definition of Marketplace Facilitator in North Carolina (cont.)

- The taxpayer is not a marketplace facilitator since it does not meet both parts of the state's definition.
- While the taxpayer does own and administer a marketplace in North Carolina that lists marketplace sellers' items for sale, the taxpayer does not directly or indirectly collect the sales price or purchase price of the marketplace sellers' items, process payment, or make payment processing services available.
- Third-party providers who are not affiliates of the taxpayer process payment and make payment processing services available. As such, the taxpayer does not meet the state's definition of a marketplace facilitator.
- (SUPLR 2022-0008, North Carolina Department of Revenue, December 9, 2022)

Fulfillment Models

Fulfillment Models

- The fulfillment model that an e-commerce seller uses can have a significant impact on nexus and sales tax requirements.
- An important consideration in determining physical presence nexus can be if the seller <u>controls</u> the movement of the inventory.

SALES TAX INSTITUTE℠

Fulfillment Models

- There are four main fulfillment models:
  - FBA – Fulfillment by Amazon
  - 3PL (Third-Party Logistics)
  - Self-fulfilled
  - Consigned inventory

Fulfillment Models

- Amazon warehouse
  - For FBA (Fulfillment by Amazon) sellers, the seller doesn't control the inventory stored in the Amazon warehouse.
  - A seller's inventory may get commingled with another seller's inventory.
  - Some people have made the argument that Amazon essentially owns the inventory because they decide what to do with it.

Fulfillment Models

- Amazon warehouse (cont.)
  - Inventory in an Amazon warehouse may or may not be considered physical presence in a state.
    - Arizona and New York specify that 3rd party inventory does not create physical nexus.
    - SST Disclosed Practice 8.1.a
  - This inventory could create income tax nexus in addition to sales tax nexus and even if the state says it doesn't create sales tax physical nexus.

Fulfillment Models

- 3PL (Third-Party Logistics)
  - The seller engages with a 3rd party contractor to manage its inventory at the 3PL warehouse location
  - The seller retains clear ownership of the inventory and controls the movement
  - This creates physical nexus.
- Self-fulfilled
  - The seller fulfills orders from its own location itself.
  - The seller clearly owns and controls the inventory, so this creates physical nexus wherever they maintain their own warehouses.

Fulfillment Models

- Consigned inventory
  - The seller purchases the inventory from the supplier and has legal title to the inventory at the time of purchase .
  - The supplier retains the inventory and acts as the fulfillment center on behalf of the seller.
  - The seller clearly owns the inventory, so this creates physical nexus.

Drop Shipments

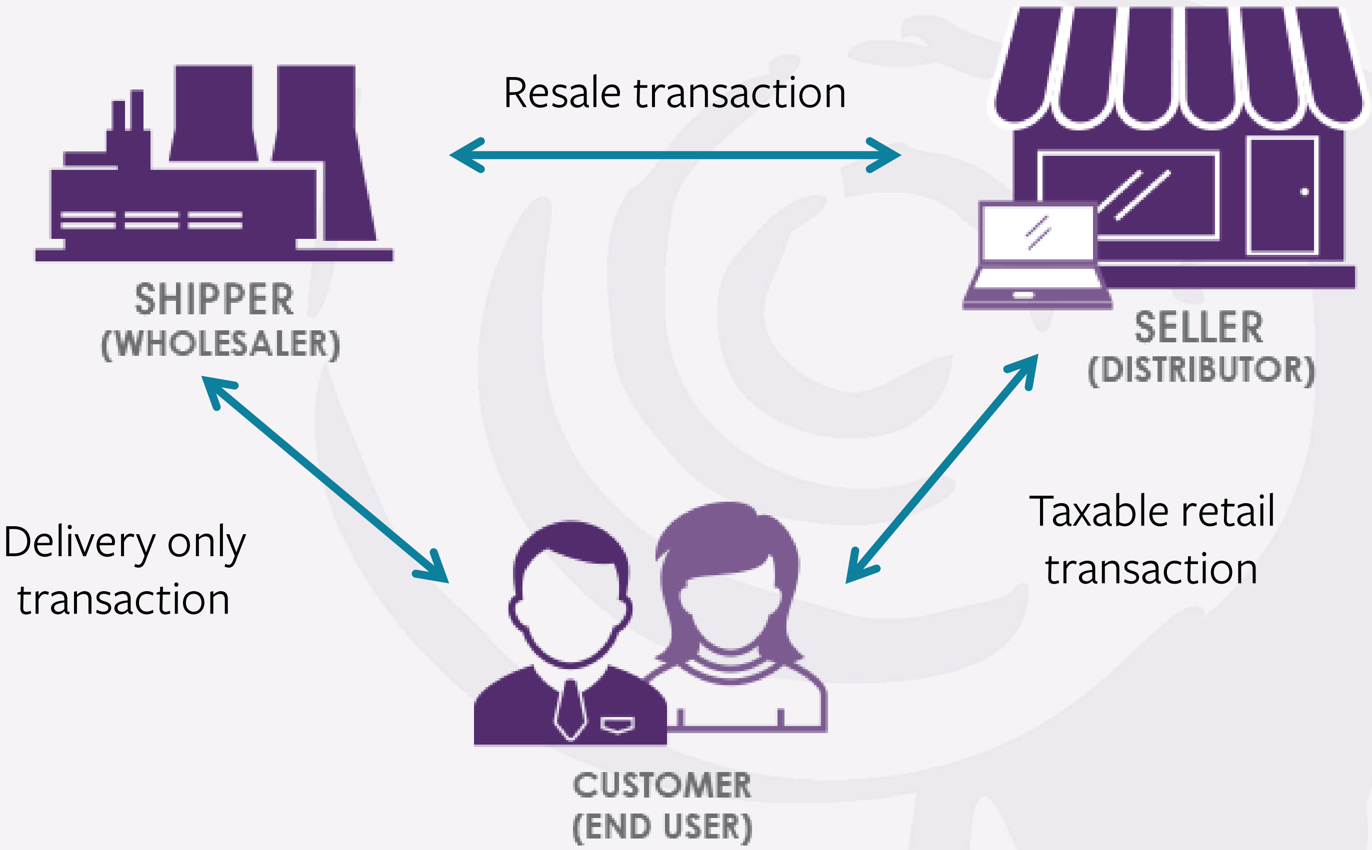
Drop Shipments

- Drop shipments commonly happen in the fulfillment of sales made by e-commerce sellers.
- As contrasted with consigned inventory, in a drop shipment model, the supplier sells the inventory to the seller at the same time the seller makes the sale to their customer in a "flash" title transfer situation.
- The seller doesn't have ownership of the inventory prior to the point of shipment.
- As such, it's important to understand how they work, the sales tax implications, and what sellers need to do to stay compliant.

Drop Shipments Definition

- Seller/distributor accepts order from customer/end user
- Seller/distributor places order with shipper/wholesaler
- Seller/distributor directs shipper/wholesaler to ship goods direct to customer/end user
- Shipper/wholesaler bills the Seller/distributor at wholesale price
- Seller/distributor bills customer at retail price

Drop Shipment Models – Traditional



SALES TAX INSTITUTE℠

The Drop Shipment Model – 4 party

Implications of Drop Shipments

- A state cannot require out-of-state businesses to register to collect its tax unless nexus is established…BUT
  - If the shipper/wholesaler requires appropriate exemption documentation, the retailer may be forced to register.
  - Otherwise, the shipper/wholesaler will be required to charge tax on the invoice to the retailer.
  - Economic nexus could resolve many of these issues and the retailer may now be required to be registered.

