2017 Sales Tax Changes

Version 2.0 Fiscal New Year Update

Changes to sales tax are making waves and reshaping the way companies in many industries manage their business. This newly revised guide for the fiscal new year that highlights many of the big changes in the works, from new taxes on soda to untapped revenue streams from marijuana sales and more.

It's by no means exhaustive, but it sheds light on emerging trends in sales tax laws. 2017 is making headlines in the world of sales tax. This guide explains why.

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Mid-Year Update to 2017 Sales Tax Changes

Mid-year is a great time stop and reassess what we know about sales tax compliance. Beginning July 1, 46 states start their fiscal new year. With that, many new laws go into effect and many more are proposed and/or dropped by local and state governments. It's a time of transition.

Since January of 2017, we've seen big changes to nexus requirements across the U.S., new use tax reporting requirements placed on online sellers, and a move by key states to place a tax obligation on marketplace providers (think Amazon, Etsy, and the like). We've also seen smaller changes, such as new tax requirements on service providers and a bevy of rate changes on many products and services across the country.

As of July 2017, we've updated our 2017 Sales Tax Changes report to keep you up to date and in the know. The following is an update on what's in the works.

Nexus Just Got Bigger

More states change rules that define presence

In recent years,more and more states have enacted legislation or adopted policies to capture more sales and use tax revenue from remote sellers. This has proven to be challenging thanks in no small part to a 1992 Supreme Court Decision, Quill Corp. v. North Dakota, which upheld a previous ruling that a state cannot impose a tax obligation on a business unless it has a substantial connection to the state, defined as a physical presence. Despite this challenge, more states are succeeding at broadening the definition of presence to mean much more than physical location.

Economic nexus is the new black

Numerous states looking to challenge or bypass Quill all together have instituted economic nexus policies, whereby a company establishes nexus (a connection to the state substantial enough to trigger a tax obligation) through its economic presence in the state. For example, in South Dakota, a remote seller has nexus if it makes at least 200 separate taxable sales transactions and has more than $100,000 in annual sales in the state. To date, The South Dakota law is being challenged, but if state officials' wishes come true, it will end up before the Supreme Court of the United States.

Further, Indiana will be taxing more out-of-state sellers under its new economic nexus law.

According to the new measure, companies that lack a physical presence in Indiana but make more than $100,000 in gross revenue from Indiana sales transactions, or more than 200 separate sales transactions in the state, are required to collect and remit Indiana sales and use tax beginning July 1, 2017. Learn more here.

For a full breakdown on what the states are doing with economic nexus, go here.

Tax on ALL Marketplace providers?

Minnesota recently enacted the country's first tax on marketplace providers. Their new law imposes collection and remittance requirements on marketplace providers unless the retailer provides the marketplace provider with a copy of its registration to collect Minnesota sales and use tax, or the commissioner discloses (upon inquiry) that the retailer is registered to collect sales and use taxes in Minnesota. This new policy is set to take effect at the earlier of July 1, 2019, or when the Supreme Court of the United States modifies its decision in Quill Corp. v. North Dakota.

Don't mess with Texas (when it comes to sales tax…)

The state of Texas seeks to impose a tax obligation on marketplace providers like Etsy and Amazon, which sells both its own products and those of other retailers. The measure defines marketplace providers as a person or entity that:

- "Facilitates the sale, lease, or rental of the tangible personal property of a retailer that is not the person to a purchaser in [Texas] in any manner, including by the use of a catalog or an internet website;
- Directly or indirectly collects from a purchaser in receipts derived from the sale, lease, or rental of the retailer's tangible personal property to the purchaser and transmits those receipts to the retailer, other than any amount the person is authorized to retail as a fee for facilitating the sale, lease, or rental; and
- Is engaged in business in [Texas] by means of any of the activities listed in Section 151.107 (a)."

The Texas measure would hold marketplace providers liable for tax on a sale unless "the retailer for whom the marketplace provider facilitates the sale, lease, or rental collects the tax from the purchaser." However, they would not be liable for collection errors "if, in determining the amount, the marketplace provider relies exclusively on information provided by the retailer" – unless they hold a substantial ownership interest in that retailer.

This measure is also under consideration in the House Ways and Means Committee. If ultimately enacted as written, it would take effect September 1, 2017.

But taxing marketplace providers isn't proving easy for every state. New York sought a similar tax on marketplace providers in it's 2017-2918 Executive Budget, but the budget that was ultimately approved didn't include that provision.

