

# Webinar on Introductions to Sales and Use Tax

Organized by : US Chapter of The Institute of Chartered  
Accountants of Nepal.

Sunday, February 10, 2019

# Topics to be covered

- **Introduction to Sales and Use Tax, Compliance & Administration (25 min)- Sudarshan Chapagain**
- **Tax rates, Retail and Internet Sales Tax and Nexus (25 min)- Laxman Bhandari.**
- **Questions & Answers (10 min)**

# Sales Tax Background

- ❖ Its transaction tax (similar to VAT)
- ❖ Its consumption based passed through tax
- ❖ Its regressive in nature (unlike income tax, mostly progressive)
- ❖ At the end of World War I, sales tax existed outside the U.S. in order to assist fiscal systems from post-war expenses and increasing inflation.
- ❖ The Great Depression of 1930's saw the adoption of sales tax in the U.S. originally thought to be a “temporary measure”.
- ❖ In 1930, Kentucky was the first state pass sales tax levied exclusively on retailers. Sales tax in earliest form was levied in West Virginia in Twenties

# What is Sales Tax?

Sales Tax is....

- A Percentage of the sales price of taxable goods or services within taxing jurisdiction
- Imposed by – for budget items like schools, road, public safety
  - ❖ State
  - ❖ Counties
  - ❖ Cities
  - ❖ Other special taxing districts (transportation, education, etc.) – imposed for special purpose
- ❑ There is no FEDERAL Sales tax and IRS has nothing to do with it.
- ❑ Sales Tax is state matter – rules and laws made within framework of US Constitution
  - Currently there are 45 US States & Washington DC has sales tax act
  - New Hampshire, Oregon, Montana, Alaska and Delaware
- ❑ Every State's sales tax laws and rules are different

# What is Use Tax

- ❖ Imposed on the possession, use, storage, or consumption of tangible personal or services within the taxing jurisdiction
- ❖ Use tax is a complementary or compensating tax to the sales tax and does not apply if the sales tax was charged.
- ❖ Use tax applies to purchases made outside the taxing jurisdiction but used within the state
- ❖ Use tax also applies to items purchased exempt from tax which are subsequently used in a taxable manner.

## Mr. ABC

- Resident of State A
  - Purchases \$ 5,000 of goods
  - Pays \$ 200 sales tax (\*)
  - \$ 5,000
  - X 6.5%
  - \$ 325
  - (200)
  - \$ 125 net tax due

Mr. ABC Should file State Sales / Use Tax Return & pay net use tax due.

# Services are also Taxed

## States taxes services in TWO ways

- Specifically enumerated – all other exempted
- All services, except exempted

Five States Tax Fewer than 20 Services – Colorado, Illinois, Massachusetts, Nevada and Virginia

Four States broadly Tax all the services – South Dakota, Hawaii, West Virginia and New Mexico

- **Services to Tangible Personal Property** - These services typically improve or repair property. Services to TPP could include anything from carpentry services to car repair

# Services are also Taxed Contd.

- **Services to real property:** Improvements to buildings and land fall into this category. One of the most commonly taxed services in this area is landscaping and lawn service. Janitorial services also fall into this category.
- **Business services:** Services performed for companies and businesses fall into this category. Examples include telephone answering services, credit reporting agencies and credit bureaus, and extermination services.
- **Personal services:** Personal services include a range of businesses that provide personal grooming or other types of “self-improvement.” For example, tanning salons, massages not performed by a licensed massage therapist, and animal grooming services can be considered “personal services.”

# Services are also Taxed Contd.

- **Professional services:** The least taxed service area, in large part because professional groups have powerful lobbying presences. Professional services include attorneys, physicians, accountants, and other licensed professionals.
- **Amusement/Recreation:** Admission to recreational events and amusement parks, as well as other types of entertainment. Some states that tax very few other services, like Utah, still tax admission charges to most sporting and entertainment events.



# Retail Sales Tax – The Basics

## □ An Overview

- Sale must take place within the territorial boundaries of the taxing jurisdiction
- Sale must be of tangible personal property
- Intangibles, real property and services generally excluded
- A planning issue for mixed activities (property & services)
  - If there is any doubt collect the tax
  - If the issue is material, seek a letter ruling from DOR

# Retail Sales Tax – The Basics

## □ Scope of a Retail Sale

➤ Imposed only once during the entire chain of events starting from the point where the goods are manufactured and culminating with their eventual sale to the retail customer.