Sales and Use Tax Issues with Drop Shipments

- If the seller/distributor is not registered to collect sales tax and has no nexus with the state where the goods are shipped to the customer, will the state recognize the sale from the shipper/wholesaler to the retailer as a sale for resale?
  - The sale is a sale for resale, but the issue is how can it be documented?

Implications of 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

California Drop Shipment Rules

- Marketplace Seller Requirements
  - If you are a marketplace seller, beginning October 1, 2019, you are no longer considered the retailer of your sales of tangible merchandise facilitated through a marketplace, as defined by statute, provided the marketplace facilitator is registered or required to be registered for a seller's permit or Certificate of Registration – Use Tax.
- Purchases for Resale by Marketplace Sellers (and Drop Shipments)
  - If you are a marketplace seller that is not required to be registered with CDTFA as a seller or retailer because all your sales of merchandise are facilitated by a marketplace facilitator that is registered as a retailer with CDTFA, or you are a marketplace seller that does not have sufficient physical presence in California or economic nexus with California and your sales for delivery in California are facilitated by a registered marketplace facilitator, you may still purchase items for resale from your supplier.
  - Unregistered marketplace sellers should explain that a permit is not required because all their sales are facilitated by a registered marketplace facilitator, or because they are an out-of-state seller that does not have a sufficient physical presence in California or economic nexus with California and their sales for delivery in California are facilitated by a registered marketplace facilitator.
  - https://www.cdtfa.ca.gov/industry/MPFAct.htm

SALES TAX INSTITUTE℠

Exemption Certificate Best Practices

- Collection of Certificates
  - Make the request part of the new customer set up
  - Match the customer "sold to" name to name on certificate
  - Develop a document retention plan and process
  - Understand drop ship rules and don't be overly restrictive
  - If drop shipping, set up all possible exempt states at creation
  - Track certificates that expire and request updated certificate timely
  - Update non-expiring certificates every 3-5 years

Exemption Certificate Best Practices

- Issuing Certificates
  - Timely provide certificates to new vendors
  - Complete appropriate reason and what certificate applies to on certificate
  - Claim all applicable states if purchasing for drop shipments
  - Maintain records of who certificates have been issued to
  - Update certificates timely for ones that expire

SALES TAX INSTITUTE℠

Exemption Certificates

- MTC Multi-jurisdiction Certificate
  - https://www.mtc.gov/Resources/Uniform-Sales-Use-Tax-Exemption-Certificate
- SST Exemption Certificate
  - https://www.streamlinedsalestax.org/Shared-Pages/exemptions
- SST Disclosed Practice 9
- Sales Tax Institute State by State Exemption Certificate Guide
  - https://www.salestaxinstitute.com/resources/state-by-state-exemption-certificate-guide

SALES TAX INSTITUTE℠

Implications for Income Tax and Business Licenses

Implications for Income Tax

- If the seller has physical presence in a state, be aware that they may also need to register for income tax.
- If the seller has economic nexus in a state and no physical presence, they likely will not need to register for income tax.
  - However, states are trending towards economic nexus concepts which could require filing.

Implications for Business Licenses

- If the seller has physical presence in a state, be aware that they may also need to obtain local business licenses.
- Business licenses could be flat rate, business type specific, or based on gross receipts, number of employees, square footage or number of vehicles.
- Failure to obtain and maintain a business license could result in actions up to and including padlocking your place of business.
- Colorado locals currently have significant business license requirements but these are not required for remote sellers.

Global Ramifications

Global Ramifications

- Just as the U.S. has economic nexus, many other countries have remote or distance sale requirement for the collection of VAT and GST for foreign companies, even with no people or physical presence in a country.
- Some countries have thresholds while others have no threshold but could have different rules based on the price of the item sold.
- Rules could differ for sales of tangible goods and digital goods as well as whether the customer is a registered business.

Global Ramifications

- Be aware of where you are making sales globally and what your footprint is.
  - If needed, develop partnerships with VAT experts to help understand the tax implications of sales into other countries.
- Using tax automation tools for global tax may be a consideration.

E-Commerce Sales of Tangible Personal Property Into Canada - Collection of GST/HST

Seller	Sold through	Goods Located	Collection of GST/HST
Non-Résident not Registered	Non-Resident Website	Canada	The Non-Resident supplier needs to register and collect the GST/HST if the small supplier threshold is exceeded.
	Distribution Platform	Canada	DPO needs to register and collect the GST/HST if the small supplier threshold is exceeded.
Non-Resident GST/HST registrant	Non-Resident Website	Anywhere	The Non-Resident supplier needs to collect the GST/HST.
	Distribution Platform	Anywhere	The Non-Resident supplier needs to collect the GST/HST.

SALES TAX INSTITUTE℠

E-Commerce Sales of Digital Goods/Services Into Canada - Collection of GST/HST

Seller	Sold through	Collection of GST/HST	Recipient
Non-Resident not registered (GST/HST)	Non-Resident Website	Non-Resident supplier does not need to collect the GST/HST if the small supplier threshold is not exceeded	N/A
	Distribution Platform	Registered (Specified/General) DPO has to collect the GST/HST	Canadian nonregistered person
Non-Resident registered for the **Simplified** GST/HST	Non-Resident Website	Non-Resident supplier needs to collect the GST/HST	Canadian nonregistered person
	Distribution Platform	Registered (Specified/General) DPO has to collect the GST/HST	Canadian nonregistered person
Non-Resident registered for the **General** GST/HST	Non-Resident Website	Non-Resident supplier needs to collect the GST/HST	All recipients
	Distribution Platform	Non-Resident supplier needs to collect the GST/HST	All recipients

SALES TAX INSTITUTE℠

B2C – Cross border OSS – European Union

WHAT

OSS – Report all B2C distance sales on one OSS resident country return
The Union scheme for intra-EU supplies of TBE services will be extended to all types of B2C services as well as to intra-EU distance sales of goods and certain domestic supplies facilitated by electronic interfaces.
Application of Destination Principle of VAT and abolition of the current distance sales thresholds

WHEN

OSS regime live 1st July 2021
Registrations from 1st April 2021

HOW

Registration of OSS is separate
Quarterly filings

WHY

OSS – Simplify registration and reporting obligations for B2C distance sales across the EU

WHERE

Union OSS (for EU-based) – Report where business is resident.

https://ec.europa.eu/taxation_customs/business/vat/oss_en

SALES TAX INSTITUTE℠

B2C – Import scheme IOSS – European Union

WHAT

IOSS – Consignments below €150 can clear customs quickly through "Green Channel"
Seller to charge and collect the VAT at the point of sale to EU customers and declare and pay that VAT globally to the Member State of identification in the IOSS.

WHEN

IOSS regimes live 1st July 2021
Registrations from 1st April 2021

HOW

Registration for iOSS is separate
Monthly filings
Can be used by both EU and non-EU businesses

WHY

iOSS – Simplify customs clearance across the EU for consignments below €150
Consignments above €150 will follow current procedure

WHERE

Non-EU businesses can use IOSS portal of any EU Member State. Will normally need to appoint an EU-established intermediary to fulfil their VAT obligations under IOSS. Possibly register for IOSS in country where intermediary is established.

https://ec.europa.eu/taxation_customs/business/vat/ioss_en

SALES TAX INSTITUTE℠

Global Ramifications

- Be aware of customs and duties.
  - If you make online sales and sell an expensive item over the threshold, the customer is required to pay the customs and duties.
  - If the customer didn't realize that, they may abandon the order.
- A number of countries have specific invoice requirements related to language and currency
- E-Invoicing requirements which can include clearance of invoices with the government are expanding across the globe

Sales Tax System Options

Reasons for Automated Tools

- Quantity of jurisdictions
  - Between 7,500 and 14,000 different authorities impose their own taxes in the U.S.
- Complexity of tax rules
  - Critical for businesses that operate in many jurisdictions, selling items that can have different taxability
- Users' qualifications
  - Given the quantity and variety of users involved in making sales and use tax decisions within a company, automation is critical.
- System Functionality
  - E-Commerce doesn't facilitate manual tax determination on invoices

SALES TAX INSTITUTE℠

Types of Systems

- Host systems
  - Most sales order/billing systems include some level of sales tax processing capability in their system.
  - Determining whether to rely on the standard functionality entails an evaluation of the users' proficiency in making tax determinations, the effort required to maintain the tax rules, and the flexibility in the system.
  - Product taxability indicators are usually limited to a single indicator. For products that have different taxability by jurisdiction, this functionality will be insufficient to meet tax calculation requirements.

