

Inside this issue:

- p2 Nexus Creep – Corporate Income Tax
- p3 Tax Incentives and Credits
- p3 State Tax: Are You in Compliance?
- p4 Fight Over Colorado Notice Reporting Law Finally Ends
- p5 Amnesty Update

State and Local Tax Team



Minimizing Risk and Adding Value for Our Clients



“If Patrick Henry thought that taxation without representation was bad, he should see how bad it is **with** representation.”

The Farmer’s Almanac

Amazon Increases Sales Tax Collection

By Thomas E. Mazurek, Jr., CPA, Principal

The days of tax free shopping on Amazon.com have come to an end for most U.S. shoppers.

The leading internet retailer started collecting sales tax in Iowa, Louisiana, Nebraska and Utah on January 1, 2017 then subsequently began collecting tax in Mississippi, Missouri, Rhode Island, South Dakota and Vermont on February 1st, and now just began collecting tax in Arkansas, Oklahoma and Wyoming on March 1st.

With this, Amazon.com will now be collecting sales tax in every state that imposes sales taxes with the exception of Hawaii, Idaho, Maine and New Mexico. At the start of this decade, Amazon.com collected sales tax in just 5 states, accounting for only about one-tenth of the U.S. population. However, the exponential growth of online shopping

forced Amazon to expand its physical footprint and build fulfillment centers and other facilities across the country to expedite the delivery of its products.

The sales tax collected by Amazon.com is limited to just those sales made directly by Amazon and its subsidiaries. Amazon will collect sale tax for third-party Marketplace sellers, however, they will not remit taxes on their behalf. It is at the discretion of the third-party seller, whether to register and collect sales taxes.

Check out this post on [Tax Justice Blog](#) for a time-lapse map illustrating the evolution of Amazon’s sales tax collection practices.

STATE AND LOCAL TAX TEAM

8321 Main St., Williamsville, NY 14221
716.633.1373 | Fax 716.633.1099

Thomas E. Mazurek, Jr., CPA, Principal
tmazurek@tsacpa.com

Andrew J. Toth, CPA, Partner
atoth@tsacpa.com

David E. Werth, CPA, Partner
dwerth@tsacpa.com

Robert H. Lamb, CPA, Of Counsel
rlamb@tsacpa.com

Alicia R. Sears, CPA, Manager
asears@tsacpa.com

SALES TAX NEXUS UPDATE

Wyoming has joined Alabama, South Dakota and Tennessee by enacting legislation to impose sales tax on remote sellers.

Effective July 1, 2017, sellers who do not have physical presence in Wyoming will be required to collect and remit tax on sales of tangible personal property and services if their gross revenue from sales into the State exceeds \$100,000, or the seller had 200 or more separate transactions with Wyoming customers.

Imposing “economic nexus” legislation is the latest attempt by states to compel remote sellers to collect sales tax, even though the seller lacks nexus with their state. Like these other states, Wyoming is seeking to challenge the 1992 U.S. Supreme Court case, *Quill v. North Dakota*, looking to turn back the physical presence requirements upheld in that case. Similar economic nexus legislation has been introduced in a number of other states since the start of this legislative season.

Click [here](#) for more details about pending legislation.

Nexus Creep – Corporate Income Tax

By Robert Lamb, CPA, Of Counsel

A current prevailing view amongst the states is that their nexus rules, which determine when an out-of-state company is subject to taxation, have not kept pace with the economic realities of how companies conduct business across state lines. To combat this, several states are moving away from the constitutional requirement to have a physical presence in order to create nexus by imposing new “economic nexus” standards. One of the more common variations on economic nexus is the “factor-based nexus standard” being imposed by various states. Under a factor-based nexus standard, nexus is created with a state when a minimum amount of property, payroll or sales is sourced to the state.