## ➤ Common Exclusions (Note : Lists differs – State by State)

- Sales-for resale – need to provide resale certificate
- Casual or Occasional Sales
- Sales of items used in manufacturing, processing and fabricating
- Sales of machinery and equipment
- Sales of certain essential items : Food, Medicine, Clothes etc.
- Sales to certain organizations or entities (Federal / State Govt, ; 501(C) (3) Organizations)

# Nexus and Levy

- “Sufficient physical presence” is a requirement where a state can levy sales taxes for doing business in that state.
- Public Law 86-272 protection is available to out-of-state business entities that sell tangible personal property in this state and whose in-state activities are limited to the solicitation of orders for their goods. As a result, if a taxpayer is protected by Public Law 86-272, it will not be required to pay the franchise tax or the corporate income tax, as both are measured by net income.

# Constitutional Issues in Imposing Sales and Use Taxes

- **Two key provisions**
  - ❖ The Commerce Clause ; and
  - ❖ The Due Process Clause
- Landmark Cases
  - *McLeod v. J.E. Dilworth Co.* 322 US 327 (1944)
  - *Miller Brothers Company v. Maryland* 347 U.S. 340 (1954)
  - *National Bellas Hess, Inc. v. Department of Revenue* 386 US 753 (1967)
  - *Quill Corp. v. North Dakota* 504 U.S. 298 (1992)
- ❖ Streamlined Sales Tax Project – effort to minimize sales tax policies and practices b/w states
  - *Streamlined Sales and Use Tax Agreement (SSUTA) became effective on October 1, 2005*
  - *Currently 23 States and Washington D.C are part of SSUTA*

# Land Mark Decision

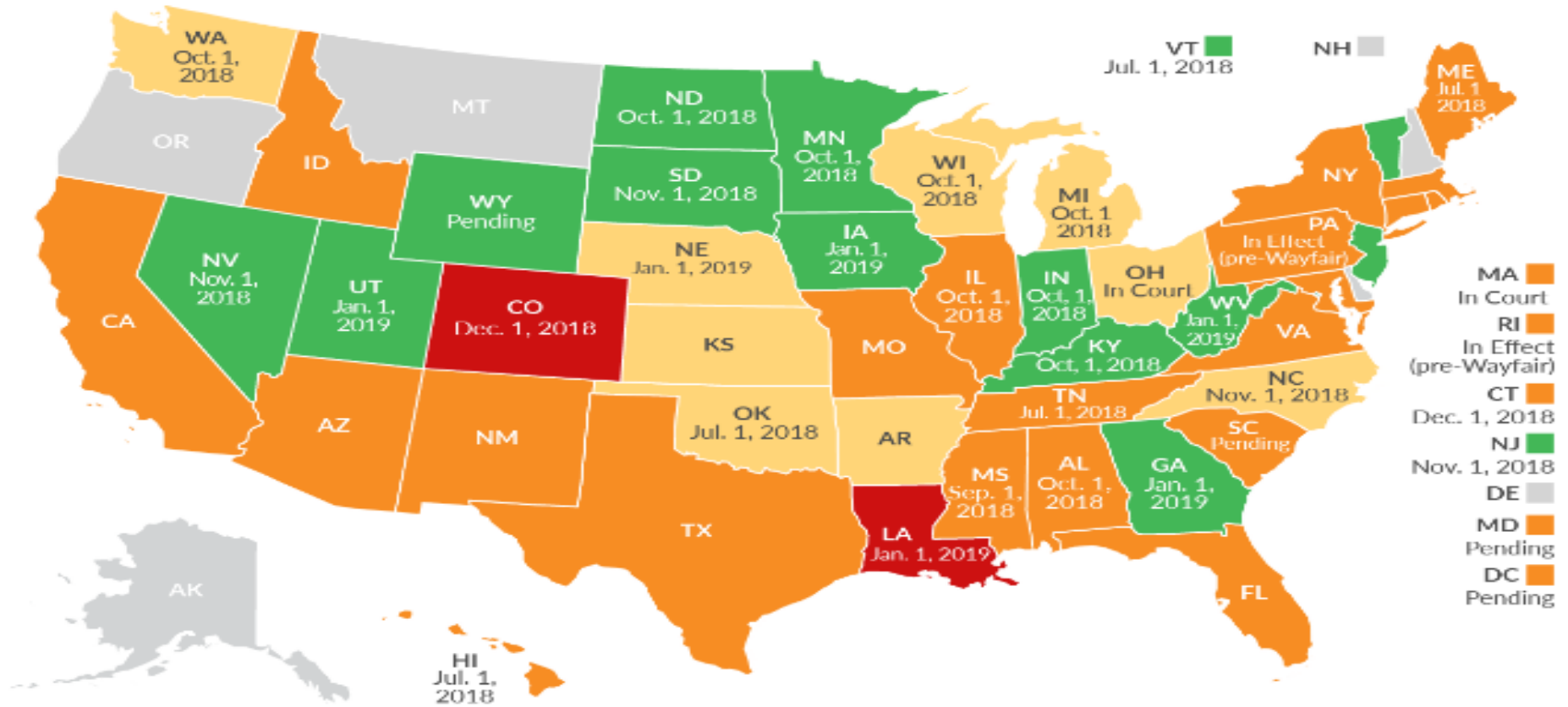
- On June 21, 2018, the United States Supreme Court fundamentally changed the rules for collection of sales tax by Internet-based retailers. In its decision in [South Dakota v. Wayfair Inc.](#), the Court effectively stated that individual states can require online sellers to collect state sales tax on their sales. This ruling overturns the Court's 1992 decision in [Quill Corporation v. North Dakota](#). The *Quill* case prohibited states from requiring a business to collect sales tax unless the business had a physical presence in the state.

