North American Regional Conference 2025

Collaborate to Create: The Power of Strategic Alliances

The International Tax (ITAX)and State and Local Tax (SALT) Crossover: Foreign Companies with US Inbound Considerations

Presenters: DiAndria "Dee" Green & John Bonk

Monday, June 2, 2025 (1:15-2:00 PM)

SALES TAX: KEY FACTS

- 45 states plus the District of Columbia have a state sales tax
- Sales tax rates differ across states, counties, and cities, with some areas having no sales tax at all
  - States without sales tax

    New Hampshire
    Oregon
    Montana
    Alaska – local only
    Delaware

- Businesses must register, collect, and remit sales taxes IF: 1) NEXUS exists in a state **AND** 2) the goods and/or services are TAXABLE
  - Sales tax is a "trust" tax – when a seller collects sales tax from a buyer, the tax jurisdiction is "trusting" the seller to appropriately remit the tax (IF YOU COLLECT SALES TAX, YOU MUST REMIT IT)

- International Interplay
  - U.S. SALES TAX IS A STATE-LEVEL OBLIGATION — TREATIES DON'T APPLY.
  - A FOREIGN SELLER WITH NO FEDERAL TAX EXPOSURE MAY STILL BE SUBJECT TO MULTIPLE STATE SALES TAX FILINGS.

Sales Tax vs Use Tax vs Value-Added Tax

TAX TYPE	DEFINITION & PURPOSE	WHEN IT'S APPLIED	WHO COLLECTS IT
SALES TAX	**Definition:** A consumption tax imposed by states and local governments on the sale of goods and some services. **Purpose:** To generate revenue for state and local governments.	Applied at the point of sale when a customer purchases a taxable good or service.	Collected by the seller at the time of sale and remitted to the state or local tax authority.
USE TAX	**Definition:** A tax on goods purchased outside a jurisdiction but used within it, designed to complement sales tax. **Purpose:** To ensure tax is paid on out-of-state or online purchases where sales tax was not collected.	Applied when a buyer purchases an item from a seller who does not collect sales tax but the item is used in a taxable jurisdiction.	Paid directly by the buyer to the state tax authority.
VAT	**Definition:** A multi-stage consumption tax levied at each stage of production and distribution. **Purpose:** To distribute the tax burden across the supply chain and reduce tax evasion.	Applied at each stage of production and sale, with businesses paying tax on the value they add.	Collected by businesses at each stage of the supply chain and remitted to the government.

Challenges for Foreign Inbound Businesses

- **Understanding Taxability Rules –** Determining whether goods and/or services are taxable in multiple states.

- **Understanding Nexus Rules –** Determining whether economic or physical presence triggers tax obligations in multiple states.

- **Complex State-by-State Regulations –** Each state has unique registration, collection, and filing requirements.

    - **No Federal Sales Tax System –** No centralized system for tax registration; must register separately in each applicable state.

    - **Difficulties in Obtaining an EIN –** A U.S. Employer Identification Number (EIN) is often required but can be complex for foreign entities to acquire.

    - **Compliance & Filing Burdens –** Managing multiple filing deadlines, tax rate changes, and exemption rules across states.

    - **Penalties for Non-Compliance –** Risk of fines, interest, or audits for failure to properly register, collect, or remit taxes.

- **Banking & Payment Challenges –** Some states require payments from U.S.-based bank accounts, creating hurdles for foreign businesses.

The Old SALTy Road: Initial Considerations

Foreign companies coming US (inbound) need to:

1. Determine if they have sales tax in any U.S. state.

- **a) Nexus (physical & economic)**
- **b) Taxability**

2. If nexus exists, calculate exposure (based on when nexus triggered, exemptions, and penalties & interest)

3. Determine if sales tax can be mitigated & how to handle historical compliance

4. Compliance: Register for and collect & remit sales tax in the states where they have nexus.

5. Seek professional advice to navigate the complex U.S. sales tax landscape and handle ongoing compliance.

STOP 1: TAXABILITY

- What is taxability?
  - Goods and certain services are subject to sales/use tax
  - Must properly characterize your good/services <u>and</u> determine the taxability of those goods/services.

