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we saw back then, it is a danger nonetheless. Many companies, as well as their trusted advisers, are either unaware of the danger or are not taking the potential danger ...

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There was a public service announcement that ran on TV in the late 1960s and 1970s saying, "It's 10 p.m.: Do You Know Where Your Children Are?" The '60s and '70s were turbulent times, with lots of civil unrest and riots. As a kid growing up in New York during the 1970s, I can remember hearing this announcement. My parents were always worried, but like many kids, I never really took the ads seriously.

While the current sales tax landscape may not represent the same type of danger we

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exponentially over the next 24 months against those companies that have nexus and are not collecting taxes.

While the states will initially set out looking for companies that have exceeded the economic nexus thresholds created as a result of Quill being overturned, they will be stumbling across all types of traditional nexus creating activities. We believe this can be very dangerous for your clients, and it's not just online sellers we are talking about, but any entity that has sales in multiple states and is not currently registered.

Will You Have Clients Asking, "Why Did You Not Tell Me?"

As states gear up to find unsuspecting companies, I find some of the attitudes and opinions of trusted advisors absolutely stupefying. I actually heard an attorney tell a room full of people that the *Wayfair* case was actually good news for them. In what bizarro universe is giving the states the ability to pursue companies that do not have a physical presence in a state good news? I wish I could say this is an isolated incident, but it's not. Many advisors are telling their clients to wait because Congress will fix this, or there will be lawsuits that fix this. While that may be true, how long will it take? How many companies will be found by the states as they gear up? What happens if nothing changes and these thresholds are here to stay? Will you have clients asking, "Why did you not tell me?"

It's Not Just States You Have to Worry About

In a recent blog post, "[Tax authorities use crowdsourcing to find non-collecting sellers](#)," Gail Cole talks about how some states are requesting consumers to provide lists of companies that are not collecting sales tax. How scary is that?

What about your clients' competitors? We receive many calls from companies wanting to turn in their competitors. These companies want to protect themselves from the states by registering, but they are afraid that if they are the first in their

industry to collect sales tax, they will lose sales to their competitors. This is not a

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diligence. One of the worst times to find out there is a sales tax problem is when the acquiring company wants to walk away from the deal, reduce the sales price or place a portion of the proceeds from the sale in an escrow account while the sales tax issues are cleaned up.

South Dakota is Already Making Companies Pay 3 Months of Back Tax

Getting back to nexus, most states that have an economic nexus are only enforcing from the effective date forward, but the effective dates are aging quite quickly, with some states having an effective date of July 1, 2018. Even in South Dakota, where the effective date is only Nov. 1, 2019, the state is making companies prove they did not have nexus on Nov. 1, 2018. So, anyone registering today is paying a minimum of three months back tax, penalty and interest. This number of months will continue to grow as time passes – we firmly believe that more states will adopt this posture.

However, the bigger problems lie with the states that have notice and reporting requirements, such as Rhode Island, or states with cookie nexus, such as Massachusetts. These states believe that even though they have thresholds, they are not bound by the recent Supreme Court decision and are pursuing companies back to 2017. Notice and reporting states, such as Washington and Pennsylvania, are especially heinous because of the low thresholds and the draconian penalties. For a full listing of the notice and reporting states with their thresholds, start dates and penalties you can find our free charts [here](#), along with a chart of the economic nexus states that includes cookie-cutter nexus.

States Go Back 7-10 Years When They Find Physical Presence Nexus

In theory, states can require the payment of back tax, penalty and interest from the date you started doing business in a state. In reality, they generally only go back seven to 10 years – and I say that with tongue in cheek. While it is better than 20

years, seven to 10 years of back tax, penalty and interest can devastate a business,

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collections.

It's 10 p.m.: Do You Know Where Your Clients Are?

The sales tax landscape has become potentially very dangerous for your clients and will continue to be so for at least the next 24 months or so. Do you know in what states they are selling? Have you discussed that times are changing and sales tax should be a priority? I know that many of your clients were like me as a child. I did not take the risks seriously, but thank goodness my parents did. They were always looking out for me. We now have to take on that role for our clients.

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Mike Fleming is the founder of Sales Tax and More, a full service state tax consulting and solutions firm with clients around the world. Sales Tax and More offers services in all 50 states, U.S. territories and Canada. For information on how we can assist you help your clients your can reach out at contact@salestaxandmore.com or visit our website at www.salestaxandmore.com.

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