A Guide to Click-through Sales Tax Nexus

Avalara

Knowing your nexus – or the relationship your business has with a jurisdiction that requires you to collect sales tax there – is crucial. "Click-through," or affiliate, nexus can be tricky, but it's important for businesses to know where and how this kind of nexus can be created.

The foundation of sales tax nexus law in the United States is a 1992 Supreme Court ruling, Quill Corp v. North Dakota, that businesses are only required to collect sales tax for a state if they have a physical presence there.

However, several states, looking to increase their revenues as many online sales go untaxed, have expanded the definition of nexus. One way they are accomplishing this is with "click-through" or affiliate nexus laws. These laws define an out-of-state business as having nexus in the state if the business receives sales referred by another business that is located in the state.

In another words, if an in-state online business leads a customer via links ("clicking through") to buy something from the out-of-state online business, the out-of-state business is considered to have a presence in that state and must collect sales taxes from customers there.

While these laws are also often referred to as "Amazon laws," they can affect businesses just as much. But unlike the online giants, small businesses don't usually have the deep pockets or resources to deal with the risk of audit, fines or back payment that can result from noncompliance with click-through nexus laws.

So it's imperative for businesses of all sizes to be aware of how these rules can affect them.

If you are using click-through marketing or affiliate programs to drive sales, you need to know:

- Which states have laws that can create nexus for you through referrals of affiliates.
- What the minimum sales thresholds are for the click-through nexus states.
- Where your referrals are coming from, so you can see if any click-through nexus laws might apply to those transactions.

Rebuttable vs. irrebuttable

New York was the first state to create a click-through nexus law, in 2008. Since then, several other states have joined suit. In most of these states, there is a legal presumption that click-through nexus laws can be challenged in court. These laws are referred to as "rebuttable." In Connecticut, however, there is a presumption that the law is "irrebuttable," meaning that the click-through nexus law cannot be challenged in court. Pennsylvania has no legal presumption either way.

Click-through nexus states

Here's the states with click-through nexus laws on the books, along with sales thresholds that must be met before the law kicks in for businesses:

Arkansas: More than $10,000 during the preceding 12 months.

California: More than $10,000 in sales under "click-through" arrangements and more than $1 million in total annual in-state sales.

Connecticut: More than $2,000 during the preceding four quarterly periods.

Georgia: More than $50,000 in the preceding 12 months.

Illinois: More than $10,000 during the preceding four quarterly periods.

Kansas: More than $10,000 during the preceding 12 months.

Louisiana: More than $50,000 during the preceding 12 months.

Maine: More than $10,000 during the preceding year.

Michigan: More than $10,000 during the immediately preceding 12 months.

Minnesota: More than $10,000 in the 12-month period ending on the last day of the most recent calendar quarter before the current calendar quarter.

Missouri: More than $10,000 in the preceding 12 months.

Nevada: More than $10,000 during the preceding four quarterly periods ending on the last day of March, June, September and December.

New Jersey: More than $10,000 in the preceding four quarterly periods.

New York: More than $10,000 during the previous year.

North Carolina: More than $10,000 during the preceding four quarterly periods.

Pennsylvania: No threshold.

Rhode Island: More than $5,000 during the four preceding quarterly periods.

Tennessee: More than $10,000 during the preceding 12 months.

Vermont: More than $10,000 in the preceding tax year.

Washington: More than $10,000 in the preceding tax year.

One way of keeping up with sales tax is sales tax automation.

Avalara AvaTax offers a simple solution for sales tax compliance. It integrates seamlessly with the most common accounting and ecommerce platforms and uses the latest sales tax rules, rates, and boundaries for guaranteed 100% accuracy across every single state for every single transaction.

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