



SALES & USE TAX STRATEGY



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Jack Schmoll

- 30 years in state and local taxation
- 9 years with the Washington State Department of Revenue
- Started own firm in 2012
- Works with wide variety of businesses in NC and across the country and world
- Works with a large number of CPA firms assisting them with SALT issues
- Love to run



Rules of Thumb

- Conservative when collecting
- Less conservative when paying



Conservative When Collecting

- Avoid aggressive nexus strategies
- Avoid aggressive taxability determination
- Do not convert your customer's liability into your own



Less Conservative When Paying

- Liability is yours to begin with
- Risk is penalties and interest
- Positions still need to be reasonable
- Vendors will likely want to be conservative (see prior slide)



Don't Let the Tax Tail Wag the Dog

- Don't create complicated entity structures to avoid collecting sales tax
- Don't stop selling to a state because you are nearing nexus threshold
- Don't stop instate activity



Use Taxes

- Use Tax
 - Storage, use, or consumption
 - Temporary storage



Sales Tax Decision Tree

- Do I have nexus?
- If yes, is my product or service taxable?
- If yes, what do I do now?



Do I have nexus?

- What is nexus?
- How did we get here?
- What did the Wayfair Court say?



What is nexus?

- The minimum connection a business needs to have with a state before the state can subject the business to its taxes
- Determined by:
 - US Constitution
 - US Supreme Court
 - Federal statutes (none apply to sales tax nexus)
 - State laws, statutes, rules, and cases



How did we get here?

- Physical presence
 - *Quill*
 - *Scripto*
- Affiliate nexus
 - Related entity
 - Click-through
- Economic nexus
 - *Wayfair*



What did the *Wayfair* court say?

South Dakota Statute

1. The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds **\$100,000; or**
2. The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in **200 or more separate transactions.**

- SB 106, 2016



Wayfair

- Does not just apply to online sellers
- Most (*not all*) states use \$100,000 or 200 transactions in current or prior calendar year
- Sales included in threshold calculations vary
- States have imposed similar requirements on marketplace sellers



Marketplace Issues

- Marketplace sales may count toward thresholds
- Beware of other channels
- Beware of when the marketplace began collection
 - NC 2/1/2020
- Fulfillment (including FBA)
 - Presence of inventory
 - Sales, income, franchise, gross receipts issues



Layers of nexus

- Physical presence (*Quill*)
- Affiliate nexus
- Related entity
- Click-through
- Use tax reporting requirements
- Threshold nexus (economic nexus) (*Wayfair*)



Sales Tax Decision Tree

- Do I have nexus?
- **If yes, is my product or service taxable?**
- If yes, what do I do now?



Is my sale taxable?

- Tangible personal property
- Taxable services
- Digital property
- Leases - careful
- Software
- Construction
- Exemptions



Is my sale taxable?

- Be conservative so you do not convert customer liability to your liability
 - Tangible personal property
 - Taxable services
 - Digital property
 - Leases - careful
 - Software
 - Construction
 - Exemptions



Understand Exemptions

- Resale
- Tax exempt entities may **NOT** be sales tax exempt
- Federal government
 - Will not pay
- State and local government exemptions vary
- Many states have unique exemptions
- Manufacturer's exemptions vary



Manufacturers - Examples

- Alabama – Reduced rate
- California – Partial exemption includes special purpose buildings
- Colorado – Would have qualified for investment tax credit and invoice totals over \$500
- Nevada – No exemption
- Washington – Useful life over 1 year



Exemption Certificates

- Valid certificates
- Timely collection
- Expiration dates
- Accepted in good faith
- Automated services available
- Drop shipping nightmare
 - Cover all states shipped to
- Understand exemptions