Amazon, eBay, and a coalition of tech groups aggressively fought Gov. Cuomo's plan, arguing that it would raise prices for consumers and hamper the growth of tech companies in New York. There is good reason to believe they would fight other state's efforts to tax marketplace providers.

You can read more about the challenge they would face here.

States Finding More Use for Use Tax

Taking a different approach to shore up state budgets, a handful of states have instituted use tax notification and reporting requirements to bring in more revenue. First let's review: Colorado led the way on this charge, defending its 2010 policy through state and federal courts and eventually winning when the Supreme Court declined to hear the case. Long on hold, Colorado's use tax reporting requirement finally takes effect on July 1, 2017. Learn more on the decision here.

New Reporting Requirements spreading across U.S.

Wisconsin introduces use tax reporting legislation. Legislation that would require certain noncollecting out-of-state sellers to provide itemized statements to Wisconsin customers is now under consideration in the Wisconsin Senate. Under a bill introduced May 17, 2017, any person who makes more than $50,000 in sales of tangible personal property (TPP) and taxable services to customers in Wisconsin during the year must "provide an itemized statement to each customer in [Wisconsin] of the person's sales to that customer in the previous year." This requirement would not apply to any remote seller who voluntarily collects and remits Wisconsin sales and use tax. Learn more here.

Pennsylvania proposes and reworks use tax notification requirement for remote vendors. The Pennsylvania Legislature is now considering a measure that would require sellers in the Commonwealth as well as out-of-state remote sellers to "conspicuously" provide a notice to Pennsylvania purchasers reading: "Unless you paid Pennsylvania sales tax on this purchase, you may owe a Pennsylvania use tax on this purchase based on the total sales price of the

purchase."

Such notice shall accompany "each separate sale at retail of tangible personal property or services via an Internet website operated by the seller or remote seller." Consumers are also instructed to report and remit use tax on their Pennsylvania income tax forms. Learn more here.

Vermont enacts notification requirements for noncollecting vendors. In 2016, Vermont enacted a use tax notification requirement that requires noncollecting vendors making sales into Vermont to "notify Vermont purchasers that sales or use tax is due on nonexempt purchases made from the noncollecting vendor and that the State of Vermont requires the purchaser to pay the tax due on his or her tax return." Building on that measure, the state has enacted additional reporting requirements. The state is requiring noncollecting vendors who make $100,000 or more of sales into Vermont in the previous calendar year to "file an annual statement for each purchaser with the Department of Taxes ... showing the total amount paid for Vermont purchases by that purchaser during the preceding calendar year or any portion thereof ... on or before March 1 of each year." Learn more here.

Texas expands sales tax reporting requirements. Generally, the Lone Star State doesn't require out-of-state sellers to collect and remit tax if it conducts business only via the internet, mail, or telephone, but now two measures under consideration in the Texas Legislature threaten to bring Texas to the forefront of the fray.

Under a new bill the state's comptroller will "conduct a study of methods to increase compliance with sales and use tax collection and payment requirements" and consider "various possible methods" to increase compliance, including:

- Imposing information reporting requirements for retailers making sales subject to use tax
- Imposing registration or information reporting requirements on persons who refer purchasers in Texas to out-of-state retailers
- Requiring retailers to notify purchasers of use tax payment requirements

As all the above have been instituted by other states, this new measure requires the comptroller to examine and create a written report on how other states are working to increase their sales and use tax collections, as well as the effectiveness of their actions. The measure unanimously passed the Senate and is under consideration in the House Ways and Means Committee.

Louisiana to enact mandatory notification requirements. Beginning July 1, 2017, remote retailers with annual cumulative gross receipts in Louisiana that exceed $50,000 will provide consumers with use tax notifications. Specifically, the legislation requires that remote retailers:

- provide a Louisiana purchaser with notice that the purchase is subject to use tax, unless exempt, at the time of sale.
- send an annual notice by January 31st of each year to a Louisiana purchaser containing the amount paid for purchases in the proceeding calendar year.
- file an annual statement with the Department of Revenue by March 1st of each year that includes the total amount paid by the purchaser in the past calendar year.

Changes to Tax on Services

Airbnb expands tax collection services. Collecting and remitting lodging taxes is about to get easier for some Airbnb hosts. The online marketplace for short-term lodging already collects and remits taxes on behalf of hosts in some parts of the country, including San Francisco and the state of North Carolina. But hosts in many other locations are responsible for tax collection and remittance themselves. Beginning May 1, 2017, Airbnb will collect and remit a variety of taxes on behalf of hosts throughout the country. Learn more here.