- Generally, sales tax applies to tangible personal property (TPP)
  - There are certain good/services and customers that are exempt by law or by nature of the transaction (resale)
  - Non-taxable goods/services - Grocery/food exemptions
  - Non-taxable customers – not for profit, educational, manufacturer, resale/wholesaler

- Questions to ask
  - Do you call it the same thing that the state does?
  - Is it as simple as taxable or nontaxable?
  - Is the taxability of goods and services the same in every state you have nexus?

STOP 2: NEXUS

- Sales Tax "NEXUS" = the relationship (or connection) the state has with a business to be able to subject the business to sales tax

- 2 ways sales tax nexus can be triggered: 1) economic nexus or 2) physical presence

- Nexus expanded beyond physical presence to compel out-of-state companies to register and collect sales and use tax, i.e., economic presence
  - South Dakota v. Wayfair, Inc. decided on 6/21/2018 and ruled that South Dakota's rule was no burden to interstate commerce
  - Almost all (if not all) states plus the District of Columbia rolled out Wayfair tax with varying rules, rates, effective dates, and thresholds
  - General Economic Nexus Presence thresholds: $100K/$250K in sales and/or 200 transactions
    - A lot of states are doing away with the transaction portion of economic nexus

STOP 2: NEXUS

- Determine how nexus was established (economic or physical) and when it was triggered
  - This will be important in determining how you want to handle current and prior period exposure

- Potential nexus issues arise when companies use the following:

  Mobile sales force
  Remote employees
  Independent contractors
  3rd party warehouses
  Online sales
  Preform repairs or installations
  Large contracts where no physical presence
  Attend trade shows
  Register with the Secretary of State

STOP 3: ESTIMATED SALES TAX EXPOSURE

Estimated sales tax exposure refers to the total potential sales tax liability a business may owe due to non-compliance with state sales tax laws. It represents the amount a business should have collected and remitted to tax authorities but has not, which can lead to penalties, interest, and back taxes if uncovered in an audit.

- **YOU CANNOT MANAGE WHAT YOU HAVE NOT MEASURED!**

- **How to calculate estimated sales tax exposure:**
  - **Identify Nexus Trigger Date** – Determine the date when nexus was triggered
  - **Review Sales Data** – Analyze gross sales in each state and distinguish taxable vs. exempt sales
  - **Determine Taxable Amount** – Apply state-specific taxability rules to products/services.
  - **Calculate Tax Owed** – Multiply taxable sales by the applicable state and local sales tax rates.
  - **Factor in Exemptions & Credits** – Subtract properly documented exempt sales and account for any credits.
  - **Assess Period of Non-Compliance** – Multiply the taxable sales by applicable state and local tax rates, plus penalties and interest, for the months/years uncollected.

STOP 4: MITIGATION & HANDLING PRIOR PERIOD EXPOSURE

Sales tax mitigation refers to strategies businesses use to reduce, manage, or eliminate their sales tax liability legally. These strategies help minimize financial exposure, improve compliance, and avoid unnecessary tax payments.

- **Mitigation Examples:**
  - **Review Exempt Customers & Resale Certificates** – Ex: A business selling computer components to manufacturers collects resale certificates from customers who intend to resell the parts, ensuring these transactions are tax-exempt.

  - **Certification of Use Tax Paid** – Ex: If seller didn't charge the buyer sales tax, ask the buyer if they accrued use and if so, obtain documentation proving remittance of use tax.

  - **Sales Channels (Marketplace Facilitators** – Ex: E-commerce seller chooses to sell through Amazon, which collects and remits sales tax on their behalf in most states, reducing their direct tax compliance burden.

