

Sales and Use Tax Compliance: Manage the Process; Don't Let the Process Manage You

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Steve Jensen, CMI

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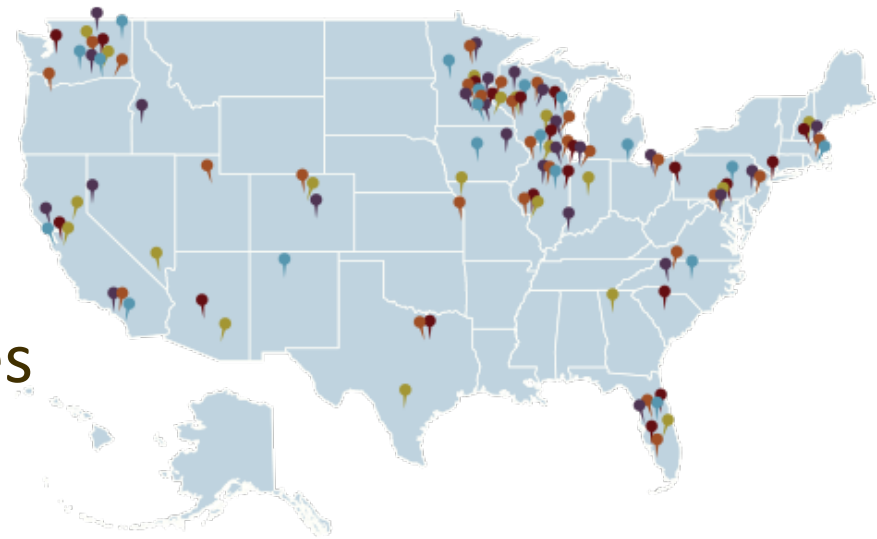
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 - Wealth Advisory
 - Outsourcing
 - Audit, Tax, and Consulting
- More than 5,000 employees
- Offices coast to coast
- Serving over 50,000 private businesses
- Average 200+ transaction engagements each year



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Speaker Introductions

Rance Morton, CPA

Manager, Dallas, TX



- Leads CLA's Sales Tax Outsourcing practice
- Provides sales tax consulting services across the country covering various industries
- Examples of Rance's projects include sales tax refund and exposure reviews, voluntary disclosure agreement projects, sales tax research projects, buy-side and sell-side due diligence, nexus studies, and other state specific credit reviews

Speaker Introductions

Steve Jensen, CMI

Director, Seattle, WA



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- Steve brings 20 years of state and local tax (SALT) experience in both industry and public accounting.
- He leads CLA's Pacific Northwest's SALT Practice in the delivery of innovative state and local tax solutions to technology, retailing, e-commerce, transportation, manufacturing, biotech, and healthcare clients.
- He is also the firm's Washington B&O tax resource.



Learning Objectives

- At the end of this session, you will be able to:
 - Identify at a high level where your organization should be filing
 - Apply some practical approaches regarding how to tackle state and local sales tax compliance
 - Predict what to expect next in terms of sales tax compliance enforcement
 - Discuss how use tax reporting requirements may impact your business



Agenda

- Nexus and Expanding Nexus
- New Developments (Wayfair and Amazon)
- Use Tax Notice Requirements
- Compliance, Compliance, Compliance
- Questions





Nexus and Expanding Nexus

Nexus – Physical Presence

- Nexus is the minimum contact required with a state before the state can tax a business
- Quill is the “current” law of the land and requires physical presence to establish nexus
- Taxpayers started finding loopholes to physical presence and States started closing them



Nexus – Affiliate Nexus

- Affiliate Nexus is established for an out-of-state business via a relationship with an in state affiliate
- Taxpayers were creating separate legal entities to do separate functions of a business to limit their physical presence
- States added this affiliate provision to close the loophole



Nexus – Click Through Nexus

- Related to Affiliate Nexus
- The “affiliate” for click through nexus is usually an internet advertiser that refers business to a retailer for a commission
- States see the “affiliate” as an extension of the business’s sales force establishing nexus
- States usually have specific laws addressing this issue



Nexus – Economic Nexus

- Economic nexus is established when out-of-state businesses reach a sales threshold which can be a dollar amount or number of sales
- With the expansion of the internet, physical presence is not as vital to the sales process and states have started losing taxes to online retailers
- To address this loss of revenue, states passed economic nexus laws even though they directly contradict Quill





New Developments

South Dakota v. Wayfair, Inc.

The Northeast outsmarts Amazon, or they gave in

South Dakota v. Wayfair, Inc.