Tax on Netflix comes streaming in

Illinois imposes more tax on services. Illinois seeks to tax laundry, structural pest control, private detective, and tattoo and body piercing services, among others. While these initiatives aren't making headlines, the state also seeks to establish a new 5 percent tax on satellite television, and an additional 1 percent entertainment tax on streaming services such as Netflix. Taxing streaming services is contentious: Chicago imposed a "Netflix tax" on streaming services in 2015, and it promptly triggered a lawsuit that is ongoing. Learn more here.

California wants taxes to stream in. Officials and lawmakers in California are also squabbling over whether to tax streaming services, and how to best go about it. In Pasadena, the services are already subject to the city's utility users tax (UUT). Several other California cities also apply UUT to video streaming services, and others want to follow suit. But this is a controversial tax, and a bill to prohibit local taxation of video streaming services has been introduced in the California Legislature. Local governments and agencies are currently permitted "to impose various taxes and fees." AB 252 would prohibit the

imposition by any local government "of a tax on video streaming services, including, but not limited to, any tax on the sale or use of video streaming services or any utility user tax on video streaming services." Learn more here.

Across the U.S. – What's Congress doing about online sales tax?

It's anyone's guess what federal legislators will do with this issue in 2017. There are currently four pieces of legislation awaiting consideration on Capitol Hill: **the Marketplace Fairness Act, the Remote Transactions Parity Act, and the Online Sales Simplification Act,** which would all authorize states to collect remote sales tax to some degree; and the **No Regulation without Representation Act,** which would definitively prevent that.
Here's an overview of the proposed legislation:

Marketplace Fairness Act of 2017 (MFA) – *the proposal that launched stet a thousand debates*

In 2015, several members of the Senate introduced a revised Marketplace Fairness Act bill, legislation similar to the original MFA proposal in 2013. Essentially, this legislation grants states authority (should they meet certain criteria) to require non-exempt remote sellers to collect sales tax. If passed, the MFA would broaden state authority to require remote sellers to collect sales tax regardless of whether that business has a physical presence within those states. Pretty straightforward, right?

Here's where it gets complicated. The MFA would not override current state and local statutes surrounding product and service taxability, tax holidays, exemptions, or related rates, boundaries and rules. The bill would also authorize states to require remote sellers to collect and remit sales tax in accordance with state and local laws, as long as those states are in full compliance with the Streamlined Sales and Use Tax Agreement, or a member of the Streamlined Sales Tax (SST) organization, or implement a minimum set of simplification measures.

Not all out-of-state businesses would be subject to the MFA and neither would all sales transactions.

Here's what everyone wants to know: How soon would the MFA go into effect? There's no way to accurately predict. Even if this bill is signed into law in 2017, it may still be challenged on grounds of constitutionality. Legal challenges would likely delay enactment.

For more information on the MFA, read the White Paper.

Remote Transactions Parity Act of 2017 (RTPA) – *same idea as MFA but friendlier to small business*

The Remote Transactions Parity Act (RTPA) is similar to the MFA in that it would allow states to apply sales tax to remote sales. As with MFA, the 23 member states of the Streamlined Sales Tax (SST) initiative would be authorized to require remote sellers to collect and remit sales tax soon after legislation is passed. Non SST member states would have to adopt and implement certain minimum simplification requirements.

The small remote seller exception is different from the small seller exception under MFA. In the Remote Transactions Parity Act, remote sellers must have gross annual receipts exceeding:

» $10,000,000 in the "calendar year preceding the first calendar year any State can exercise the authority provided under this Act."

» $5,000,000 in the "second calendar year any State can exercise the authority provided under this Act."

» $1,000,000 for the "third and subsequent calendar year any State can exercise the authority provided under this Act."

In addition, the RTPA would give catalog-only sellers a break, allowing them an exemption from the law. The RTPA, like MFA, would have no effect on nexus; sales made to states with no sales tax would not be subject to tax. In addition, it would create no new taxes and have no effect on intrastate sales or the Mobile Telecommunications Sourcing Act.

Learn more here.

Online Sales Simplification Act (OSSA) – *not as simple as the title suggests*

According to lawmakers, OSSA is grounded on two key principles: Simplicity, particularly for small businesses, and No Regulation without Representation. Under OSSA, a state would collect tax only on sales originating in the state, meaning the seller has a physical presence there.