STOP 4: MITIGATION & HANDLING PRIOR PERIOD EXPOSURE

Marketplace Facilitator refers to a platform that connects third-party sellers with buyers and is responsible for processing transactions, payments, and order fulfillment. Marketplace facilitator laws require these platforms to **collect and remit sales tax on behalf of sellers** using their marketplace.

- Marketplace Facilitator laws in all states where there is a sales tax
- Examples of Marketplace Facilitators: Amazon, Walmart, eBay
- **Mitigation Purposes: SHIFTS THE BURDEN FROM SELLER TO MARKETPLACE FACILITATOR** (Marketplace facilitator laws require these platforms to **collect and remit sales tax on behalf of sellers** using their marketplace.)
    - **Note** – Even if a Marketplace Facilitator collects sales tax, sellers must track total sales for nexus purposes, as direct sales may require registration.

HOW IT WORKS

- **Seller**: A UK company, XYZ Electronics, sells phone accessories.
  Platform: XYZ sells through Amazon's U.S. marketplace.
  Sales: $150,000 in total sales—$120,000 via Amazon, $30,000 via its own website.

AMAZON, AS A MARKETPLACE FACILITATOR, MUST COLLECT AND REMIT THE SALES TAX ON BEHALF OF XYZ TO THE APPROPRIATE TAXAING AUTHORITY

STOP 4: MITIGATION & HANDLING PRIOR PERIOD EXPOSURE

A **Voluntary Disclosure Agreement (VDA)** is a program offered by many U.S. states that allows businesses to come forward and report previously uncollected sales tax liabilities in exchange for reduced penalties and interest. It is designed to encourage compliance while minimizing financial and legal risks for businesses.

- **Eligibility**
  - The business must not have been previously contacted by the state regarding sales tax issues.
  - The business must not have registered for the tax type in question.
  - The business must disclose and pay outstanding tax liabilities for the agreed-upon lookback period.
  - The business must commit to future compliance by registering and filing sales tax returns.

- **Key Benefits**
  - **Limited Lookback Period** – Rather than going back and looking back at estimated exposure indefinitely, as state will generally limit to 3-4 years (varies by state)
  - **Penalty Waiver** – States will generally waive all penalties once all VDA requirements are met (it is rare that interests are waived, with the exception of Texas, or where the state otherwise decides to reduce interest)
  - **Confidentiality** – Majority of states allow businesses to submit VDAs anonymously