Types of Systems (cont.)

- Host systems (cont.)
  - Customer taxability indicators are often tied to an address.
    - As long as unique address records are created for each delivery address and all items sold to the given customer qualify for an exemption these indicators may be sufficient.
  - Procurement systems, including purchasing and accounts payable functions also may include some level of tax processing.
    - This is generally limited, and in some cases, only a taxable or exempt indicator is permitted.
  - Most e-commerce platforms have an internal sales tax calculation function.

SALES TAX INSTITUTE℠

Types of Systems (cont.)

- Bolt-on products
  - For more sophisticated tax processing, there are third party "bolt-on" products that interface with host systems.
  - An interface is required to communicate between the host system and bolt-on package.
  - Full functionality for tax management may require customization of the host system or interface.
  - User training may impact effectiveness
  - Some e-commerce solutions may not provide bolt on functionality

Types of Systems (cont.)

- Cloud/ASP Hosted Systems
  - Alternative to on-premise solutions for tax determination
  - Can be cost efficient as the provider will manage all updates and provide the infrastructure.
  - Arrangements for access to the tax data should be included in the hosting agreement
  - Not all businesses will be able to use due to either confidentiality/firewall issues or processing speed and volume of transactions.
  - May not be as customizable as full software implementation but allow for easy scalability

Types of Systems (cont.)

- Custom designed systems
  - Often incorporated into custom billing systems
  - This often exists for companies in industries with unusual tax requirements or non-standard sales tax rates such as food, medicine, telecommunications and utilities.
  - More difficult to maintain but can be very sophisticated and accurate.
  - In some instances, a third-party rate package is incorporated into the custom calculation in lieu of manual rate updating.
  - As custom systems are converted to standard billing systems, the custom tax functionality must be replaced with canned programs.

Types of Systems (con't)

- E-Commerce and Marketplace Tax Calculation
  - Most e-commerce platforms include built in tax functionality that usually must be used for tax calculation as integration to a tax bolt on isn't supported
  - Varied level of tax rate and rule functionality exists in the different platforms
  - Tax compliance solutions may have extractors from e-commerce and marketplace applications to transfer data for return preparation

Types of Systems (con't)

- Shopify
  - Shopify Basic and Advanced have tax functionality built in and don't generally support bolt ons
  - Recent enhancements have added advanced rate functionality as well as product taxability
  - All tax calculation occurs within Shopify
  - Extractors to compliance solutions
  - Shopify Plus supports full integration to Avalara and Vertex for real time tax calculation

SALES TAX INSTITUTE℠

Types of Systems (con’t)

- Marketplaces provide all tax functionality and compliance
- Sellers required to map products to Marketplace product categories
- Extractors facilitator data population in returns solutions

E-Commerce Platforms Tax Functionality

- Adobe Commerce/Magento:
  - https://experienceleague.adobe.com/docs/commerce-admin/stores-sales/site-store/taxes/taxes.html?lang=en
- BigCommerce: https://support.bigcommerce.com/s/article/Tax-Overview?language=en_US
- Shopify:
  - https://help.shopify.com/en/manual/taxes
- Square:
  - https://squareup.com/help/us/en/article/5061-create-and-manage-your-tax-settings
- Squarespace:
  - https://support.squarespace.com/hc/en-us/articles/360053592211
- Weebly:
  - https://www.weebly.com/app/help/us/en/topics/all-about-taxes
- Wix:
  - https://support.wix.com/en/article/wix-stores-about-tax-collection
- WooCommerce:
  - https://woocommerce.com/products/tax/

Marketplace Platforms Tax Functionality

- Amazon: https://www.amazon.com/gp/help/customer/display.html?nodeId=202211260
- Amazon Canada: https://www.amazon.ca/gp/help/customer/display.html?nodeId=G202029080
- Amazon Mexico: https://sellercentral.amazon.com/help/hub/reference/external/201812940
- Ebay: https://www.ebay.com/help/selling/fees-credits-invoices/taxes-import-charges
- Etsy: https://www.etsy.com/seller-handbook/article/marketplace-sales-tax-where-etsy/321914904041
- Google: https://support.google.com/merchants/search?q=sales+tax&from_promoted_search=true&sjid=495906291513093468 2-NA
- Google Ads: https://support.google.com/merchants/answer/7052112?visit_id=637787498489036633-3538217980&rd=1
- Sears: https://marketplace.sears.com/seller-support/sales-and-use-tax-policy/

- Walmart: https://sellerhelp.walmart.com/seller/s/guide?language=en_US&article=000006444

Types of Systems (cont.)

- Non-Interactive Solutions
  - Simplistic and require manual updating
  - Excel and Access can be used to build templates
  - Manual maintenance of rules and rates is required to comply with tax changes as they occur.
  - May be best suited for companies that have limited billing systems that cannot interface with a standard third-party tax package
  - In some situations, a combination of a non-interactive solution with an interactive solution may be necessary.

SALES TAX INSTITUTE℠

Vendors Evaluation

- The most important initial step is to fully understand your business needs and select the correct classification of solution.
- Evaluate interaction and ease of integration between solutions.
- There are a number of vendors that provide tools which have differing levels of capabilities.
- Comprehensive evaluation should include vendor demonstrations using representative data of your business.

Questions & Comments

Diane Yetter

Sales Tax Institute

diane@salestaxinstitute.com

312.701.1800, ext. 2

Sales Tax Institute Linked In Group

- Join the Sales Tax Institute's LinkedIn group, exclusively for Sales Tax Institute course attendees!
- Post questions, ideas, practical suggestions and news updates that you think will be relevant to other Sales Tax Institute alumni.
- We will be moderating the group, and we will remove inappropriate content posts so that this stays as a resource for our students to help them develop their sales tax expertise and ask questions.

SALES TAX INSTITUTE℠

Sales Tax Nerd Community Membership

https://www.salestaxinstitute.com/sales-tax-nerd-community-membership

Save 10% with code **WEBINAR10**

Exclusive Online Platform to connect with Peers and STI

A year of live webinars and unlimited on-demand webinars

Quarterly Office Hours with Diane

Sales Tax Tools Library

Course Discounts

Mentoring Program

….And much more!

SALES TAX INSTITUTE℠

Thank you for attending!

/salestaxinstitute

/company/sales-tax-institute

/user/salestaxinstitute

/salestaxinstitute/

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

webinars@salestaxinstitute.com

SALES TAX INSTITUTE℠

Sales Tax Registration Deep-Dive

SALES TAX INSTITUTE℠

On-Demand Webinar

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 six times between 2011 and 2020

SALES TAX INSTITUTE℠

When to Register for Sales Tax

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

Click to add text

SALES TAX INSTITUTE℠

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

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:
  - Economic nexus
  - Marketplace nexus
  - Notice and Reporting Requirements
  - Click-through nexus
  - Affiliate nexus

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?

SALES TAX INSTITUTE℠

Nexus (cont.)

