KNOW YOUR NEXUS

DETERMINING WHERE AND WHEN YOU NEED TO COLLECT AND REMIT SALES TAX

Avalara
Tax compliance done right

EBOOK

Contents

DISCLAIMER

Sales tax rates, rules, and regulations change frequently. Although we hope you'll find this information helpful, this report is for informational purposes only and does not provide legal or tax advice.

GETTING SALES AND USE TAX COMPLIANCE RIGHT IS IMPORTANT.

The first step to compliance often starts with understanding where your business has nexus, or where you need to collect and remit sales tax. But nexus is ever-changing and it can be confusing for even the savviest business owner.

According to a 2020 survey by market research firm Potentiate, 79% of U.S.-based businesses are familiar with the term nexus. However, this number drops drastically to only 46% among small businesses. And the spread is even greater when asked about the difference between physical nexus and economic nexus.

Unfortunately, you can't just figure out where you have nexus today and forget about it – you have to closely monitor changes to nexus. Many activities can trigger new tax collection obligations for your business, especially now that every state has passed laws targeting remote sales tax revenue and online marketplace sales.

As of December 2020, just 66% of businesses had heard of the 2018 Supreme Court decision, South Dakota v. Wayfair, Inc., which led to economic nexus – indicting there is still a lot to understand when it comes to nexus and how companies establish it from state to state.

We know nexus can be tough, which is why we've developed this quick reference to help. Throughout this guide we outline what nexus is, what may trigger nexus, and how to keep up with your nexus obligations.

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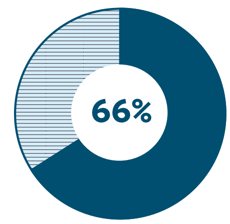


2020 survey by market research firm Potentiate

What is nexus?

Sales tax nexus is the connection between a seller and a state that requires the seller to collect and remit tax on sales made in that state. For example, if you have sales tax nexus in California and Texas, you must charge customers the right amount of sales tax and pay your tax obligation to the states.

As of July 30, 2021

TEXAS

TRIGGER AND THRESHOLD:

$500,000 in sales

INCLUDED TRANSACTIONS:

Gross revenue from sales of tangible personal property and services into the state. Exempt sales and exempt services are included.

FLORIDA

TRIGGER AND THRESHOLD:

$100,000 in sales

INCLUDED TRANSACTIONS:

Taxable sales of tangible personal property delivered physically into the state.

EXCLUDED TRANSACTIONS:

Taxable services, exempt sales, and exempt services are not included in the threshold.

Sales tax nexus is **not** the same as income tax nexus: A business can have an obligation to collect and remit sales tax in a state where it has no income tax liability. Confounding, but true.

What triggers nexus?

So, what exactly triggers nexus? Unfortunately, there's no one thing. Nexus has long been linked to physical presence, but even physical presence can be hard to measure. Due to the explosion of ecommerce sales and the Wayfair decision, physical presence is no longer the de facto standard for establishing nexus.

We've broken down some common activities that may cause your business to have nexus.

ECONOMIC NEXUS

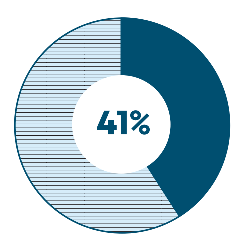
Economic nexus bases a tax collection obligation on economic activity alone. As a result of the Wayfair decision, **economic nexus laws** have been adopted by every state with a sales tax, Washington, D.C., and some jurisdictions in Alaska. Missouri will begin to enforce its law as of January 1, 2023.

Nexus thresholds vary by state. Many states use $100,000 in taxable sales or 200 separate sales transactions as the economic nexus threshold. But some states have higher thresholds, and several states base economic nexus on sales revenue only. Alabama's threshold is $250,000 in taxable sales during the previous calendar year. In Washington, D.C., it's $100,00 in taxable sales or 200 sales transactions in the current or previous calendar year. In New York, it's $500,000 in taxable sales and 100 sales transactions during the previous four sales tax quarters. Some states **include exempt sales** and services in their thresholds.

Did you know?

New Hampshire, Oregon, Montana, Alaska, and Delaware (also known as NOMAD states) are the only states that don't have a general sales tax. However, some have local and county sales taxes.

Only 41% of businesses claim to have implemented all required changes to be compliant with South Dakota v. Wayfair, Inc.