# Post Supreme Court Decisions

- North Carolina – eff Nov 1, 2018, \$100K gross Sales or 200 or more separate transaction
- South Carolina – 100K Gross Sales
- South Dakota – eff Jan 1, 2019
- New Jersey – eff Nov 1, 2019, \$100K or 200 or more transactions
- Wyoming - eff Nov 1, 2019, \$100K or 200 or more transactions
  
- As of December 2018, 31 different states have standing tax laws requiring taxation of Internet purchases, most following the model of the South Dakota to only collect tax from those vendors with more than 200 customers or exceeding \$100,000 in revenues. Several of these new laws came into effect on January 1, 2019.

# Is Your State Prepared to Tax Internet Sellers?

Status as of November, 2018



Note: Dates represent enforcement start date of remote seller collection.  
 Source: Tax Foundation review of state statutes and regulations.

- State Compliant with Wayfair Checklist
- Not Compliant with Wayfair Checklist
- State Can Proceed with Caution
- No Sales Tax
- State Should Proceed Only After Making Legislative Changes



# Rates

States	State Sales Tax	Avg. Local Sales Tax	Total Sales & Local Tax		State Sales Tax	Avg. Local Sales Tax	Total Sales & Local Tax
Alabama	4.00%	4.91%	8.91%	Montana	0.00%	0.00%	0.00%
Alaska	0.00%	1.76%	1.76%	Nebraska	5.50%	1.30%	6.80%
Arizona	5.60%	2.57%	8.17%	Nevada	6.85%	1.09%	7.94%
Arkansas	6.50%	2.76%	9.26%	New Hampshire	0.00%	0.00%	0.00%
California	7.50%	0.94%	8.44%	New Jersey	7.00%	0.00%	7.00%
Colorado	2.90%	4.54%	7.44%	New Mexico	5.13%	2.22%	7.35%
Connecticut	6.35%	0.00%	6.35%	New York	4.00%	4.48%	8.48%
District of Columbia	5.75%	0.00%	5.75%	North Carolina	4.75%	2.15%	6.90%
Delaware	0.00%	0.00%	0.00%	North Dakota	5.00%	1.56%	6.56%
Florida	6.00%	0.65%	6.65%	Ohio	5.75%	1.35%	7.10%
Georgia	4.00%	2.96%	6.96%	Oklahoma	4.50%	4.27%	8.77%
Hawaii	4.00%	0.35%	4.35%	Oregon	0.00%	0.00%	0.00%
Idaho	6.00%	0.01%	6.01%	Pennsylvania	6.00%	0.34%	6.34%
Illinois	6.25%	1.94%	8.19%	Rhode Island	7.00%	1.00%	8.00%
Indiana	7.00%	0.00%	7.00%	South Carolina	6.00%	0.00%	6.00%
Iowa	6.00%	0.78%	6.78%	South Dakota	4.00%	1.13%	5.13%
Kansas	6.50%	2.05%	8.55%	Tennessee	7.00%	2.45%	9.45%
Kentucky	6.00%	0.00%	6.00%	Texas	6.25%	1.80%	8.05%
Louisiana	4.00%	4.91%	8.91%	Utah	5.95%	0.73%	6.68%
Maine	5.50%	0.00%	5.50%	Vermont	6.00%	0.14%	6.14%
Maryland	6.00%	0.00%	6.00%	Virginia	5.30%	0.33%	5.63%
Massachusetts	6.25%	0.00%	6.25%	Washington	6.50%	2.39%	8.89%
Michigan	6.00%	0.00%	6.00%	West Virginia	6.00%	0.07%	6.07%
Minnesota	6.88%	0.33%	7.21%	Wisconsin	5.00%	0.43%	5.43%
Mississippi	7.00%	0.07%	7.07%	Wyoming	4.00%	1.47%	5.47%
Missouri	4.23%	3.58%	7.81%	Puerto Rico	6.00%	1.00%	7.00%