- Resources
  - Remote Seller Nexus Chart
    - https://www.salestaxinstitute.com/resources/remote-seller-nexus-chart
  - Economic Nexus State Guide
    - https://www.salestaxinstitute.com/resources/economic-nexus-state-guide
  - Remote Seller Resource Page
    - https://www.salestaxinstitute.com/resources/remote-seller-resources

The Registration Process

Registration

- For remote sellers that sell on a marketplace, the evaluation as to whether they need to be registered will be based on:
  - Does the state impose the collection responsibility on the marketplace facilitator?
  - Does the seller make sales only on collecting marketplaces?

Registration

- After a nexus study has been conducted to determine where a taxpayer has a presence, registration must occur.
- Every state has different questions on their application form.
- Populate a questionnaire with the common information to aid in completing the applications
- TOOL: Registration Questionnaire

Registration

- 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.
  - If you're an e-commerce seller, you should be registered for seller's use tax generally but a few states like CO are requiring sales tax.

Examining Registration Forms

- What tax type are you registering for?

From PA business registration application:

SECTION 3 – TAXES AND SERVICES

ALL REGISTRANTS MUST CHECK THE APPLICABLE BOX(ES) TO INDICATE THE TAX(ES) AND SERVICE(S) REQUESTED FOR THIS REGISTRATION AND COMPLETE THE CORRESPONDING SECTIONS INDICATED ON PAGES 2 AND 3. IF REACTIVATING ANY PREVIOUS ACCOUNT(S), LIST THE ACCOUNT NUMBER(S) IN THE SPACE PROVIDED.

	PREVIOUS		ACCOUNT NUMBER
☐ CIGARETTE DEALER'S LICENSE	______	☐ SALES, USE, HOTEL OCCUPANCY TAX LICENSE	______
☐ CORPORATION TAXES	______	☐ SMALL GAMES OF CHANCE LIC./CERT.	______
☐ EMPLOYER WITHHOLDING TAX/1099 MISC	______	☐ TRANSIENT VENDOR CERTIFICATE	______
☐ FUELS TAX PERMIT	______	☐ UNEMPLOYMENT COMPENSATION	______
☐ LIQUID FUELS TAX PERMIT	______	☐ USE TAX	______
☐ MOTOR CARRIERS ROAD TAX/IFTA	______	☐ VEHICLE RENTAL TAX	______
☐ PROMOTER LICENSE	______	☐ WHOLESALER CERTIFICATE	______
☐ PUBLIC TRANSPORTATION ASSISTANCE TAX LICENSE	______	☐ WORKERS' COMPENSATION COVERAGE	______
☐ SALES TAX EXEMPT STATUS	______		

From KY business registration application:

The following questions will determine your need for a Sales and Use Tax Account, the schedules you may need to file, and/or your need for a Transient Room Tax Account, Motor Vehicle Tire Fee Account, Commercial Mobile Radio Service (CMRS) Prepaid Service Charge Account, Utility Gross Receipts License Tax Account, and/or Telecommunications Tax Account.

SALES TAX INSTITUTE℠

Registration

- Locations

From IL business registration application:

If you have other locations in Illinois from where you do business, complete and attach Schedule REG-1-L.

From IL Schedule REG-1-L:

Step 1: Identify each permanent location.

Permanent Location 1:

DBA name:____

Address: ____

Street address - **No** PO Box numbers   Apt. or suite no.

________________ **IL** ____________

City   State   ZIP

County:____

If in Madison or St. Clair county, list township: ________________

Contact: ___________________ Phone: (____)____ - _______

Starting date for this location: ____/____/_______

Check all of your activities at this location:

❐ Retail sales   ❐ Aviation Fuel

❐ Vehicles: ❐ Sales   ❐ Renting/leasing

Check if your rental/lease agreements are for more than12 months: ❐

❐ Hotel room rental to the public for periods less than 30 days.

Do you charge for telecommunication services? ___yes ___no

❐ Other: ____

Step 2: Identify each changing location

A changing location is one that constantly changes (*e.g.*, door-to-door sales, home party sales).

Step 3: Identify each temporary location

Examples include fairs, festivals, or special events. Seasonal sales (*e.g.*, trade-shows, holiday sales, concession stands) are considered a temporary location.

Registration

- Locations

From FL business registration application:

37. List the locations where you employ workers in Florida.

Address:	City:	County:	Number of employees:
Principal products or services:	If services, indicate if ☐ Administrative ☐ Research ☐ Other: ______		
Address:	City:	County:	Number of employees:
Principal products or services:	If services, indicate if ☐ Administrative ☐ Research ☐ Other: ______		
Address:	City:	County:	Number of employees:
Principal products or services:	If services, indicate if ☐ Administrative ☐ Research ☐ Other: ______		

Registration

- Entity Information
  - Sales Tax Registrations are by legal entity
  - If there is a dba, listing it on the application will help with identification and issuance of exemption certificates particularly if that is the name your business is known under
  - Trade name registration proof may be required (DC)
- Locations
  - In state locations should be listed in states where required
  - In origin states, this will result in location filing set up by state

SALES TAX INSTITUTE℠

Registration

- Many application forms request an average annual liability.
  - Used to determine filing frequency
- Read forms carefully when answering the average annual questions.
  - Tax liability vs. sales
  - If the form asks for sales, you need to determine whether it is asking for taxable sales or gross sales and whether it is asking for in-state sales only.

Examining Registration Forms

- Average amount of liability vs. sales

From HI business registration application:

Type	Annual Estimated Tax Liability	Filing period
GE/Use TA RVST	$0 — $2,000	Semiannually
	$2,001 — $4,000	Quarterly
	More than $4,000	Monthly
GE One-Time Event		Monthly

From KY business registration application:

66. Estimated gross monthly sales tax collected in Kentucky:

☐ $0.00–$1,199.99 ☐ $1,200.00 or more

From ID business registration application:

12. Date sales or use will begin in Idaho ________ month ________ year

13. Estimated monthly taxable sales

SALES TAX INSTITUTE℠

Examining Registration Forms

- Filing Frequency
  - Some states don't request the average liability but ask you to identify your filing frequency.
  - TOOL: Filing Frequency Threshold

From HI business registration application:

Filing Frequency	Monthly	Annual tax exceeds $4,000.00

- Due Dates
  - The filing frequency will dictate the due dates for returns
  - Returns are due in the month following the end of the period on the specified due date
  - Returns must be filed by the due date and the tax paid by the due date
  - TOOL: Sales Tax Return Due Dates

SALES TAX INSTITUTE℠

Registration

- Most applications also request the date that business began in the jurisdiction.
  - Used to determine if returns are due for prior periods
  - If a prior period is listed, expect to receive these returns with interest and penalty notices.
- Nexus date
  - If 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.

SALES TAX INSTITUTE℠

Examining Registration Forms

- What is the start date?

From MN business registration application:

1 Date of first Minnesota taxable sale, lease, service or use tax obligation:

month day year

From TX sales tax registration application:

30. Enter the date that you will begin making sales or begin other operations subject to Texas sales and use tax. *(Date cannot be more than 90 days in the future.)* ....

Month Day Year

SALES TAX INSTITUTE℠

Registration

- Registration applications frequently ask if the business was acquired and prior registration.
- If there was an acquisition, the nature of the acquisition could impact any prior period exposure.
  - A Stock transaction means the buyer purchases all assets and liabilities and will have continuing obligation
  - An Asset transaction is purchasing only the assets. However, due to successor liability provisions, the buyer could still be held liable.

Examining Registration Forms

- Prior ownership

From NJ business registration application:

2. Did you acquire ☐ Substantially all the assets; ☐ Trade or business; ☐ Employees; of any previous employing units? . . . . ☐ Yes ☐ No
If answer is "No", go to question 4.
If answer is "Yes", indicate by a check whether ☐ in whole or ☐ in part, and list business name, address and registration number of predecessor or acquired unit and the date business was acquired by you. (If more than one, list separately. Continue on separate sheet if necessary.)