However, the issue of remote sales tax remains a divisive one among federal lawmakers. As such, the most current version of OSSA 2016 exists in draft form only. As explained in the OSSA discussion draft, "A state may impose a sales, use or similar tax on a seller, or impose on a seller an obligation to collect such a tax imposed on a purchaser, with respect to remote sale of a product or service only if–under OSSA:

1. The State is the origin State for the remote sales (where the company had the most

employees during the previous calendar year);

2. The tax is applied using the origin State's tax base applicable to non-remote sales; and
3. The State participates in the State tax clearinghousev

The clearinghouse

Central to the plan proposed in OSSA is a state tax clearinghouse, "to be established by the participating States." The clearinghouse would collect sales and use tax revenue from state revenue offices and distribute that revenue to participating states. It would also create audit regulations and reporting requirements. Participation in the clearinghouse, although encouraged, would not be mandatory.

Rates and rules

For states participating in the clearinghouse, remote sales would be taxed at a single statewide rate established by the destination state (the location of the consumer). In this scenario, a seller based (with the most employees) in New York City would collect the California single statewide rate on a sale to a consumer located in California. If the destination state doesn't participate in the clearinghouse, the origin state's normal tax rate (the combined state and local rate) would apply. In this case, the New York seller would apply the New York City rate to the California consumer's sale.

Retailers would rely on the origin state's product taxability rules to determine which goods and services are taxable and which are exempt. In both of the above examples, New York and not California product taxability rules would apply.

OSSA also presents a plan for dealing with buyers and sellers located in the five states without a general sales tax: Alaska, Delaware, New Hampshire, Montana and Oregon.

Learn more here.

No Regulation without Representation Act – *takes the legs out from under each proposition*

In the summer of 2016, a fourth piece of legislation was introduced, this one seeking to prevent states from taxing any seller lacking a physical presence. The **No Regulation without Representation Act** of 2016 seeks to codify the physical presence requirement upheld by the U.S. Supreme Court in 1992 (Quill Corp. vs North Dakota case).

Taxation with representation only

According to bill sponsor Congressman Jim Sensenbrenner (R-Wis), “States should not have the ability to tax non-citizens, plain and simple. This legislation would help reduce burden-some overregulation, keep government overreaches in check, and ensure that only residents of a state are subjected to tax obligations.” Under his bill, “a state may not obligate a person to:

- Collect a sales, use or similar tax;
- Report the sale;
- Assess a tax on a person; or

Treat the person as doing business in a state for purposes of such tax, unless the person is physically present in that state during the relevant tax period.

The bill also establishes a de minimis physical presence under which “physical presence” does not include any of the following:

Referral agreements with in-state persons who receive commissions for referring customers to the seller:

- Presence for less than 15 days in a taxable year
- Product delivery in-state by a third-party
- Internet advertising services not exclusively directed towards, or exclusively soliciting, in-state customers

Finally, it protects non-sellers: “Sales tax payment, collection or reporting obligations may only be imposed on a purchaser or seller having a physical presence in the taxing State.”

Possible fallout?

It’s too early to tell if this measure will have any traction. However, if enacted, the click-through and affiliate nexus laws in place in numerous states would likely be trumped by the bill’s de minimis provision. Notice and reporting requirements such as the one established in Colorado would also be preempted by the physical presence requirement. And there would be little point in continuing the legal battles currently underway over the Alabama and South Dakota laws (with an eye to reverse Quill), as the federal law would take precedence over the Supreme Court.

Nexus Perplexus (or states take matters into their own hands...)

According to MultiState Insider, 2016 ushered in a lot of sales tax nexus legislation, as states attempted to overturn Quill Corp. v North Dakota. In total, a whopping 42 bills were introduced in 16 states, but only four bills were ultimately enacted (Louisiana, Oklahoma, South Dakota, and Vermont).

Other news on the nexus front:

New Mexico legislature still pushing to tax internet sales. The New Mexico Legislature and Gov. Susana Martinez are clashing over how to balance the budget. Earlier this spring, the governor signed a budget bill but cut close to $775 million from the plan with line-item vetoes. A measure that would have allowed the state to tax sales by certain out-of-state businesses was among those axed, but the proposal will likely be back on the table during the current special session. Learn more here.