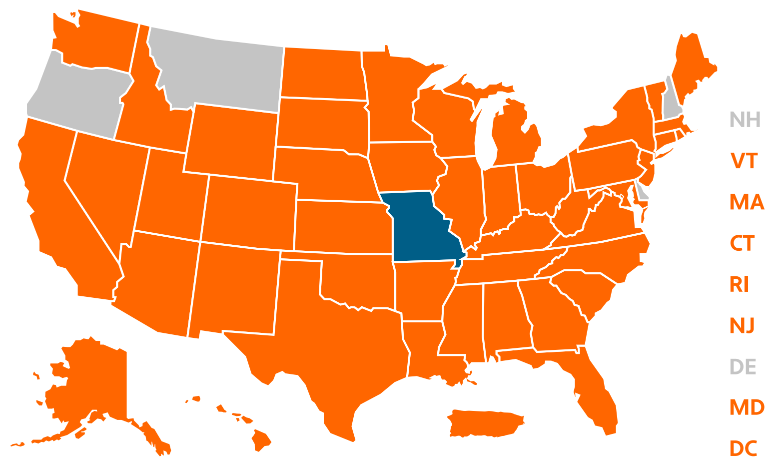
2020 survey by market research firm Potentiate

Because of economic nexus laws, it's important for businesses to actively monitor their sales volumes in states where they're not registered. It's easy to exceed thresholds in one or more states, especially if you sell online or through multiple channels. Review our **State-by-state guide to economic nexus laws** for more details on specific thresholds and rules.

ECONOMIC NEXUS LAWS BY STATE

- States with economic nexus laws
- States without statewide sales tax
- States with economic nexus laws going into effect soon

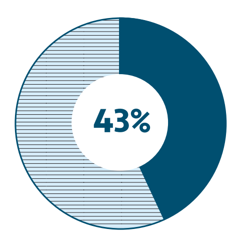
As of August 30, 2021



MARKETPLACE FACILITATOR LAWS

The rise of **marketplace facilitator laws** means that platforms where you sell goods or services, like Amazon, Etsy, and eBay, are now likely to collect and remit sales tax on your behalf. These laws shift the obligation to collect and remit sales tax from the seller to the platform that facilitates the sale. In most cases, the marketplace provider is required to collect and remit taxes if it meets economic nexus thresholds. Depending on the state, remote sellers should either include or exclude marketplace sales in their economic nexus threshold count. Find more details in our guide, **State-by-state registration requirements for marketplace sellers**.

Only 43% of businesses claim to have implemented all required changes to be compliant with marketplace facilitator laws.



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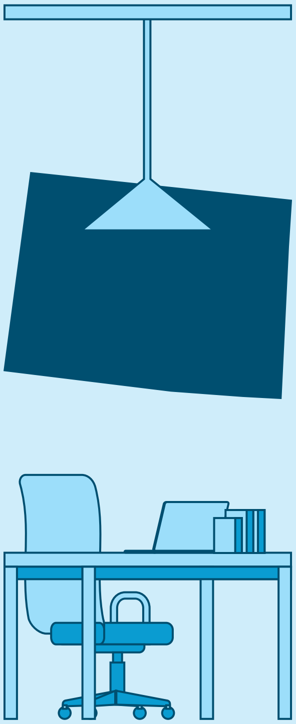
PHYSICAL PRESENCE

As you may expect, physical presence includes brick-and-mortar locations like branches, offices, stores, and warehouses. It can also include renting or owning property – even property located at a site owned by a third party. Having remote employees or contractors in a state, even temporarily, can trigger **physical nexus**, as can delivering goods in your own vehicle, or storing property in a location owned by someone else, such as a fulfillment center. Common triggers include:

REMOTE EMPLOYEES/SALES REPRESENTATIVES



States are evaluating how their tax policies should adapt to new remote work situations, which have swelled due to the COVID-19 pandemic. Nexus is typically established once your business hires an employee. The same occurs when a team member moves to another state. It can be difficult to keep up with employees moving around, a trend that could continue to be popular. If you're not paying attention, you may unknowingly trip nexus in one or more states. During the pandemic, some states created nexus enforcement exemptions for remote employees.

Nexus can also be created if you employ salespeople in different states. If your employees or contractors conduct any work at a customer's out-of-state location, or even deliver products into another state, nexus can be triggered. **Colorado**, for example, has stated that nexus can be established when a remote seller has employees in the state, "even if the activities of the employees are completely unrelated to the sales transaction at issue."