Tax on Services: Five Free States (OR, DE, MN, NH and AK)



# Rates Around the World

<b>Nepal</b>	<b>VAT 13%</b>
United Kingdom	VAT 20%
Canada	HGST 13%-15%
Australia	GST 10%
New Zealand	GST 15%
Singapore	GST 7%
India	GST 5%-28%
Mexico	IVA 16%

Around 160 countries have implemented VAT/GST in the World

# Sales Tax Compliance

- ❖ Determine the Nexus (including economic nexus)
- ❖ Determine the taxability of the product / services
- ❖ Register for Sales Tax Permit – usually Department of Revenue of each state
- ❖ Collect sales tax at the time of sale
- ❖ Remit taxes timely (Monthly, Quarterly, Bi-annual or yearly – depends on volume and state regulations)
- ❖ File report timely (Monthly, Quarterly, Bi-annual or yearly – depends on volume and state regulations)
  - Always file return on time – even “ZERO” return if there is no sales tax due
  - Sometime filing on time gets you discount also – free money for business (Depends on State by State)

# Administration of Sales and Use Taxes

- **Reporting Obligations**

- ❖ **Fiduciary Responsibilities to Report, Collect and Remit the Taxes**

- ❖ **Reporting Obligations**

- Register Business

- File Tax Returns (Monthly, Quarterly, Semi Annual, Annual)

- ❖ **Returns**

- Due Dates— (between 15<sup>th</sup> and last day of month – mostly 20<sup>th</sup> of every month)

- Content

- ❖ **Filing**

- Most States allow filing online (some require it)

- Failing to file on time – Penalty & interest along with actual sales tax due

- Some states may allow late filing but late payment is not allowed

# Audit and Appeals

- **Audit**

- ❖ Administer and enforce law
- ❖ Audit Assessment procedure vary by state
- ❖ Books, documents, data etc. may be examined
- ❖ law requires and dictates that records must be kept
- ❖ Officers / responsible party may be assessed upon failure to pay taxes due.

## **Notification**

- ❖ Generally notified by mail
- ❖ Desk Audits / Managed Audits
- ❖ Statute of limitations ( generally 3 years)

## **Records and Data**

- ❖ Auditors has right to ask for documentation
- ❖ Burden of proof is on taxpayer

# Audit and appeals Contd.

## **Appeal Procedure**

- ❖ Can vary by State and Tax Type
- ❖ Taxpayer Bill of Rights
- ❖ Informal Conferences – opportunity to settle matters informally before actual conference

## **Matter to consider**

- ❖ How strong is your case
- ❖ Amount of Assessment
- ❖ Effect on future audits
- ❖ Realize that interest and penalty are accruing
- ❖ Any need for legal counsel
- ❖ Work with auditor for final settlement with auditor before appeal
- ❖ Usually penalty may be waived, interest NOT

# Sales Tax – Individual Perspective

- ❖ Each individuals residing in sales / use tax jurisdiction are required to pay sales tax / use tax on taxable goods or services purchased/consumed.
- ❖ State / Local Authorities can always require individual to provide proof of payment of tax.
  - *Example : Mr. ABC imported goods from Canada without paying sales tax. State government can send notice to individual asking for proof of payment of sales tax based on documents submitted at customs.*
- ❖ Individuals can itemize sales tax paid or state income tax paid amount in their yearly tax return. This is very much beneficial to person residing in states with no state income tax like Texas, Florida etc. (Limit is \$10,000 for Tax Year 2018)

# Areas of Current Interest

- ❖ Definition of Specific Exemptions
- ❖ Taxation of Services
- ❖ Sales Tax Audits (Tyco)
- ❖ Taxation of e-Commerce
- ❖ Streamlined Sales Tax Project
- ❖ Alternative Approaches to Sales/Income Tax
- ❖ Sales/Use Tax on Capital Changes
- ❖ Competition with No Sales Tax States—  
NH,DE,MT,OR
- ❖ Tax Amnesty, Tax Holidays (back to School shopping)  
etc.

# Sources & Literature

- Wikipedia
- <https://taxfoundation.org>
- [https://en.wikipedia.org/wiki/South\\_Dakota\\_v.\\_Wayfair,\\_Inc.](https://en.wikipedia.org/wiki/South_Dakota_v._Wayfair,_Inc.)
- Google.com and Various Internet Sources





Thank You very much!!!

Sudarshan Chapagain  
Laxman Bhandari