Amazon to collect new sales tax from all taxable states. On April 1st, 2017 ecommerce giant Amazon began collecting tax of their own products. Learn more here.

Massachusetts has new recipe for taxing internet vendors that use cookies. Massachusetts has devised a creative way to tax sales by out-of-state retailers. Under a new tax directive, out-of-state internet retailers that lack a traditional physical presence in Massachusetts, but that use software or internet "cookies" to foster a certain amount of sales there, may eventually be required to collect sales and use tax in the Bay State. Learn more here.

Virginia triggers nexus for out-of-state sellers storing property. Beginning June 1, 2017, Virginia will require any out-of-state dealer who owns tangible personal property in the state that is for sale to collect and remit Virginia sales and use tax. This is expected to generate approximately $21 million annually, beginning in Fiscal Year 2018. Learn more here.

Connecticut revives effort to tax noncollecting out-of-state sellers. Connecticut plans to tax sales by out-of-state sellers making "a significant volume of sales" into the state. In a media release dated March 28, 2017, Commissioner of Revenue Services Kevin Sullivan explains that it is time to close the loophole that enables many remote retailers to sell to Connecticut consumers without collecting and remitting Connecticut sales and use tax. It is, he says, "a matter of fundamental fairness." Learn more here.

South Dakota: SD stipulated that an out-of-state seller has nexus if their gross sales revenue exceeds $100,000 in the previous year or if they engaged in 200 or more separate transactions. To date, SD lost at the circuit court and appealed to the state supreme court in litigation.

Alabama: AL adopted an economic nexus position–asserting substantial nexus based on economic activity rather than physical presence–via the regulatory process. Litigation is currently underway.

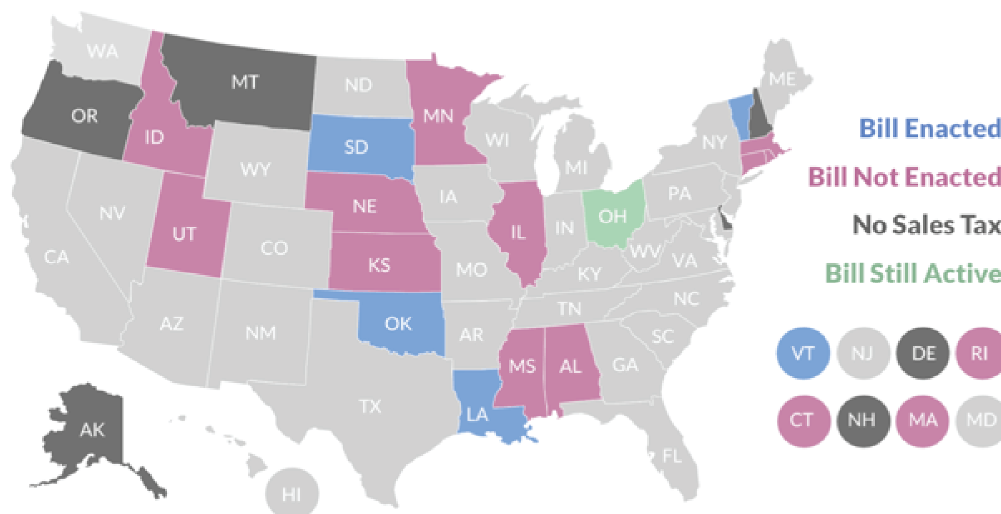
Tennessee: Like AL, TN enacted a rule that asserts economic activity, rather than physical presence, establishes an obligation for online sellers to collect. This is in step with a growing movement by states to capture more sales and use tax revenue from sales by out-of-state sellers. Learn more here.

Louisiana expanded its nexus laws by applying tax to remote retailers who solicit business in the state through an independent contractor or any other representative in exchange for a consideration of any kind, provided cumulative gross receipts from such sales exceed $50,000 during the preceding 12 months.

More states could follow suit

Louisiana is just one state in need for more tax revenue; Alaska and Pennsylvania are two others. Even states with their financial houses more or less in order are considering ways to expand and broaden sales tax: Oklahoma, modernized sales tax by broadening it, eliminating exemptions, and improving audits.

Nexus Bills in the 2016 Legislative Session



While states took different approaches at enacting new sales tax nexus laws, all of these bills shared a common objective: broaden sales tax compliance for as many online sellers as possible.