Name of Acquired Unit ____________________ ____________________
N.J. Employer ID
____

Address ____________________ ____________________
Date Acquired
____

ACQUIRED	PERCENTAGE ACQUIRED
☐ Assets	____%
☐ Trade or Business	____%
☐ Employees	____%

SALES TAX INSTITUTE℠

Examining Registration Forms

- Officers SSN or Driver's License
- Officer Home Address

From KY business registration application:

15–16. OWNERSHIP DISCLOSURE–RESPONSIBLE PARTIES *(REQUIRED FOR ALL BUSINESS STRUCTURES)*

CAUTION See instructions regarding required responsible parties for your business structure

Full Legal Name (First Middle Last)			Full Legal Name (First Middle Last)		
Social Security Number ***(REQUIRED)***	FEIN (if Responsible Party is another business)		Social Security Number ***(REQUIRED)***	FEIN (if Responsible Party is another business)	
Driver's License Number (if applicable)	Driver's License State of Issuance		Driver's License Number (if applicable)	Driver's License State of Issuance	
Business Title	Effective Date of Title		Business Title	Effective Date of Title	
Residence Address			Residence Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number	County (if in Kentucky)		Telephone Number	County (if in Kentucky)	

SALES TAX INSTITUTE℠

Registration (cont.)

- 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.
- Secretary of State registration is typically a legal evaluation.
- Registering with the secretary of state unnecessarily could result in additional filing and fees

Examining Registration Forms

- Secretary of State registration
  - Is it required?
  - Registered agent

From IL business registration application:

7 Illinois Secretary of State identification number:

___ - ___ ___ ___ ___ - ___ ___ ___ - ___

From KY business registration application:

8. Secretary of State Information *(if applicable)*

Kentucky Secretary of State Organization Number		
Date of Incorporation/Organization	State of Incorporation/Organization	If you are an Out-of-State Entity, Date of Qualification with the Kentucky Secretary of State's Office

SALES TAX INSTITUTE℠

California Secretary of State Registration Rules

- Without excluding other activities that may not constitute transacting intrastate business, a foreign corporation shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on in this state any one or more of the following activities:
  - Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
  - Holding meetings of its board or shareholders or carrying on other activities concerning its internal affairs.
  - Maintaining bank accounts.
  - Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.
  - Effecting sales through independent contractors.
  - Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance outside this state before becoming binding contracts.
  - Creating evidences of debt or mortgages, liens or security interests on real or personal property.
  - Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

SALES TAX INSTITUTE℠

New Jersey Secretary of State Registration Rules

- In general, corporations required to file include:
  - Every corporation existing under the laws of the State of New Jersey; and
  - Every foreign corporation which either:
    - holds a general Certificate of Authority to do business in New Jersey issued by the New Jersey Division of Revenue;
    - holds a certificate, license or other authorization issued by any other New Jersey department or agency authorizing the corporation to engage in activity in New Jersey;
    - does business in New Jersey;
    - employs or owns capital in New Jersey;
    - employs or owns property in New Jersey; or
    - maintains an office in New Jersey.

Registration (cont.)

- Applications must be completed accurately to the best of your knowledge.
- Applications are signed/submitted under penalty of perjury

Examining Registration Forms

- Signature – who needs to sign?

From NJ business registration application:

25. Contact Information: Person ______________________ Title: ______________

Daytime Phone: ( ) ______ - __________ Ext.______ E-mail address: ______________

Signature of Owner, Partner or Officer: ______________________

Title ______________________ Date: ______________

SALES TAX INSTITUTE℠

Registration

- Registration application forms can be obtained from the Department of Revenue of the jurisdiction.
- State by State Sales Tax Registration Guide is included in the bonus tools provided with this webinar.

Registration (cont.)

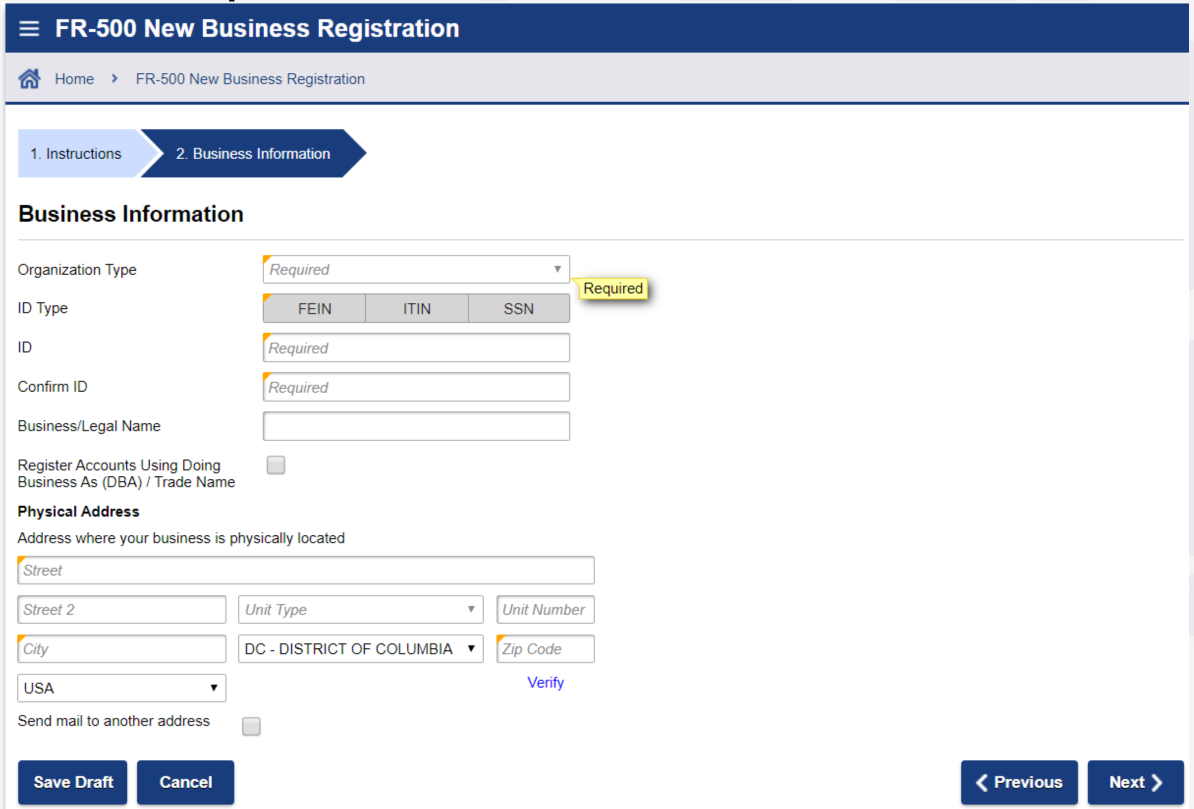
- Registration Process
  - Online
    - Preferred method;
    - May be only option;
    - Some states provide registration number immediately
      - Virginia provides the registration number immediately after submitting the registration.
  - Paper forms – may be necessary if can’t skip questions online that don’t apply (Sec of State, SSN)

SALES TAX INSTITUTE℠

Registration – Online Process

- Many states use a similar portal for online sales tax registrations:

From DC online registration form:


FR-500 New Business Registration

Home › FR-500 New Business Registration

1. Instructions | 2. Business Information

Business Information

Organization Type	Required
ID Type	FEIN / ITIN / SSN
ID	Required
Confirm ID	Required
Business/Legal Name	
Register Accounts Using Doing Business As (DBA) / Trade Name	

Required

Physical Address

Address where your business is physically located

Street

Street 2 | Unit Type | Unit Number

City | DC - DISTRICT OF COLUMBIA | Zip Code

USA

Verify

Send mail to another address

Save Draft | Cancel | Previous | Next

SALES TAX INSTITUTE℠

Registration – Online Process (cont.)