Nexus thresholds for states with a factor-based nexus standard for corporate income tax include:

- **Alabama** – greater than \$50,000 of property or payroll; or greater than \$500,000 of receipts; or greater than 25% of total property, payroll or receipts.
- **California** - greater than \$53,644 of property or payroll; or greater than \$536,446 of receipts; or greater than 25% of total property, payroll or receipts.
- **Colorado** - greater than \$50,000 of property or payroll; or greater than \$500,000 of receipts; or greater than 25% of total property, payroll or receipts.
- **Connecticut** - \$500,000 or more of receipts.
- **New York** - \$1,000,000 or more of receipts. A recent revision to New York’s draft regulation on nexus (see draft Regulation Section 1-3.2(f)) indicates that each corporate partner or corporate member of a LLC taxed as a partnership, may be required to include 100% of the partnership or LLC’s receipts in determining if the \$1,000,000 receipts threshold has been met by the corporate partner or member regardless

of the percentage of ownership interest.

- **Tennessee** – equal to or greater than \$50,000 of property or payroll; or greater than \$500,000 of receipts; or greater than 25% of total property, payroll or receipts.
- **Virginia** – any positive applicable apportionment factor percentage.

Having nexus from in-state property or payroll (in-state physical presence) should not be a surprise. However, companies are getting caught off-guard when they have no physical presence in a state but have exceeded the factor-based nexus standard threshold for in-state receipts shown above. In-state receipts can come from shipping tangible property into the state or from performing services for customers located in a state if the state sources service receipts on a market-based approach rather than based upon where the costs are incurred to provide the services. Alabama, California, Connecticut (new for tax years beginning after 2015) and New York (new for tax years beginning after 2014) are among the new states using the market-based approach for sourcing service receipts.

In these states, companies performing services may erroneously believe they have no receipts in states where their customers are located when all of their costs are incurred at their place of operations. For companies selling tangible personal property, it may be possible to avoid corporate income tax nexus via PL 86-272 (mere solicitation exemption), however, this will not apply to protect against non-income based taxes nor will it protect companies that perform services.

Companies with customers in factor-based nexus states need to keep track of their in-state activities taking into consideration the bright-line nexus thresholds and receipts sourcing rules utilized by these states.

Tax Incentives & Credits

By *Alicia Sears, CPA, Manager*

The federal government, as well as states, use tax credits, deductions and incentives to encourage investment, boost employment and stimulate innovation. No matter if your company is new, growing or well established there are a variety of tax credits and incentives available that you may be eligible for. Understanding whether your business is a candidate for such programs can be confusing – quantifying the benefits, determining how to apply and complying with these programs are just some of the challenges.

There are two categories of incentives, statutory and discretionary. Statutory incentives are typically available as of right (available to any company meeting the definition of a qualified company and performing qualified activity) but may still require an application or pre-approval. Discretionary incentives typically involve a “but-for” requirement (but for the receipt of incentives the project will not move forward). Public authorities have the

discretion to approve or deny and the amount of the benefits is variable based on a number of factors.

Types of statutory benefits include:

- Capital investment incentives
- Job creation or point of hire credits
- Research and development enticements
- Location based benefits
- Activity based credits

Types of discretionary incentives include:

- Cash grants for infrastructure or training
- State owned infrastructure
- Real estate tax abatements

Some common Federal credits include the recently renewed Work Opportunity Tax Credit, expanded Research and Development Tax Credit, Historic Preservation tax credit and Renewable Energy credits.

In New York State incentives are targeted at new businesses, employers and

manufacturers. Companies involved in agriculture, research and development and the entertainment industry are also often beneficiaries. Programs include the highly publicized Start-Up NY, Excelsior Jobs Program for firms in targeted industries and more well-known perks such as sales tax exemptions and investment tax credits.

Additional benefits are available from sources other than the state, such as real estate and mortgage recording tax abatements, low cost financing or sales tax exemptions through the local industrial development agencies. Some utility providers also have their own economic development programs offering reduced rates or grants for infrastructure.

If your business in hiring, buying new equipment or investing in training be sure you’re not leaving money on the table.

State Taxes: Are You in Compliance?

By *Andrew J. Toth, CPA, Partner*

States are aggressively looking for taxpayers that are doing business in their state and not filing returns. Rather than wait until your company receives a state tax notice, we recommend that you proactively look at where your company may have state tax return filing requirements. Once a state has contacted you or determined you have nexus, the chances of negotiating a favorable outcome are greatly reduced. If a state has determined your company has nexus, the state has the right to request tax returns back to the date you began doing business in the state. This can be quite costly, not only in taxes, but also time spent resolving the matter.