- South Dakota passed an economic nexus law knowing it wouldn't pass the physical presence test that Quill established at the Supreme Court
- South Dakota immediately audited Wayfair, issued an assessment, and Wayfair protested
- South Dakota lost the protest, appealed, lost again (repeat) until it got to the Federal Supreme Court
- Now we wait to see if they overturn Quill...



South Dakota v. Wayfair, Inc.

- Oral arguments are scheduled for April 17, 2018
- May be decided in June
- States are not standing still:
 - In 2018, New York and Hawaii are considering measures attempting to capture taxes on third-party transactions facilitated through Amazon.com Inc. and other marketplace providers.
 - In 2017, Minnesota adopted a law requiring Amazon-type marketplace providers to collect sales tax on third-party marketplace transactions. Washington, Rhode Island and Pennsylvania soon followed.
 - In 2017, nearly 20 states pursued economic nexus models.



The Northeast and Amazon

- States in the Northeast like Massachusetts and Rhode Island implemented reporting laws for fulfillment centers and “Retail Sale Facilitators”
- Since this isn’t a tax, Quill doesn’t apply
- Amazon is now required to tell Massachusetts if someone is storing inventory in an Amazon warehouse (think FBA) and tell Rhode Island if they are facilitating transactions shipped into Rhode Island





Use Tax Notice Requirements

Use Tax Notice Requirements (Colorado used as example)

- Starting July 1, 2017, non-collecting retailers are now subject to use tax notice requirements even if they don't have nexus
- The U.S. Supreme Court ruled that the law was not a tax and was held to be constitutional



Who is a non-collecting retailer?

- “Non-collecting Retailer” means a retailer that sells tangible personal property to Colorado Purchasers and does not collect Colorado sales or use tax
- This definition covers more than just online sellers



What notices are required?

Notices are required in CO if Total Gross Sales into CO exceed \$100,000 in a calendar year (exempt sales are not included in the \$100,000 figure). Notices include:

1. Provide a **transactional notice** to all CO purchasers
2. Provide an **Annual Purchase Summary** to all Colorado Purchasers by January 31st of each year
3. Provide an **Annual Customer Information Report** to Colorado by March 1st of each year



Use Tax Notice and Reporting

State	Effective Date	Receipts Threshold	Comments
Alabama	July 1, 2017	None	
Colorado	July 1, 2017	\$100,000	
Kentucky	July 1, 2013	\$100,000	
Louisiana	July 1, 2017	\$50,000	
Oklahoma	November 1, 2016	\$100,000	
Puerto Rico	July 1, 2017	None	
South Carolina	June 14, 2011-Dist. Cent. only	None	Expired January 1, 2016
South Dakota	July 1, 2011	\$100,000	
Texas	July 1, 2017	None	
Vermont	July 1, 2017	\$50,000	
Washington	January 1, 2018	\$10,000	



What happens if I don't comply?

- You will get nickel and dimed, big time. For example, in Colorado:
 - \$5 penalty for each time a sale occurs without the transaction notice
 - \$10 for each time you don't send the customer an annual summary
 - \$10 for each customer not included on the annual report
- It might be cheaper to just start collecting sales tax



Use Tax Notice Requirements - Washington

- Washington
 - Effective 1/1/2018
 - Sales threshold: \$10,000
 - Penalties
 - ◇ \$20,000 penalty for failure to notify purchaser
 - ◇ Graduated penalties for failure to provide list to DOR; \$100,000 penalty for \$300,000 in sales plus \$20,000 for every \$50,000 over \$300,000 in sales



Washington: Nexus and Use Tax Reporting

Amazon began collecting and remitting sales tax for all Fulfillment by Amazon (“FBA”) sales to customers in Washington State beginning on January 1, 2018.

Use Tax Reporting definition for “marketplace facilitator”

Nexus for B&O Tax - \$267,000 or physical presence
Use Tax Reporting Requirements at \$10,000



Washington: Nexus and Use Tax Reporting

FBA Seller Washington Tax Application - January 1, 2018				
	Sales Tax		B&O Tax	
	\$1 - \$10,000	>\$10,000	\$1 - \$267,000	>\$267,000
FBA Inventory in WA or other physical presence				
FBA Sales	Amazon collects and remits	Amazon collects and remits	Applies to the seller	Applies to the seller
Non-FBA Sales (company website)	Seller collects and remits	Seller collects and remits	Applies to the seller	Applies to the seller
FBA inventory not in WA and no other physical presence				
FBA Sales	Amazon collects and remits	Amazon collects and remits	N/A	Applies to the seller
Non-FBA Sales (company website)	No sales tax collection required	Seller collects and remits or complies with Use Tax Reporting Requirements	N/A	Applies to the seller



States Want to Collect from Everyone

- Effectively, notice and reporting laws require either collection or reporting by companies
- Recommended Approach for Remote Sellers
 - Evaluate cost of complying with notice and reporting
 - Evaluate cost of collecting and remitting sales tax
 - Make a business decision