- However, online forms can vary widely among states:

From MD online registration form:

New Registration

* **Required**

* **1.** What type of ownership does your business have?

- Sole Proprietorship
- Partnership
- Non-Profit Corporation
- Maryland Corporation
- Limited Liability Company
- Non-Maryland Corporation
- Governmental
- Fiduciary

* **2.** Have you paid or do you anticipate paying wages to individuals, including corporate officers, for services performed in Maryland? Yes No

* **3.** Please enter your nine-digit federal identification number (FEIN). If you are a sole proprietorship or applying for a sales and use tax license only and do not have a FEIN, enter your Social Security number (SSN): FEIN: - SSN: - -

If you need to apply for a FEIN, you can click on the link below and follow the directions to obtain this number from the IRS. Apply for a FEIN.

* **4.** All applicants must enter the nine-digit Social Security number of the individual owner of the company or officer or agent of a corporation responsible for remitting the taxes - -

From SC online registration form:

Business Tax Application Form Instructions

Select the type of registration:

- **Register a new South Carolina business or Remote Seller**
- **Register additional South Carolina tax accounts**
- **Register a tax preparer with no business tax filing requirement with the South Carolina Department of Revenue.** Examples include out of state third party tax preparers and individual tax preparers with no business tax accounts with the South Carolina Department of Revenue.

Taxpayer Information

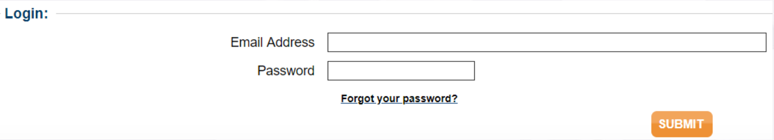
Type of Ownership	Corporation
ID Type	Required
Legal Business Name	Legal Name or Last Name (Required)
Incorporation Date	Required
Incorporation Country	USA
Incorporation State	SOUTH CAROLINA
Are you registering as a Remote Seller? ?	
Have you applied for or received a non-profit charter with the South Carolina Secretary of State?	
Will the corporation request or has it received a subchapter S election with the Internal Revenue Service?	
Is this an entity that is filing an 1120-H, 1120-REIT, or 1120-POL for federal tax purposes?	
Is this an entity that pays taxes to the South Carolina Department of Insurance?	

Registration – Online Process (cont.)

- Some online registration forms require authentication through an email address.
  - Example: New York
- The email address may also become the account login so you can't change the email.
  - Example: Rhode Island
- Consider setting up an email address like salestax@company.com so it is easier to administer.

From NY online registration form:

From RI online registration form:



SALES TAX INSTITUTE℠

Registration (cont.)

- Streamlined Sales Tax (SST) Registration Process
  - Consideration should be given to registering through the SST system for participating states.
  - 2019 change allows registrants to select which states to register in
  - Significantly few questions and requirements especially helpful for foreign entities as no requirement for FEIN or social security numbers for officers
  - Can use for registration even if not using a CSP

Registration (cont.)

- Streamlined Sales Tax (SST) Registration Process
  - Benefits
    - Limited questions
    - Ability to easily update information for all states when needed
    - Can identify remote seller or not
  - Risks/Limitations
    - Limited start date to only up to 60 days in the past
    - Participating states where you don't register could discover you but they don't receive notification that you didn't register
  - Future Functionality may include ability to register non SST states through the system

Streamlined Sales Tax Online Registration Form

- If foreign and no FEIN can use the system
- Doesn't require officer SSN or home addresses
- Registration Date vs. Remote Seller Begin Date

State	Register	Registration Date	Already Registered	Remote Seller
	select all ☑		select all ☐	select all ☐
Arkansas	☑	09/01/2019	☐	☐
Georgia	☑	09/01/2019	☐	☐

SALES TAX INSTITUTE℠

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

Sales Tax Bonds

- When filing for a sales tax permit, the state may require the individual to post a sales tax surety bond.
- In Mississippi, any taxpayer operating a business from their home or from a temporary location (less than 90-day lease), is required to post a cash or surety bond prior to receiving a sales tax permit to engage in business. The cash bond or approved surety bond shall be in an amount sufficient to cover the estimated tax liability for a six-month period. Similarly, any taxpayer operating a new or used mobile home dealership is required to post a cash or surety bond prior to receiving a sales tax permit. (MS Reg. 35.IV.1.03)

SALES TAX INSTITUTE℠

Sales Tax Bonds (cont.)

- In Iowa, the Director of Revenue may require any person liable for retail sales tax to file a bond to secure the payment of any tax or penalties. A new applicant for a sales tax permit may be required to file a bond if:
  - the applicant's financial status reveals that the applicant would not be able to remit the tax on time;
  - the applicant was delinquent or caused a collection problem under a prior permit; or
  - the new applicant is owned or controlled by the same persons that owned or controlled a previously delinquent permit holder.
  - (IA Sec. 423.35; IA Rule 701 11.10(423))

Sales Tax Bonds (cont.)

- Some states may impose a “deposit” or sales tax prepayment but not a bond
- Some states require an application fee
  - Connecticut - $100
  - Arkansas - $50 if have any physical activity in the state
  - SST can’t require application fee if register through SST System

SALES TAX INSTITUTE℠

Updating Your Sales Tax Registration

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

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.

SALES TAX INSTITUTE℠

New Mexico Business Owner Held Personally Liable for Unpaid Tax

- A trucking business owner became personally liable for New Mexico gross receipts tax after failing to update his business registration when he changed the business from a sole proprietorship to an LLC.
- In 2016, the taxpayer was issued a tax lien from the New Mexico Department of Revenue for unpaid tax, penalty, and interest.
- The lien was issued to the individual rather than the company, as the taxpayer was listed as a sole proprietorship with the Department.
- The Department found that the taxpayer never formally updated his business registration in response to converting the business to an LLC. As a result, the lien was deemed properly assessed to the sole owner and the taxpayer was held liable for the gross receipts tax.
- (In the Matter of the Protest of Casias, New Mexico Taxation and Revenue Department, (May 30, 2017))

Consumer's Use Tax Registration

Consumer's Use Tax

- With expanded nexus profiles, companies need to consider whether a consumer's use tax registration is also required
- Remote sellers may have obligation for use tax due to samples, loaner equipment or marketing materials shipped into a state

Consumer's Use Tax

- "Use" : the **storage, use or consumption** of **taxable** property or services and includes the **exercise of any right or power** incident to the ownership of the property
- Use Tax
  - Complementary to sales tax and does not apply if sales tax charged
  - Applies to purchases made outside the taxing jurisdiction but used within the state
  - Also applies to items purchased exempt from tax, but subsequently used in a taxable manner

Consumer's Use Tax

- Purchases of taxable property where the seller did not collect sales or seller's use tax are subject to consumer's use tax
  - The determination of the correct local rate to apply generally follows the seller's use tax rules
  - However, in some states, if the seller and purchaser are located in the same state, special rules may apply
  - In some instances, the tax is imposed on the seller and if the purchaser did not provide an exemption certificate to the seller, the purchaser does not owe the consumer's use tax. This is very state specific and the particular rules must be reviewed in detail.

SALES TAX INSTITUTE℠

Use Tax Base

- The value of the items that are subject to sales or use tax
- Generally defined as the total amount of the sales price, without any deduction for the cost of the goods sold, interest paid, other expenses or transportation
- Taxable and Non-Taxable components must be separately-stated or the entire cost becomes subject to tax. There are a few exceptions to this rule if the taxable component is incidental to the non-taxable portion.

