

Got Nexus? Learn to Be SALT Compliant

Frequently Asked Questions on the complicated web of sales and use taxation.

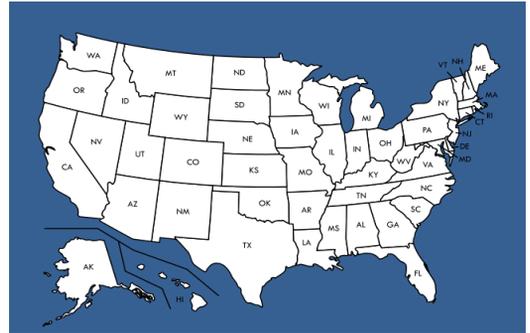
By Judy Vorndran, CPA, Esq., and Meredith Smith, CPA

Most businesses are multistate businesses subject in one way or another to state and local taxation requirements. Online merchants who do business or have nexus in a state are likely required by the state to collect and remit sales tax. Many companies fail to comply with collection and multi-state filing requirements, putting these companies at risk of increased taxes, audit assessments and penalties.

Quiz yourself on the basics of sales and use taxation with the following *Frequently Asked Questions*.

What is a state sales tax?

A state sales tax is a tax paid to a state revenue department for the sale of certain goods and services. Sales tax is a consumer tax and the seller acts as the collection agent for the department. However, when a business does not properly collect sales tax, the audit liability (and ultimate cash



outflow) is on the business for the amount that should have been collected. The sales tax rate is often the sum of multiple tax rates including the state, local, and special districts.

What is a state use tax?

This is a tax on the use, storage, or consumption of certain goods and services. Use tax is often applicable when sales tax is not collected at the point of purchase or sales tax is paid to a different jurisdiction than where the product or service is going to be used, stored, or consumed.

Must I charge tax on my internet sales?

In order for sales tax to apply, a business still must have physical presence as ruled in *Quill Corp. v North Dakota*, 504 US 298 , 112 S Ct 1904 , 119 L Ed 2d 91 (1992). Each state, however, determines what it means to be physically present; this can mean as little as “more than one visit” to a state. What constitutes physical presence is one of the biggest points of contention from state to state in SALT compliance.

In order to simplify the “physical presence” debate, the federal government proposed the Marketplace Fairness Act of 2013. The proposed law would allow states to require sellers not physically located in their state to collect taxes on online and catalog sales made to customers in their state. Sellers that make \$1 million or less in annual sales and have no physical presence in the state would be exempt from this requirement. States would have to meet certain criteria to simplify their sales tax laws and make sales tax collection easier before they could require sellers to collect the tax.

What is the concept of “nexus?”

Nexus = Connection. Nexus describes the amount and degree of business activity that must be present before a taxpayer becomes subject to a state’s taxing jurisdiction. It is important to remember that sales tax nexus is different from income tax nexus. There are certain protections afforded to income tax that are not applicable to sales tax, and vice versa.

Do I only have to collect sales tax in states where I have an office?

Your business may have to file sales tax returns in states where you do not have an office. Almost any physical connection your company has with a state can be construed as creating nexus for sales tax purposes in that state, including:

- Ownership or rental of real property in the state;
- Presence of inventory or vehicles in the state;
- Performance of services in the state;
- Presence of salesmen or other employees in the state;
- Use of independent sales representatives;
- Use of certain third party warranty companies or in-state collection agencies;
- or
- Use of businesses to ship and receive product.

Contact your tax professional to complete a nexus study to determine and establish a list of tax jurisdictions where your company has sales tax obligations and risk review for state filings.

What is a NEXUS questionnaire?

States send nexus questionnaires to businesses not currently filing income tax or sales tax returns to obtain information concerning the out-of-state company’s business activities and to determine whether those activities subject the company to the state tax laws. After the taxpayer responds, the state may further examine activities or simply conclude that the out-of-state company has nexus and should file returns. When completing a nexus questionnaire, review responses with your tax professional before returning the questionnaire to the state.

How difficult is calculating sales tax?

The answer varies dramatically based on the structure of the company, the industry the company is in, and the states where the company operates. Sales tax is a transaction based tax. Each purchase and sale must be analyzed to determine if it has a sales tax impact. If your business buys products from other states or sells products and services to other states, it is a multistate business with multistate sales tax issues, and the potential for multistate tax obligations.

What steps can I take to become SALT compliant?

Develop a solid plan to move your company toward sales and use tax compliance.

- Understand what you are doing in states and track how often you may visit them;
- Distinguish between taxable and non-taxable sales of both goods and services and make sure these items are separately stated on your invoices;
- Establish procedures to properly account for, accrue and report tax on untaxed purchases;
- Identify the nexus triggers that could require you to register and pay taxes in states other than your home state and understand your internet sales;
- Be proactive. If you think you might have a liability, chances are you do.
- Register as required and avoid penalties;
- Learn about voluntary disclosure and amnesty programs and how to take advantage of them;
- Identify the key policies and procedures your company should have in place to help with tax audits; and
- Know your limits. If you don't understand, ask for help.

Author Profiles

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- Leads the state and local tax practice, developing efficient SALT management functions and advising businesses in all aspects of state and local tax compliance
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