States pursued three general legislative strategies:

1 **Change nexus requirements.** Some states created affiliate or economic nexus requirements, while others imposed requirements on marketplace providers of required referral registration. States with these types of bills were Connecticut, Idaho, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, and Utah.

2 **Impose reporting or notification requirements**. States pursuing this approach were Kansas, Louisiana, Minnesota, Vermont, and Puerto Rico.

3. The third "approach" is less of an approach and more of a catch-all category for those states that didn't pursue the first two strategies. In this miscellaneous category were bills preparing for federal action (Illinois and Massachusetts), study bills (Nebraska), and a bill in Alabama that doesn't quite fit into any other category but is related.

Go to MultiState Insider for a breakdown of each state and their proposed legislation. They have a handy table that highlights all of the details.

What do soda, tampons, and cigarettes have in common?

All three are being taxed differently this year.

Soda isn't just high in calories: Soda taxes are slowly sweeping the nation. Special taxes on certain sweetened beverages took effect in Berkeley California in January 2015 and in Vermont six months later. On November 8, 2017, voters in three cities approved proposed soda taxes, Philadelphia's soda tax took effect on January 1. Similar taxes take effect in Boulder, Colorado, Oakland, and California, on July 1, 2017.

Learn more here.

Tampons get an exemption: A number of states enacted the popularly known tampon tax exemptions in 2016. New York's took effect in September, while the Connecticut tampon tax exemption won't take effect until July 2018. The exemption for feminine hygiene products in Illinois takes effect on January 1.

Learn more here.

Tax on vaping: As of January 1, California extends cigarette and tobacco taxes to e-cigarettes and similar vaping products, "any component, part, or accessory of a tobacco product, and "any product containing, made, or derived from nicotine" and intended for human consumption. California is also increasing the tax rate on tobacco.

Learn more here.

Seven new states get high on taxes: recreational and medical marijuana sales drive revenue

Four states are preparing to administer tax revenue from sales of recreational marijuana: California, Maine, Massachusetts, and Nevada. Another three will do the same for medical marijuana: Arkansas, Florida, and North Dakota.

Illinois considers legalizing (and taxing) marijuana. Could legalizing the recreational use of marijuana solve Illinois' ongoing budget woes? Perhaps. Seven states and Washington D.C. have already made sales of recreational pot legal: California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington. Illinois could be next. Identical measures seeking to legalize marijuana are currently under consideration in the Illinois Legislature. Learn more here.

Exemptions: three states forward, two states back

Maine is expanding the sales tax exemption for products used in certain commercial activities as of January 1. Additional information will soon be available from the Maine Revenue Services.

North Carolina maintains that certain service contracts sold by or on behalf of motor vehicle dealers are exempt from sales and use tax, as will certain sales of food, prepared food, soft drinks, candy, and other items of tangible personal property at school sponsored events. Additionally, certain sales of repair, maintenance, and installation services that are part of a real property contract will be exempt. Learn more here.

Repealed exemptions

In **Georgia**, a temporary exemption for tangible personal property used for or in the renovation or expansion of qualifying aquariums terminates as of January 1, 2017.

Learn more here.

In **North Carolina,** retail sales of tangible personal property, certain digital property, and taxable services by certain nonprofits will no longer be exempt from sales and use tax as of January 1. And as of that date, purchases by a manufacturer of fuel or piped natural gas used solely for comfort heating at certain manufacturing facilities are no longer exempt from North Carolina sales and use tax.

Learn more here.

Possible exemption repeal

The Wyoming Joint Revenue Committee looks favorably upon eliminating the sales tax exemptions triggered by economic development incentives. It remains to be seen whether or not that will come to pass. More to come on this issue in 2017.

Local sales tax changes by state

California

The state sales and use tax rate in California will drop from 7.5% to 7.25% under Proposition 30, which temporarily increased the rate by 0.25% through December 1, 2016. The state rate decrease also affects certain partial state tax exemptions.

Learn more: https://www.boe.ca.gov/sutax/prop30.htm

New Jersey

To offset a recent gas tax hike, the state sales and use tax rate in New Jersey will decrease from 7% to 6.875% on January 1, 2017. The rate will drop further in 2018.

Learn more: http://www.njleg.state.nj.us/2016/Bills/AL16/57_.HTM

The tip of the iceberg

As we near the second half of 2017, we're bound to see many more changes take effect. In sales tax compliance, you can research and memorize all of the sales tax rules that affect your business on your own or you can simply automate it – and let Avalara worry about the changes.

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