Sales Tax Decision Tree

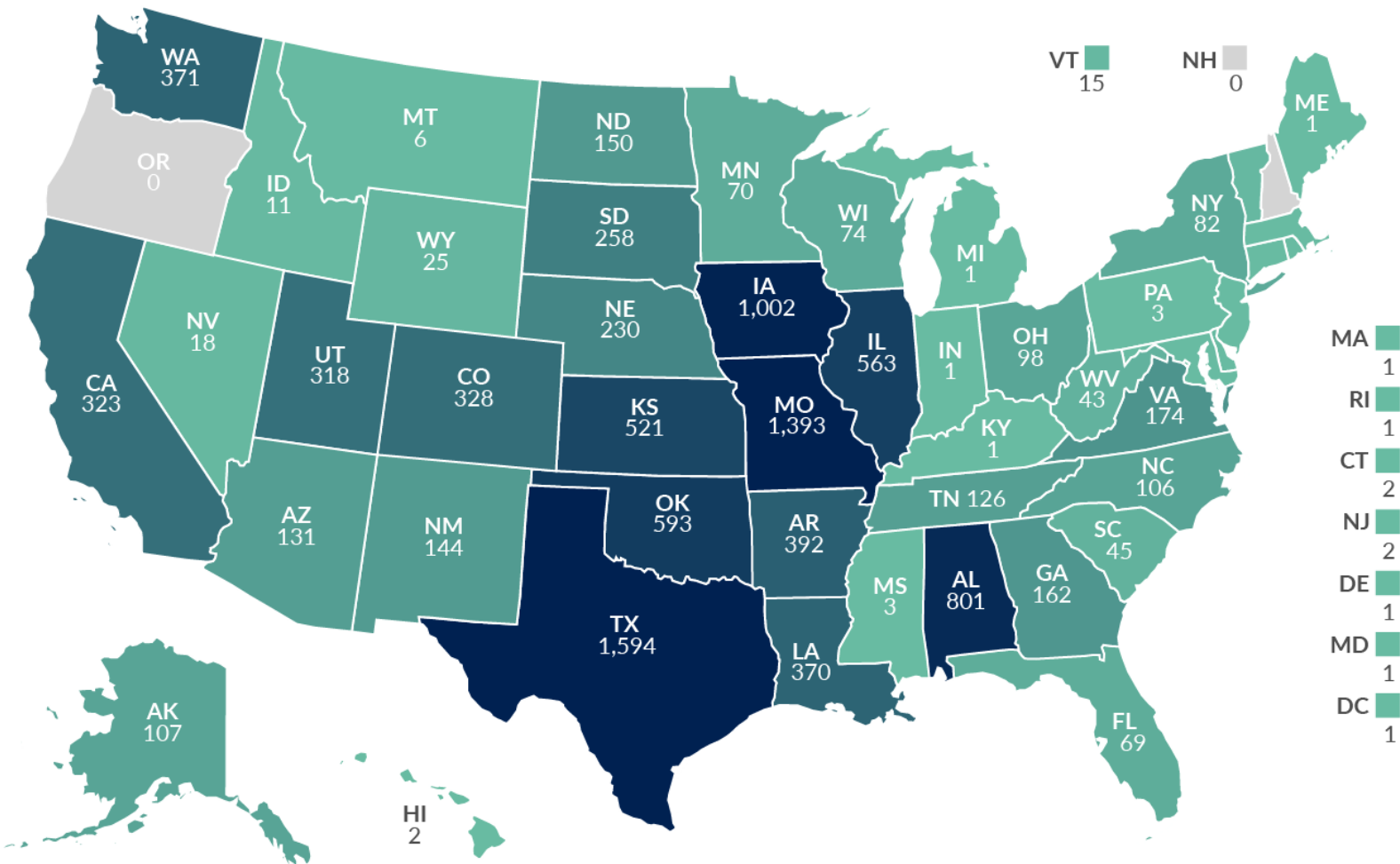
- Do I have nexus?
- If yes, is my product or service taxable?
- **If yes, what do I do now?**



Oh No! Nexus started when?

- Prior nexus
- 4 Options
 - Voluntary disclosure (VDA)
 - File back returns w/o VDA
 - Prospective
 - Continue to ignore

What rate do I charge - Sourcing?



Source: Vertex, Inc.





Sales Tax Software – When?

- Are sales being delivered to multiple jurisdictions?
- Can sales software calculate sales tax?
- How many returns do I need to file?
- How complex are the returns, IL v. NJ?
- What is the cost of time spent on sales tax compliance?



Sales Tax Software

- Vendors include
 - Avalara - <https://www.avalara.com>
 - TaxJar - <https://www.taxjar.com/>
 - CCH - <http://www.salestax.com/>
 - Vertex - <https://www.vertexinc.com/>



Software Integration

- Multiple sales channels
 - Switch sales channel
 - Manual uploads
- Sales software and sales tax software conflict
- Waiting period to get online up and running
- Collection and entry of registration information



Software - level of service

- Front end
 - Adding tax to invoices
 - Pulling sales and tax information from your system
- Back end
 - Automated filing
 - Manual filing



Software - Cost

- Difficult to compare
 - Very complex
 - Cost per transaction
 - Monthly/annual fee
 - Pay as you go
 - Pay up front
 - Automated filing charge
- Need to fully cost level of service



Software – Timing, Plan Ahead

- Coordinate collection with sales tax registration
- Determine when filing will be required
- Register in advance
 - Depending on the state, can be time consuming
 - If not timely entered, the manual return required



Minimize Payment of Tax*

- Do not rely on vendors
 - Consulting businesses built entirely around finding sales tax overpayments
- Understand exemptions
 - What can you purchase with your manufacturing exemption?
 - Do I qualify as a secondary metals recycler?
- Understand taxability
 - Is the remodeling of the office taxable?
 - Is my software taxable?

* When appropriate



Practical Considerations

- Cost of compliance
- Complexity



Cost of Compliance

- Cost of software and time
- Cost of compliance can easily exceed tax
- Small dollar, high volume
- Business decisions, not accounting decisions



Complexity Issues

- Taxability can become very complex if services and products are bundled
 - Varying treatment by state
 - Varying treatment by billing method
 - Varying treatment by component
- Is the juice worth the squeeze?



Thank You!



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