Thank you for watching!

@SalesTaxInst

/company/sales-tax-institute

/user/salestaxinstitute

/salestaxinstitute/

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

webinars@salestaxinstitute.com

Drop Shipments: What Are They and What's New Post-Wayfair?

SALES TAX INSTITUTE

On-Demand Webinar

1

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

SALES TAX INSTITUTE

2

Drop Shipment Definition

3

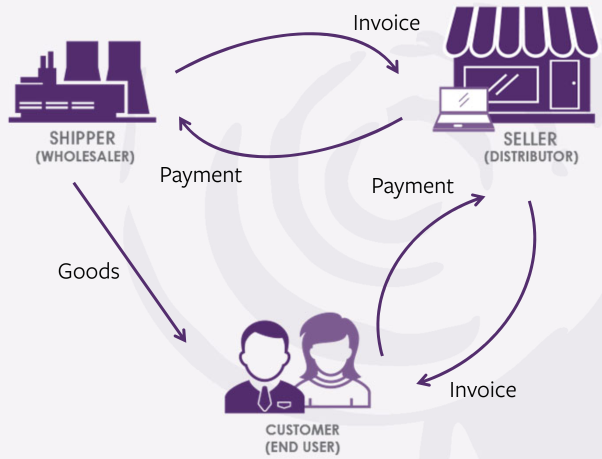
Drop Shipment Definition

- Seller/distributor accepts order from customer/end user
- Seller/distributor places order with shipper/wholesaler
- Seller/distributor directs shipper/wholesaler to ship goods direct to customer/end user
- Shipper/wholesaler bills the Seller/distributor at wholesale price
- Seller/distributor bills customer at retail price

SALES TAX INSTITUTE℠

4

Drop Shipments



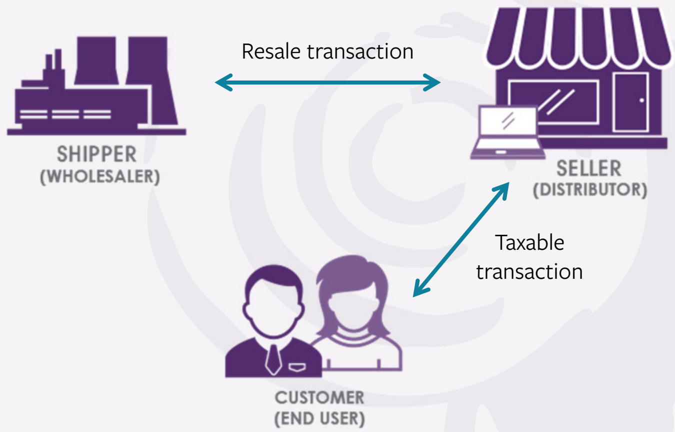
SALES TAX INSTITUTE™

5

Sales Tax Treatment of Drop Shipments

6

Implications of Drop Shipments



SALES TAX INSTITUTE™

7

Implications of Drop Shipments

- A state cannot require out-of-state businesses to register to collect its tax unless nexus is established
  - If the shipper/wholesaler requires appropriate exemption documentation, the retailer may be forced to register.
  - Otherwise the shipper/wholesaler will be required to charge tax on the invoice to the retailer.
  - Economic nexus could resolve many of these issues

SALES TAX INSTITUTE™

8

Sales and Use Tax Issues with Drop Shipments

- If the seller/distributor is not registered to collect sales tax and has no nexus with the state where the goods are shipped to the customer, will the state recognize the sale from the shipper/wholesaler to the retailer as a sale for resale?
  - The sale is a sale for resale, but the issue is how it can be documented

SALES TAX INSTITUTE™

9

Sales and Use Tax Issues with Drop Shipments (cont.)

- Does the answer change if the shipper/wholesaler delivers the goods in its own vehicles, rather than by common carrier or if the goods are shipped COD? Do the shipping terms affect the taxability of the transaction?
  - If delivery is made in the vendor's own truck, this is no longer an "interstate delivery" so some states won't accept alternative documentation (Florida and Kansas)

SALES TAX INSTITUTE™

10

Sales and Use Tax Issues with Drop Shipments (cont.)

- Does the answer change if the customer is reselling the goods, rather than using or consuming them?
  - Some states will accept a pass-through exemption if the end customer is reselling the goods purchased. (ex. California)
- Does the answer change if the customer is an exempt entity?
  - Some states will accept a pass-through exemption if the end customer is an exempt entity. (ex. Tennessee)

SALES TAX INSTITUTE™

11

Implications of Drop Shipments (cont.)

- 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
- TOOL: Drop Ship Model and rules

SALES TAX INSTITUTE™

12

Implications of Drop Shipments (cont.)

- Tax collection issues
  - Is the in-state shipper/wholesaler considered a warehouse location for determining local tax rates on intrastate transactions?
  - Missouri considers the shipper location if located inside MO to be the origin of the sales and that the retailer must collect tax based on the shippers location and sales tax not seller's use tax applies

SALES TAX INSTITUTE™

13

Drop Shipment and Export

- Are export sales similar to drop shipments? If so, how? What documentation should you maintain for export sales?
  - Export sales may be similar to drop shipments if the goods are shipped to someone other than the purchaser
  - If the goods are shipped to an export broker address in a state hired by the customer, the seller should obtain the export documentation from the export broker or customer upon export
  - If the goods are picked up by the customer or the customers agent who is not an export broker, tax generally applies

SALES TAX INSTITUTE™

14

Dock Sales

- If the retailer's customer picks up the item at the dock, is it still considered a drop shipment?
  - It is deemed an in-state sale, so any states with inventory location rules will be impacted
  - Rules generally say "delivery" which doesn't necessarily mean "ship"
  - Lack of guidance on issue

SALES TAX INSTITUTE™

15

Sales and Use Tax Issues with Drop Shipments (cont.)

- Is Shipper/wholesaler required to collect tax?
  - What is the tax base?
    - Retail Price
    - Wholesale Price
    - California – if no certificate, collect tax on 110% of the price
    - Most other states say wholesale price unless they know the retail price
- If the shipper/wholesaler is required to collect tax from the seller/distributor, can the seller/distributor reimburse itself by passing the tax to the customer?
  - Usually no. It's a cost of goods sold.

SALES TAX INSTITUTE™

16

Tax Reimbursement

- Can an unregistered retailer reimburse itself by passing tax to customer? How can it be displayed? Does the sales tax reduce the use tax?
  - In California, if the seller does not hold a permit:
    - The shipper is responsible for reporting and paying the tax.
    - The shipper should charge the seller tax based on the retail amount.
    - The seller may choose to seek reimbursement from the customer on the sales tax either by increasing the selling price or adding a line on the invoice for reimbursement.
    - The seller cannot issue an invoice with a line called "California tax" or "California sales tax." However, they may use a phrase such as "California tax paid to California drop shipper" or similar terminology, indicating that CA tax has been paid to the shipper.
    - (Publication 121, Drop Shipments, September 2018)

SALES TAX INSTITUTE™

17

Tax Reimbursement (cont.)

- Can an unregistered retailer reimburse itself by passing tax to customer? How can it be displayed? Does the sales tax reduce the use tax?
  - Connecticut indicates that the tax should be collected from the consumer rather than the retailer
  - Florida and Maryland allow the retailer to reimburse itself but can not show it as "tax" on the invoice
  - Michigan allows the retailer to indicate the tax is being passed through to the consumer and is not a tax being collected and remitted by the retailer, as the retailer is not registered for Michigan taxes.