Compliance

Sales Tax Compliance

- It's probably time to start thinking about expanded requirements to collect and remit sales tax
- Sales and use tax compliance considerations
 - Software vs. Manual
 - ◇ Rate lookup
 - ◇ Human error
 - ◇ Taxability decisions
 - Filing
 - ◇ In-house vs. outsourced
 - ◇ Complexity – filing periods, jurisdiction break-out



A variety of different services exist, including:

- Rate Lookup
- Integrated Real-time Calculation
- Product Specific Taxability
- Filing Assistance
- Automated/Managed Filing
- Exemption Certificate Management
- Accounts Payable/Use Tax Support
- Cloud vs. Premise



Different solutions:

- Solution 1 – Download sales data from an e-commerce platform. Upload data to software which generates sales tax reports and returns. Typically will allow for direct e-filing or printing/filing of returns, and automatic payment to each state.
- Solution 2 – Software integrates with online shopping cart or invoicing system to calculate tax. Provider offers managed filing and payments so seller doesn't need to do anything.



Some considerations:

- In addition to sales tax, are there other point-of-sale taxes/fees you are required to collect that the provider also supports?
 - Meals Tax, Rental Tax, Lodging Tax, Fuel Tax, Alcohol Tax, Soda Tax, Prepaid Wireless Fees, Tire Fees, Bottle Deposit Fees, Bag Fees, Mattress Fees, PaintCare Fees, etc.
- Are services offered individually or do you need to purchase an entire suite?
- Does the provider support all of the local jurisdictions in states where you sell into?
- If you have international sales, are those supported?





Certified Service Providers

Certified Service Providers

- The Streamlined Sales Tax Project began in 2000, and currently consists of 24 member states.
- All member states agree to adhere to the Streamlined Sales and Use Tax Agreement (SSUTA) which attempts to simplify and modernize sales and use tax administration, and provide some degree of uniformity.



23 Full Member States and 1 Associate Member

- Arkansas
- Georgia
- Indiana
- Iowa
- Kansas
- Kentucky
- Michigan
- Minnesota
- Nebraska
- Nevada
- New Jersey
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Rhode Island
- South Dakota
- Tennessee*
- Utah
- Vermont
- Washington
- West Virginia
- Wisconsin
- Wyoming



Currently 7 CSP's: AccurateTax, Avalara, Exactor, Sovos, TaxCloud, Taxify, and Taxometry

- The SSUTA allows for Certified Service Providers (CSP's) which are software providers certified by the Governing Board that can provide services for sellers at no cost to the seller (the member states pay the CSP a percentage of the sales tax collected in states where the seller is a volunteer seller)
- Seller must register through SST to collect in all 23 full member states in order to use a CSP for free (a CSP can charge seller for service in any state where the seller has nexus)



Being a CSP helps ensure accuracy:

- On a quarterly basis, member states send test decks to the CSP's to test their tax rates, boundaries, and product taxability.
- CSP's can request that each state certify the correct taxability of each product category that they offer.
- CSP's are audited every 3 years before their contract is renewed by the Streamlined Sales Tax Governing Board.





Sales Tax Software Options

An extensive amount of options exist, including:

- Accurate Tax*
 - Avalara*
 - Avior Data
 - CCH
 - DOTS FastTax
 - efileSalesTax.com
 - Exactor*
 - Instant Software Solutions
 - Intacct
 - Lumatax
 - Pavlou Sales Tax Pro
 - Saxon Tax Software
 - Sovos Compliance*
 - TaxCloud*
 - Taxify*
 - TaxJar
 - Taxometry*
 - Thomson Reuters
 - Vertex
 - Xero
- * Denotes CSP

Most solutions are concentrated towards a particular market:

- Enterprise:
 - CCH
 - Sovos
 - Thomson Reuters
 - Vertex
- Small or Mid-Sized:
 - Accurate Tax
 - TaxCloud
 - Taxify
 - TaxJar
- Hybrid:
 - Avalara
 - Exactor
- Specialty
 - LumaTax (CA)
 - Pavlou Sales Tax Pro (IL)
 - Saxon Tax Software (FL)



Sales/Use Tax Compliance

- There is no one size fits all
- Analysis of your business and sales activities should include:
 - Where do we have nexus?
 - What do we sell? Retail? Services? Digital products? What is the taxability?
 - Who are our customers? Government? Charitable organizations?
 - What rate do we charge? Bifurcation of taxable and nontaxable?
 - How has the obligation to collect? Drop shipments? FBA sales?
 - How do we get this onto an invoice? Into our system? Reporting?



Questions?

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