For example, ABC Company has been selling products in State Z for 10 years and never filed sales tax returns. State Z determines ABC Company has nexus for

sales tax purposes. State Z can request sales tax returns for the past 10 years (practically speaking most states will go back 6 to 8 years). Assume ABC Company had annual sales of \$50,000 a year in State Z. ABC Company could owe \$40,000 or more in sales tax, penalties and interest. This amount could have been reduced to less than half that amount had the company identified and addressed the matter proactively.

To reduce or prevent the risk of state tax underpayments, it is important to consider your company is doing business in other states.

Start by asking yourself the following questions:

- Do we have sales in other states?
- Do we have locations in other states?
- Do we have employees or representatives that are residents of

other states or making sales calls in other states?

- Do we send employees or subcontractors to make repairs or perform installations in other states?
- Do we have inventory, equipment or other assets in other states? If you are selling through Amazon’s “Fulfillment by Amazon” program, you likely have nexus in multiple states because your inventory could be held in Amazon fulfillment centers across the country.

If you answered yes to any of the above questions, your company should consider conducting a nexus study. A nexus study is a detailed review of sales and business activities by state to identify and quantify the risk of tax underpayment. Once nexus with a state is determined, a proactive plan can be put in place to reduce the risk of potential unreported liability.

WELCOME NEW ASSOCIATES



Tronconi Segarra & Associates is pleased to welcome Alicia R. Sears, CPA, to our State & Local Tax Team. Alicia has over eight years of public accounting experience

plus significant experience assisting clients with various federal, state and local tax credits and incentives for which they may qualify. Some of the programs with which she has experience include StartUP NY, the Excelsior Jobs Program, the Empire Zone Program, as well as incentives available through industrial development agencies and other federal, state and local programs. Alicia obtained her Bachelor of Science Degree in Accounting at SUNY Geneseo and is a member of the AICPA and the NYSSCPA.

Tronconi Segarra & Associates also welcomes David R. McElwain, CPA, MBA, to the Firm's State & Local Tax Team. He has nearly 40 years of experience with the New York State Department of Taxation & Finance, where his position upon retiring was District Audit Manager. He will be available to assist our Firm's clients with sales & use tax audit defense services and other sales & use tax services as needed. David is a graduate of St. John Fisher College with a Bachelor of Science Degree in Accounting. He earned his Masters of Business Administration in Finance from the Rochester Institute of Technology. He joined the Firm in 2016 in an of counsel role.



Fight Over Colorado Notice & Reporting Law Finally Ends

By Thomas E. Mazurek, Jr., CPA, Principal

The Data and Marketing Association (DMA, formerly Direct Marketing Association) and the Colorado Department of Revenue reached a settlement agreement over the State's Notice and Reporting Requirements imposed on out-of-state retailers who are not required to collect tax on sales to customers in Colorado.

The legislation, which was originally enacted in 2010, requires out-of-state retailers to:

1. Provide a transactional notice to purchasers regarding their obligation to self-report and pay use tax on the transaction;
2. Provide an annual summary to purchasers with over \$500 or more in calendar-year purchases regarding their obligation to self-report and pay use tax on the transactions;
3. Provide an annual Customer Information Report to the Dept. of Revenue listing their customers' name and their purchases during the year. This requirement only applies to retailers with over \$100,000 or more of annual Colorado sales.

In February 2016, after years of federal and state court proceedings, the U.S. Court of Appeals (Tenth Circuit) reversed a lower court's ruling, finding that Colorado's notice and reporting requirements did not violate the Commerce Clause. After the DMA's petition for *certiorari* was denied by the U.S. Supreme Court in December, the matter was finally resolved.

