

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

years ago, the ripple effects are still as strong.

Dec. 21, 2023



By Lauren Stinson

Since the *South Dakota v. Wayfair* ruling more than five years ago, economic nexus has remained as a huge factor for sales tax implications. Following the Supreme Court ruling, many states quickly adopted economic nexus laws, which have required companies selling in a multistate environment to collect tax in states that they have a substantial amount—as defined by each state—of sales. The *Wayfair*

ruling was looked at as a way to even the playing field between in-state and out-of-

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

exponentially increased.

How Economic Nexus Will Impact Your Businesses

For the last 12 months, state revenues have been declining and states are looking for different ways to bolster their incoming cash flow. Prior to the *South Dakota v. Wayfair* ruling, typical revenue-generating activities included raising the sales tax rate or expanding the tax base, which often hit state residents the hardest. States are now aiming to ensure that out-of-state companies are compliant with all tax obligations to seemingly take the tax burden off their local residents. Mandating sales and use tax rules and regulations for out-of-state non-compliant taxpayers is a win-win solution for raising state revenue.

For the above reasons, state departments of revenue (DORs) are aggressively looking for out-of-state companies that have met economic nexus thresholds. This can be done via nexus questionnaires requiring detailed analysis of sales into the state or scrutinizing the effective date put on a registration application. DORs seem to have taken the approach that new taxpayers need to prove they did not establish economic nexus in the past, and they are holding them liable for uncollected tax if they did. This is complicated because each state determines economic nexus against a variety of factors—from dollar threshold, number of transactions, time period, and more.

Guidance Through the Complexities of Economic Nexus

Companies can stay ahead of obligations through a few simple steps:

- **Economic nexus evaluations:** There should be a yearly review of the volume of

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

payment returns, companies that may be non-compliant for sales tax can be easily identified.

- **Check tax automation systems:** There are many effective types of software for accounting systems or shopping carts to automatically calculate sales tax. However, these engines cannot be set up and forgotten about. The reality is that tax laws are dynamic, constantly evolving, and subject to change. Tax engines must be regularly updated to reflect changes in the business, such as the nexus footprint and new products and services for proper tax collection.
- **Reconciliation of tax collected to tax returns:** This will help identify any gaps in compliance and identify the most egregious problem in the world of sales tax—tax collected but not remitted.

If you find your company is not compliant with their sales tax obligations, there are a few ways to remedy the situation. The most popular remediation is through a voluntary disclosure agreement (VDA), which offers companies the opportunity to clear all tax exposure. This is typically done by paying tax due within the open statutory period while limiting the lookback period and waiving penalties. It is important to note that acceptance into such programs may be denied if a business has been previously contacted by the DOR.

A word of caution to companies that think they can just register today without remedying past liabilities: this rarely works. On many registration applications, there is a perjury section where you are attesting to the facts. Additionally, registration applications often trigger scrutiny of the effective date and could take a VDA opportunity off the table.

While *South Dakota v. Wayfair* changed the foundation of sales tax more than five years ago, the ripple effects are still as strong. Due to the complexity of nexus and sales tax obligations, it is important to proactively meet with a tax professional to

ensure no mistakes are made when identifying when and where to register, file, and

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.

© 2024 Firmworks, LLC. All rights reserved