State Sales Taxes: Understanding How Wayfair Impacts Your Company

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State Sales Taxes: Understanding How Wayfair Impacts Your Company

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What is nexus

Nexus is the minimum connection with a state needed before a state can require a person to register with it to collect and remit sales and use tax.

• Physical presence – historically this was the sales and use tax nexus standard
  • Employees or independent contractors in the state including tradeshows
  • Inventory, leases or other tangible personal property in the state
  • Office, warehouse

• Economic nexus – new standard under Wayfair decision
  • Physical presence is not necessary in the state
  • Directing sales to customers in a state/availing oneself of a state’s market creates nexus
WAYFAIR – What was the result

U.S. Supreme Court Decision – June 21, 2018

- Established economic nexus - physical presence no longer a requirement
- South Dakota’s threshold
  - $100,000 gross receipts
  - 200 transactions
- Taxability of transaction is generally not a consideration
- Implementation by states is ongoing
Wayfair – What was the result

What States are doing

- **Safe harbor provided:**
  - Passed new laws or issued guidance implementing economic nexus
  - All states that impose a sales and use tax will have economic nexus standard by January 2020.
  - Set thresholds $100,000 sales/200 transactions is common

- **Prospective only**
  - Economic nexus is not in effect until June 21, 2018
  - No retroactivity
WAYFAIR – What was the result

What States are doing

• Cookie Nexus:
  • Massachusetts & Ohio
  • Enacted prior to Wayfair
  • Websites & apps

• Marketplace Facilitators
  • Required to collect sales tax on behalf of the seller
  • ~ 35 states have this requirement
Deciding where to register

What to do first:

• Physical presence
• State thresholds & implementation dates
• Taxability of sales
Deciding where to register

Should I jump in and register?

- Historical exposure
  - Voluntary disclosure agreements
  - Amnesty programs
- Exemptions
  - Documentation
- Other taxes
  - Income taxes
  - Gross receipts taxes

States May Use Economic Nexus to Impose Sales Tax Collection
Deciding where to register

Should I jump in and register?

• Responsibilities
  • Who do I register with
  • What tax rate applies
    • Local taxes
  • Invoicing/collecting tax
  • Filing returns
Registration

Methods & Resources

• State website
  • 46 States, including the District of Columbia impose a state level sales and use tax.
  • NOMAD – New Hampshire, Oregon, Montana, Alaska & Delaware do not impose a state level sales and use tax.

• Streamline Sales Tax member
  • Single application for up to 23 states
Registration

Methods & Resources

• Software options
  • Tax tables
  • Software available from state
  • Sales tax software solutions
Other issues

Differences by state

- Taxability/terminology differs state to state
  - Streamline Sales Tax (SST) states
  - Bundled transactions
- Drop shipments
  - Special rules in some states
- Exemptions/documentation requirements
  - Resale
  - Manufacturing

States May Use Economic Nexus to Impose Sales Tax Collection
Marketplace facilitator rules

• Marketplace facilitators are required to collect sales tax on all sales

• Marketplace seller is not responsible for sales tax
  • Verify that the marketplace facilitator is registered and collecting the sales tax
  • Provide accurate information to the marketplace facilitator
  • Coordinate with marketplace facilitator on exempt sales requiring exemption certificates
WAYFAIR – How does this affect you?

- Don't Panic!
- Determine states where you need to register
- Determine the taxability of the product/services
- Set-up processes and systems to collect and remit tax
- What if I don’t meet the thresholds and do not register in a state?
Sales Tax Resources

Streamlined Sales Tax (SST) - [https://www.streamlinedsalestax.org/](https://www.streamlinedsalestax.org/)

- Registration in 23 states with a single application
- Multistate exemption certificate
- Uniform definition of some products & services
- Taxability matrix
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