As part of the Settlement Agreement reached with the DMA on February 22nd, the Colorado Department of Revenue agreed to not start the enforcement of the notice and reporting law until July 1,

2017, as well as waive penalties for non-compliance prior to this date. Out-of-state retailers will be required to provide transactional notices to purchases starting July 1st, provide an annual summary to purchasers with over \$500 of purchases by January 31, 2018 and provide the Department of Revenue a Customer Information Report by March 1, 2018. While not required to include any transactions prior to July 1, 2017 on either the annual summary to purchasers or the Customer Information Report, the Department of Revenue encourages retailers to include these purchases in an effort to "facilitate customer compliance." Penalties will be waived for retailers who decide not to include purchases from the first six months of 2017. See the full-text of the Settlement Agreement [here](#).

Colorado finally gets to claim victory in their multi-year fight over a law that essentially forces out-of-state retailers who presumably have no connection with their state, to choose between voluntarily collecting sales tax when they legally are not required to, or turning over information about customers and their purchases to state taxing authorities, while bearing the burden of increased administrative responsibilities, on behalf of a state where they have no connection – property, employees or physical presence, under the threat of penalties. It is still unclear how Colorado intends to enforce penalties on out-of-state retailers who are not located within their borders. Expect the Department of Revenue to issue more guidance on this in the coming months. On the heels of this victory, several states have introduced similar notice and reporting requirement legislation this year, in addition to the handful of states that have previously enacted laws similar to Colorado's.

Amnesty Update

State Amnesty Programs At-A-Glance

State	Amnesty Period	Benefits
Pennsylvania	April 21 – June 19, 2017	Waiver of all penalties & 50% of interest
South Carolina	TBD	TBD
Virginia	TBD	Waiver of all penalties & 50% of interest

Pennsylvania

Legislation passed in 2016 authorized the Pennsylvania Department of Revenue to administer a Tax Amnesty Program, which will run from April 21 to June 19, 2017. Most taxes administered by the Department of Revenue are eligible for amnesty including: Capital Stock or Foreign Franchise Tax, Corporate Net Income Tax, Employer Withholding Tax, Gross Receipts Tax, Liquid Fuels Tax, Personal Income Tax, and Sales & Use Tax, including the local sales & use tax for Allegheny County and Philadelphia. Eligible periods are those where a delinquency exists as of December 31, 2015. Non-filed periods due after this date must also be filed by June 19th to be approved for amnesty.

The Department of Revenue will waive all penalties and half of the interest owed for anyone who pays

the tax due in the applicable timeframe. If an individual, business or other entity participated in the State's 2010 Tax Amnesty Program, they are not eligible to participate in this program.

For more information, visit the State's amnesty website [here](#).

South Carolina

In 2015, the State enacted legislation authorizing the Department of Revenue to implement a three-month tax amnesty program sometime in the future, pending notification of the General Assembly, at least sixty days prior to the start of the program. The amnesty program authorizes the Department of Revenue to waive penalties and portions of interest at its discretion. There are no indications that South Carolina has any plans to initiate this amnesty program in 2017,

but with new leadership at the Department of Revenue, priorities may change.

Virginia

Legislation was just enacted in Virginia to establish a tax amnesty program sometime during the period July 1, 2017 to June 30, 2018. The timing and duration of the program (at least 60 to 75 days) is at the discretion of the Tax Commissioner. The Department of Taxation will waive penalties and half of the interest due on underreported tax obligations attributable to tax years prior to January 1, 2016. The program will be open to any taxpayers who have failed to file returns or pay any taxes administered by the Department.

State and Local Tax Team On-The-Road

Tronconi Segarra & Associates' state and local tax practice leaders responded to the CPE needs of the members of various professional organizations across Upstate New York. During this past winter, we presented for both the UB/ NYSSCPA Tax Institute, the Buffalo and Rochester Chapters of the Tax Executives Institute, and the Niagara Chapter of the Institute of

Management Accountants. Topics included:

- The Taxman Awards – Recognizing 2016 “achievements” across the country in the area of sales and use tax.
- Kill Quill – Discussing states' initiatives to challenge the physical presence standard upheld in the Supreme Court's 1992

decision in *Quill Corp. vs North Dakota*.

- Hot Topics in State and Local Income Tax.
- New York State Audit Update.

Presenting on behalf of the Firm were David Werth, Thomas Mazurek, Alicia Sears, Robert Lamb, & David McElwain; and Director Joseph Carzo from the NYS Department of Taxation and Finance Audit Division.