Mitigating Exposure

How to navigate the sales tax economic nexus.

BY **DAVID BRENNAN**

Sales tax in the U.S. is more complicated than in recent years and you may not even realize it. You now have the possibility of needing to collect sales tax in every taxing jurisdiction across the country—and you may already be accruing liabilities. For many companies, simply registering and collecting is dangerous because the company may already have sales tax exposure. This is on top of any potential liability for other state tax types you may be subject to. Are you taking this exposure seriously?

Changes to Sales Tax Collection Requirements

A 2018 U.S. Supreme Court decision, *South Dakota v. Wayfair*, has dramatically changed sales tax law across the country. Specifically, this landmark case allows states to require you to collect sales tax even when not physically present in the state. Called "economic nexus," it is based on the amount of sales or number of transactions into a state. While numerous states have a threshold of $100,000 in sales or 200 transactions into the state, others have differing thresholds. Meanwhile, states without such thresholds are quickly jumping on the bandwagon.

Worse, every county and municipality nationwide can require sales tax to be collected. A separate application may be needed for each county and municipality. You also must determine whether your sales are taxable in each of these places. If so, you must figure what exemptions may apply to your sales and how to properly document the exemptions.

States are already sending letters to businesses informing them of potential collection requirements. In some cases, businesses must prove they do not need to register. Failure to respond may result in an assumption of needing to register and potential penalties.

Carefully Navigating Post-*Wayfair* Challenges

If you make sales across state lines, you may have exposure because of *Wayfair*. There are several things you can do to mitigate your exposure.

Among other things, you need to know where inventory may be kept (e.g., Amazon's Fulfillment by Amazon, or FBA, services stores inventory nationwide). Next, sort your sales and number of transactions by state by year. Cross-reference these numbers with the economic nexus thresholds nationwide to determine potential exposure.

Once you have identified the states with exposure, you must determine whether to register and how to do so with the least exposure. Should you decide to delay registering, the delay may be costly as you could have been collecting sales tax from customers instead of paying the sales tax out-of-pocket. Furthermore, the registration application could reveal past exposure for you.

As a practical point, the registration answer may not necessarily be to register everywhere. While registering may immediately resolve the sales tax collection requirement, there are two issues that will come up. First, registering for sales tax everywhere could lead to registration requirements for uncontemplated tax types. For instance, if you register for sales tax, you may also have an income tax or franchise tax registration requirement. Second, for every tax registration made, there is the potential of a future audit. In other words, registering everywhere could lead to a full audit of your business every two months.

Knowing the pitfalls can ensure you are headed in the right direction with minimal exposure. Otherwise, it is only a matter of time before you are contacted on your sales tax exposure by the government. Better to resolve it now instead of having the government help itself to your pocketbook. **TBJ**

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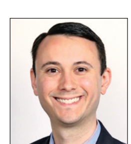

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