

Notes on US Sales Tax

A Conversation with Doug McCubbin, Sales and Local Taxes Specialist,
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What is sales tax?

45 states have sales tax

Whoever sells tangible personal property or taxable services has to collect and remit the sales tax

Each state is treated individually

Digital products can be taxable depending on the state.

Software sold is typically defined as tangible personal property but sometimes only if provided eg on a CD

Currently around 15 states tax SaaS (software as a service)

Tangible products ARE taxable, except

Sold to exempt customer eg non-profit

Stated in the statute eg food

Or used in the manufacturing process

Services – Must be defined in the state to be taxable...Many states tax very few services, the more populated states have more taxable services

When do I have to collect and remit sales tax?

Nexus – a “connection” of your business to the State that means you have to collect sales tax in that state.

Having an office, inventory, or an agency relationship (such as paying a commission on a sale) in that State = Nexus.

Amazon/ecom: most likely consigned inventory is going to create Nexus.

Agency: “click through revenue” (affiliate commission) will also give Nexus of the agent’s State.

Summary: states in which you have inventory (consigned inventory), have an office, have an employee, or pay commission, you have Nexus!

What do we do to get legal and must we do it?

Statute of limitations typically 4 years – unlikely a state will look back more than 4 years

Ask yourself – what is my “exposure” to back taxes? In \$\$?

If I report it (voluntary): 10% penalty + 10% interest plus the tax itself. This is the companies’ risk (as you likely can’t go back to get it from a retail customer). Plus, the cost of getting it done!

Once you know the \$\$ amount of back taxes:

Get a sales tax permit for the States with Nexus

Start remitting.

So at least we have corrected the situation from here forward, and in 4 years we are in the clear

So, what are my options?

Going forward if small amounts of taxes due in some states:

Could just permit for a single state, remit to them, and correct if audited.

Saves administrative expense while keeping overall risk/exposure low.

But it’s incorrect of course – penalty however is just admin if audited (amend return to state originally filed and get refund, then remit to auditing state)

Once any state becomes material – wise to report correctly to that state

Back taxes:

Voluntary disclosure of back taxes (often with voluntary disclosure they will waive penalty).

Alternatively, when you file you put a business start date (be honest!) – but then just wait for the audit and hope it doesn’t come.

Internationals – must they bother?

If you can avoid Nexus - ok great.

But if you have consigned inventory (eg Amazon) – you have Nexus.

States are working on finding companies that do not collect sales tax and finding businesses with sales tax due.

States can seize your consigned inventory! However, Doug has not seen that happening in the ecomm world, but is common with other businesses.

Audit

Likelihood varies by different states. Bigger population states fairly sophisticated. Some have sued Amazon for lists of customers. Pretty low for small sales < 100K in that state. Maybe 20% chance of audit over 4 years of sales.

Practical steps for compliance:

1. Email your questions and/or concerns for Doug – Doug will send some question to you and schedule call to suggested approach/best course of action.
2. Decide what states will we collect in and why?
3. Admin – Doug’s team does it all the time, or compliance can be outsourced

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