

8 WAYS SALES TAX NEXUS DEFINITIONS ARE EVOLVING

Corporate Sales Tax Liability Has Become More Complex 7 Years After The Wayfair Decision

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Today's nexus complexities, outpacing even the most advanced software & AI, increase the likelihood that many companies will overpay sales taxes by six & seven figures-all of which could be refundable”

William Flick, Managing Partner, EisnerAmper Advisory Group, LLC

United States Supreme Court ruled in a 5-4 decision in *South Dakota v. Wayfair, Inc., et al*, that states can require an out-of-state seller to collect and remit sales tax on sales to in-state consumers even if the seller has no physical presence in the consumer's state. A company's sales tax collection liability relates to its “nexus” or connection to a sales tax collecting jurisdiction. The nexus formula typically is defined by the company's presence, number of transactions and/or dollar volume of business done in a particular jurisdiction over a specified time period. Although there are currently 5 states that don't collect sales tax at all, the other 45 states each define nexus differently and in ways that are continually changing.

Further complexity ensues because even in the non-collection states, many counties and municipalities collect sales taxes. For example, although the state of Alaska does not charge sales tax, over 100 municipalities within the state of Alaska do. Overall in the United States, it is estimated that there are over 13,000 jurisdictions that collect sales and use tax. Companies that do business in multiple states are susceptible to overpaying.

William Flick, a thought leader in sales tax policy and process, and a Managing Partner at EisnerAmper Advisory Services said, “Today, seven years after Wayfair, corporate sales tax nexus definitions continue to evolve and become more complex, based upon each jurisdiction's experience and collection opportunities. These complexities dramatically increase the likelihood that many companies will overpay their sales taxes by as much as six and seven figures - all of which could be refundable if an expert in sales taxes could be engaged to analyze the situation relative to the latest rules and laws. Yet many companies don't prioritize sales tax procedure and therefore miss significant refund opportunities.”

Over the last year, the U.S. has seen a geometric rise in rules and that further add to this complexity including:

1) A growing number of jurisdictions charging or increasing sales and use taxes.

The 13,000 jurisdictions continue to grow and their tax rates continue to get larger.

2) Redefining what it means for a company to have a “physical presence”

Prior to Wayfair, if a company had an office in the state, it had a nexus. Otherwise, not. Today, nexus gets defined by warehousing, personnel domiciles, agents and other connections to jurisdictions. Even activities like attending trade shows in a state can now create nexus in some states.

3) Dollar volume of business done in the jurisdiction used to be a key factor.

At one time, the dollar volume related to direct sales. In some states, dollar volume relates to merchandise value even just passing through or being warehoused in those states.

4) The number of transactions completed in the jurisdiction.

The good news here is that this category may be getting simplified as some states are now defining a floor of a minimum number of transactions completed before sales taxes are charged, in order to protect small businesses.

5) Providing a definition that includes a combined minimum dollar volume together with a transaction volume. before sales tax collection is required.

Complexity can be increase by stipulating more criteria for companies to meet in order to broaden qualifications for sales tax liability.

6) Shortening the length of time for sales levels to be achieved.

Jurisdictions are changing nexus definitions where qualifying statistics are measured over shorter periods of time.

7) Recently adding new categories, such as “digital services” on which to charge taxes.

The definition of nexus is expanding to new areas beyond tangible merchandise. For example, in 2025 New York State has ruled that many digital services must also be taxed.



William Flick - Managing Partner EisnerAmper

8) Adding 3rd parties to the definition of those responsible for collecting taxes.

Not only are sellers responsible for collecting sales and use taxes, but adding agents of sellers, such as marketplace facilitators, to those liable for sales taxes is a trend designed to expand the pool of collecting organizations.

These added factors may be only the beginning. The complexity further increases because not all the qualifications are applicable in every state and jurisdiction. Overpayments can occur when a sales tax is billed by a vendor in another state, and automatically paid by the customer company, when the sales tax is not owed in the state where the customer company is sourced.

Said Flick, "Since the Wayfair decision, the practice of billing and collecting sales and use taxes has significantly increased in complexity that goes beyond the knowledge of even the most educated accountants and financial people. The rules are changing so rapidly that even the most advanced software and artificial intelligence can't keep up. The complexity has opened the door to a new practice by experts in the sales tax specialty with deeper knowledge and skills capable of identifying overpayments and qualifying companies for refunds."

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EisnerAmper, one of the largest business consulting groups in the world, is comprised of EisnerAmper LLP, a licensed independent CPA firm that provides client attest services; and EisnerAmper Advisory Group LLC, an alternative practice structure that provides business advisory and non-attest services in accordance with all applicable laws, regulations, standards and codes of conduct. Having recently joined the EisnerAmper family, FM Cost Containment is one of the leading forensic tax recovery firms in the United States, specializing in tax confirmation and recovery of overpayments of sales and use taxes, as well as tax audit defense, utilizing proprietary research and knowledge of little-known technicalities in the tax laws of each of the 50 states, including over 10,000 tax entities throughout the United States.

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