
Sales Tax Challenges and Solutions in the New World



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Agenda

- Definition of Nexus
- Pending Legislation
- Sales Tax Challenges
 - **Lack of clear or uniform rules**
 - **Expansion of transactions subject to sales tax**
 - **State regulations & resources trail technology**
 - **Sheer number of jurisdictions, rates, boundaries, and rules.**
 - **Fiscal, political and technological positions of the states.**
- Impacts
- Questions & Answers



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Definition of Nexus

- Minimum connection or link necessary that allows a state to tax you or force you to collect taxes on it's behalf.
- US Constitution - Due Process Clause states that no state shall deprive anyone of life, liberty or property without due process of law.
- US Constitution - Commerce clause states that Congress shall have the right to regulate commerce among the states.



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Pending Legislation

- **House HR3179 Marketplace Equity Act** - Authorizes states to require all sellers making remote sales to collect and remit sales and use taxes without regard to location of the seller.
- **Senate Committee on Commerce, Science and Transportation** – Marketplace Fairness: Leveling the Playing Field for Small Business



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1. Lack of clear or uniform rules on what activities trigger nexus

- In the legal sense, Nexus describes the connection between two or more participants, interests or concepts.
- Specifically in the world of sales tax, Nexus refers to the connection a retailer has with a state.
- Nexus is the legal connection that empowers a state to demand collection and remittance of a retail sales tax.



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1. Lack of clear or uniform rules on what activities trigger nexus

Quill was a 1992 USSC case and remains the most recent sales tax nexus decision of the High Court.

- Time and time again the Court reminds us that central federal administration of an interstate taxation system is Constitutionally agreeable and the US Congress is specifically and uniquely suited to set the rules.



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1. Lack of clear or uniform rules on what activities trigger nexus

- The result of Congressional inaction is a patchwork of state and local laws and regulations.
- The laws tend to push the limits of the limited USSC precedent in order to ensnare more and more vendors within the sales tax collection net.
- In all but the most obvious cases, the determination of sales tax Nexus is a test of facts and circumstances.



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1. Lack of clear or uniform rules on what activities trigger nexus

- Accountants familiar with income tax issues for multistate companies might recognize P.L. 86-372.
- In 1959 the US Congress acted swiftly in reaction to a US Supreme Court case by passing PL 86-372. 15 U.S.C. § 381.
- In short, PL 86-372 provides a safe harbor and some regularity for inter-state companies determining their multiple state income tax liabilities.
- The law is the type of thing we would expect a Congressional agreement on sales tax nexus to look like.



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2. Expansion of the universe of transactions subject to sales tax, especially services.

- The taxation of services has rapidly expanded in scope over the last few years.
- Traditional services like repairs, maintenance or installation are taxable in many states.
- Contemporary services are taxed in some jurisdictions as well, including information services, software-related services or data processing.



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3. State regulations and resources trail technology. For example, see the field of computer software.

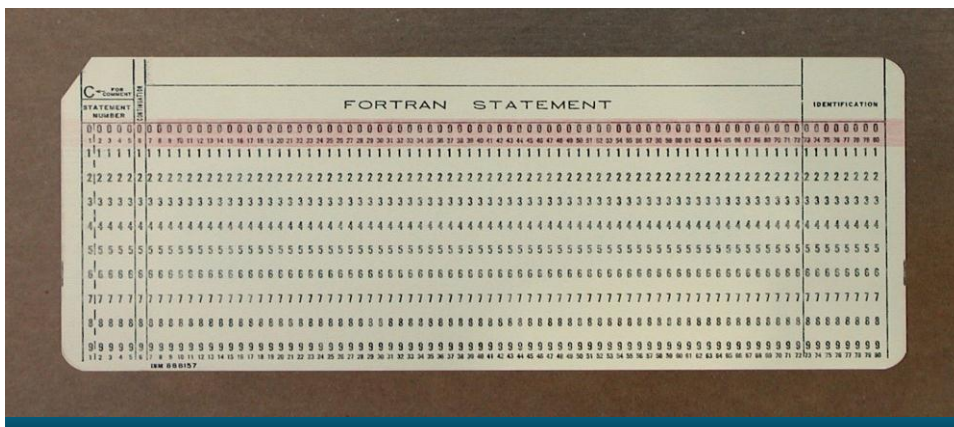
- Software as a Service is software delivered over the internet, think: applications on the cloud.
- SaaS is taxable in SC as a communications service.
- SaaS is taxable in WA as tangible personal property.
- SaaS is taxable in TX as data processing service, but only 80% of the charges are subject to tax.
- SaaS is taxable in DC as data processing, 100% taxable.



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Not to be outdone ... In CA, SaaS is exempt, but software delivered via punch cards is taxable.



4. Sheer number of jurisdictions, rates, boundaries, and rules.

- Over 10,000 current jurisdictions in the US.
- The number of authorized jurisdictions might exceed 50,000.
- Some states provide a state-wide rate and taxability rules: CT, KY, ME
- Some states allow unique rates collected by localities: IL, MN, NY
- Some states allow unique rates *and* unique taxability rules within localities: AL, CO, AZ



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5. Finally, the fiscal, political and technological positions of the states.

Sales tax “planning” has become a political issue (purposeful avoidance of requirement to collect, see *Amazon*).

Sharing of information between state’s income, payroll or business activities tax administration with sales tax auditors is expanding rapidly.



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Impacts/Opportunities for Accountants/Technology Consultants

- Need to stay abreast of tax laws
- Inform clients of pending changes
- Be able to reconcile multi-state sales tax forms
- Make technology changes necessary



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Key players

Tax Compliance



Accounting Software



Ecommerce software



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Questions?



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