SALES TAX INSTITUTE™

18

Streamlined Sales Tax Project Drop Shipments Issue Paper

- Under SSTP, member states must allow manufacturers to accept a resale exemption certificate from the retailer regardless of whether the retailer is registered to collect and remit sales and use taxes in the ship to state when the sale is made
- As a result, many member states have had to change their rules on what is considered acceptable documentation
- Tennessee will have to change once they become full member state
- https://www.streamlinedsalestax.org/docs/default-source/issue-papers/drop-shipments.pdf?sfvrsn=ebb98f41_4
  - Note that this paper is outdated as it relates to NE, NV, RI and WI which are now full member SST states

19

Good Faith Acceptance

- If a vendor accepts a certificate adopted by the taxing authority, the vendor will be relieved of any tax liability and the Department may require a purchaser to validate the claimed deduction or exemption

20

Drop Shipments, Nexus, and Changes Post-Wayfair

21

Drop Shipments and Nexus

- Businesses involved in drop shipment transactions may create tax collection and nexus issues as well
- "Click-Through" and affiliate nexus rules often apply in drop shipment business structures
- Unregistered retailers should not advertise that no sales tax applies on the orders
  - Notice & Reporting provisions may apply

SALES TAX INSTITUTE™

22

Drop Shipments and Nexus

- Use of 3rd party agents in the drop shipment business structure is often overlooked in determining where a retailer is required to be registered
- **Third-party logistics** (abbreviated as **3PL**, or TPL) in **logistics** and supply chain management is an organization's use of third-party businesses to outsource elements of its distribution, **warehousing**, and fulfillment services.
- Ownership of inventory at the fulfillment house will create nexus for retailer by the drop shipper
- Some fulfillment activities performed on behalf of the retailer may create nexus

SALES TAX INSTITUTE™

23

Drop Shipments and Nexus

- Use of 3rd party agents in the drop shipment business structure is often overlooked in determining where a retailer is required to be registered
- Third-party logistics (abbreviated as 3PL, or TPL)in logistics and supply chain management is an organization's use of third-party businesses to outsource elements of its distribution, warehousing, and fulfillment services.
- Ownership of inventory by the seller at the fulfillment house will create nexus for seller by the drop shipper

SALES TAX INSTITUTE™

24

Drop Shipments and Nexus

- True Wholesalers may now be deemed to have nexus after Wayfair and need to be diligent on getting all resale certificates.
- If they have nexus in states with restrictive exemption rules, they may need to register to collect tax if their customer can't provide the certificate with the right state number
- Wholesalers need to evaluate risk of non registering if sales exceed Gross sales thresholds

Changes Post-Wayfair

- The South Dakota v. Wayfair decision could impact whether or not you need to register in some states.
- For states with economic nexus, be aware of how the state calculates the threshold (gross, taxable, or retail).
- The following states are restrictive:
  - California (gross sales)
  - Connecticut (gross sales)
  - District of Columbia (retail sales)
  - Hawaii (gross sales)
  - Maryland (gross sales)
  - Massachusetts (gross sales)
  - Mississippi (gross sales)
  - Tennessee (retail sales)

Changes Post-Wayfair

- In all of the above states, make sure that you have resale certificates.
- In each state, it's important to get resale certificates if you are predominately wholesale. If you are exclusively wholesale and exceed the threshold, you may or may not need to actually register in the state.
- In "retail" states, if you are a wholesaler, only customers without valid resale certificates count toward the threshold.
- In "gross" states, if gross sales exceed the threshold, you have nexus and need to register if you need to obtain a valid state certificate.

27

Drop Shipments and Marketplace Facilitation

- With marketplace facilitation, "seller" may not have reason to register as marketplace will collect
- Shipper may not have any indication sale is through a marketplace
- Challenges to the shipper as to what to accept if seller has no registration anywhere
- Does Marketplace Certification suffice?

28

Drop Shipments and Marketplace Facilitation

- California new provisions allow a marketplace seller to provide a resale certificate in any form that contains all:
  - Name and address of purchaser
  - Purchaser's CA permit number **OR** if unregistered marketplace seller explanation that all sales are through registered facilitator with facilitator CA permit number
  - Description of property purchased
  - Statement that property is purchased for resale (must not say exempt or non taxable)
  - Date of document
  - Signature of purchaser
- CDTFA Tax Guide for Marketplace Facilitator Act-- Sales and use-- Introduction-- Nexus--Doing business in California-- Guidance on marketplace facilitator act, California (Aug. 1, 2019) https://www.cdtfa.ca.gov/industry/MPFAct.htm

SALES TAX INSTITUTE™

29

Registration Requirements vs. Filing "Zero" Returns

- Nexus vs Registration
  - Companies can have nexus but not have a registration requirement if they don't make taxable sales
  - Registration may be required in order to issue resale certificates
  - Registration may be required if your customer may not be able to issue you exemption certificates
- Be aware of the statute of limitations. If you aren't registered, there is no statute of limitations generally.

SALES TAX INSTITUTE™

30

Practical Issues

31

Practical Issues

- Manufacturers can be held liable for non collection of tax in states where they have nexus – should they require ship to state certificates?
- Retailers won't pay tax on items they buy for resale so if they are charged, they will short pay.
- How much time is spent trying to resolve these issues?

32

Practical Issues

- How should you handle customers that refuse to pay the sales tax and cannot provide the required documentation?
- Do you credit the tax and reduce your taxable sales, or do you remit the tax to the appropriate jurisdiction?
  - Registered sellers that don't have appropriate exemption documentation should remit tax regardless of whether their customer paid it to minimize their audit risk and tax liability.

33

Practical Issues

- Retailers are not required to register to collect tax if they don't have nexus.
- In states that require registration to issue a resale certificate, retailers may be "forced" to voluntarily register.
- What are the implications of voluntary registration?
  - You are required to collect and remit tax on ALL sales into that state.
  - You need to follow that state's laws.
  - You need to get appropriate exemption documentation on your customers.
  - You need to file returns.
  - You're subject to audit.
  - Bonding may be a requirement.

34

Practical Issues

- In states that require the manufacturer to invoice the tax on a basis other than their selling price, how can they do this in their billing system?
  - Does the manufacturer know the retail selling price?
  - If there is a MSRP, but retailer can bill a different amount, what should the manufacturer use?
  - What if the known retail price is greater than 10% in California?

35

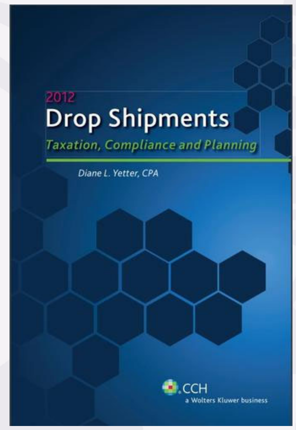
Practical Issues

- Customers that accrue use tax on drop shipment purchases may end up paying use tax on an invoice that already includes some or all of the tax paid by the retailer. What should they do?
  - Do customers have the right to ask for documentation of tax paid?
    - Most states say that you can't ask for this documentation.
  - Will this documentation reduce their use tax obligation?
    - Most states say that it doesn't reduce the use tax obligation.
  - Should customers avoid purchasing where a drop shipment might apply if the retailer is not registered?
    - This can be a challenge. Doing price comparison shopping may be helpful.

36

CCH Drop Shipment Book

- CCH Drop Shipment book
  - https://salestaxinstitute.redshelf.com/
- May be unavailable after January 2020



SALES TAX INSTITUTE

37

Questions/Comments

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

SALES TAX INSTITUTE

38

Thank you for watching!

@SalesTaxInst

/company/sales-tax-institute

/user/salestaxinstitute

/salestaxinstitute/

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

webinars@salestaxinstitute.com

SALES TAX INSTITUTE™