STOP 5: SALES TAX COMPLIANCE AND AUTOMATION

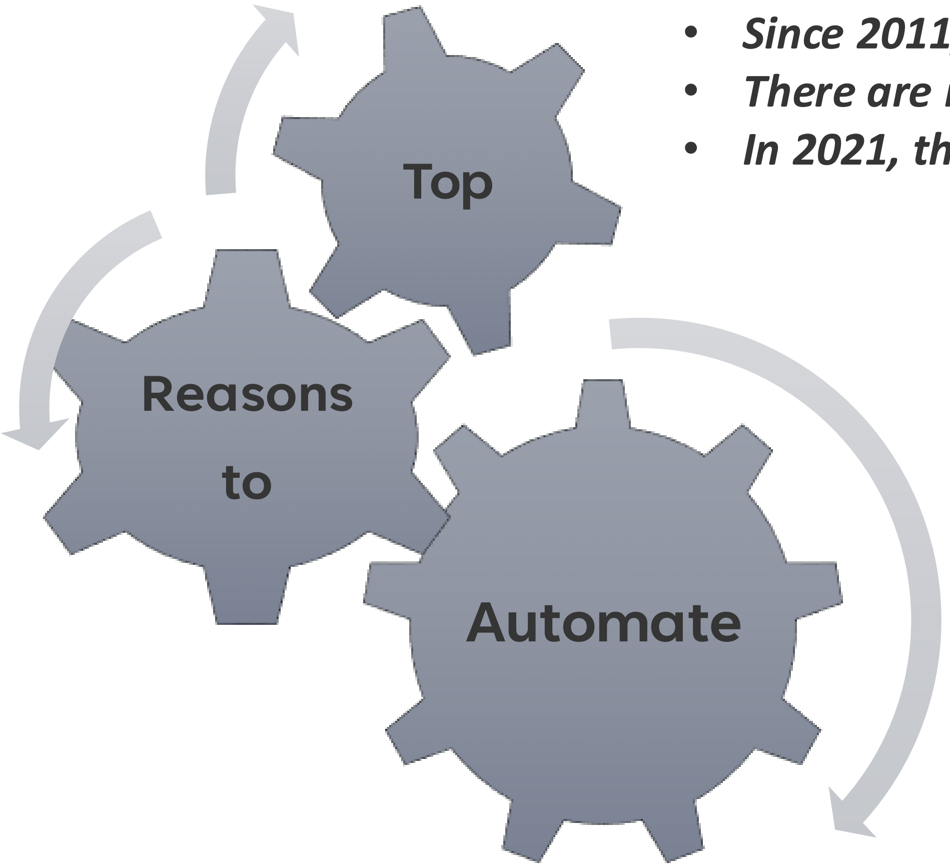
- Sales Tax Compliance requires a business to…
    - Monitor taxability and nexus
    - Maintain proper recordkeeping
        - Track and manage sales, sales tax collected (if any), and exemptions
        - Collect and verify resale and exemption certificates
    - Register for sales tax purposes
        - Identify all applicable state and local jurisdictions
    - Calculate correct sales tax amounts
        - Monitor rule changes for rates and new thresholds
    - Timely, file and remit sales taxes to the appropriate tax authorities
        - Know your filing frequency
        - Know the date returns are due
        - Know how you are going to file (self vs automated)

STOP 5: SALES TAX COMPLIANCE AND AUTOMATION

What's the best way to manage sales tax compliance?

- **Manual Self-Management**
- **Outsource** (Offshore, LEA Member Firm, Etc.)
- **Automated Sales Tax Software**

STOP 5: SALES TAX COMPLIANCE AND AUTOMATION



- *Since 2011, there have been 2,202 new sales and use taxes*
- *There are more than 13,000 sales and use tax jurisdictions in the U.S. alone*
- *In 2021, there were more than 123,000 rate and taxability updates in the U.S.*

1. **Reduce Risk of Audit**
2. **Accuracy**
   - Tax Rate, Taxability, and Report Filing Monitoring
3. **Time & Cost Efficiency**
   - Internal team bandwidth
   - Internal team knowledge
   - Highest and Best Use of Time
4. **Centralized Storing**
5. **Scalability**

STOP 5: SALES TAX COMPLIANCE AND AUTOMATION

Automated
Sales Tax Software Providers

VERTEX®

Avalara

SOVOS

Anrok
Sales tax for SaaS

TaxJar®

Numeral

THOMSON REUTERS
ONESOURCE™

SALES TAX: TRAPS & HAZARDS

- Failing to understand the rules can create significant liabilities that can attach to the owner personally
- Nexus for one type of tax can trigger nexus for another tax
- Where they catch you: Filing for one tax puts you on radar for other taxes
- Don’t have expertise in sales and use tax
- Received a notice, nexus questionnaire, or audit letter
- Acquisitions and due diligence
- Missing state correspondence due to international address
- No US based people
- New business, expansion of product lines, services and/or new sales delivery channels and platforms
- Lack of documentation
- Manually handling compliance (not using automated software)

THANK YOU! CONTACT US WITH QUESTIONS!

John Bonk
SALT Managing Director
CBIZ
Email: john.bonk@cbiz.com
Ph: (561) 653-7335

DiAndria "Dee" Green
SALT Partner
Bennett Thrasher
Email: diandria.green@btcpa.net
Ph: (678) 990-2885