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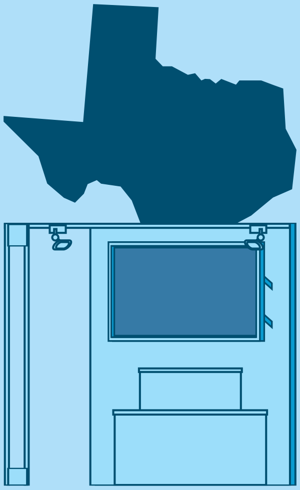
EVENT ATTENDANCE

Attending trade shows or other events in another state can also establish nexus with that state. State rules vary, and some states take a more aggressive stance than others.

To trigger nexus in **Arizona**, for example, an employee or independent contractor generally has to be in the state to solicit sales or establish a market for more than two days per year.

Remember, nexus laws can change. Before July 1, 2016, attending just one trade show in **Washington state** could trigger nexus. Since then, attendance or participation at one trade show each year doesn't automatically establish nexus – although it could if an attendee is there to sell goods or take retail orders, or if the trade show is marketed to the general public.



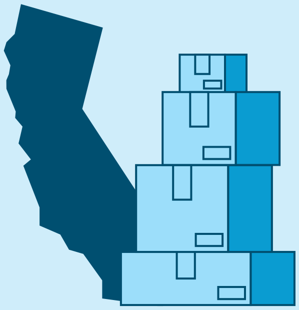
Did you know?

In Texas, attendance at a single trade show may create nexus.

STORING INVENTORY

If your business stores inventory in a warehouse in another state, you may trigger nexus. You can establish a physical presence even when the facility is owned by another party. This commonly occurs when businesses use a fulfillment center to process orders, such as Amazon FBA. And, unlike economic nexus, the obligation to collect sales tax starts from your first sale.

To further complicate matters, a few states are trying to **collect back sales taxes** from marketplace sellers based on storing inventory in a marketplace facilitator's warehouse. Their aim is to collect taxes owed before marketplace facilitator laws took effect.



Inventory creates a physical presence:

One Philadelphia-based Amazon FBA seller was notified that he could owe California up to $1.6 million in back sales tax, plus penalties and interest, because he had inventory stored in Amazon warehouses in the state.

The fact that nexus rules vary by state – and are subject to change at any time – makes it extremely complicated to determine all the places your business needs to register, collect, and remit sales tax.

Nexus may be triggered even if you and your employees or shippers don't step foot in another state. For example:

ADVERTISING

It's now easier than ever for a business based in one state to advertise to potential customers in other states. Beware: Sometimes advertising across state borders can trigger a tax collection obligation.

For example, advertising in newspapers or other periodicals printed in **Virginia** can trigger nexus, as can advertising on billboards or posters located there. Similarly, the regular or systematic solicitation of sales through marketing channels like television, radio, magazines, mail, and more can establish sales tax nexus in **Texas**.

In 2021, Maryland became the first state to adopt a **digital advertising tax**. Other states, including Massachusetts and New York, have proposed such laws. The new laws tax banner advertising, interstitial advertising, search engine advertising, and similar services. On the surface, it may sound simple to levy a tax whenever a person in a state views a digital ad. But since we take our smartphones everywhere, including across state lines, it may be difficult to pinpoint exactly where someone viewed the ad.

Did you know?

Tax obligations can be established through a connection to an in-state business or individual, including online advertising.

AFFILIATE NEXUS

Nexus can be established if an out-of-state retailer is affiliated with an entity that has nexus in another state. **Affiliate nexus laws** have been expanded in some states to include activities by unrelated parties that help out-of-state businesses generate or maintain a market in the state.

In **New York**, an out-of-state seller may have affiliate nexus if it uses in-state representatives to solicit business or otherwise help it develop or maintain a market in the state. Nexus-triggering activities include distributing catalogs or coupons, taking orders, or accepting merchandise returns on behalf of the remote seller.

Some states have recently repealed their affiliate nexus laws, and it can be difficult to keep up with changes. Illinois, for example, repealed its affiliate nexus law in 2019 and then reinstated it in 2020.

CLICK-THROUGH NEXUS

Under **click-through nexus laws**, your out-of-state business can establish a physical connection to a state through an agreement to reward a person for directly or indirectly referring potential buyers through links on a website.

Some states have recently repealed click-through nexus laws, but 19 still have them in place. Most have a sales threshold, meaning the referrals must generate a certain amount of sales to trigger nexus. Thresholds vary. In most states, referrals must generate more than $10,000 in taxable sales during the preceding 12 months or four quarters.

Other thresholds include:

CONNECTICUT

More than $100,000 in taxable sales during the four preceding quarters

GEORGIA

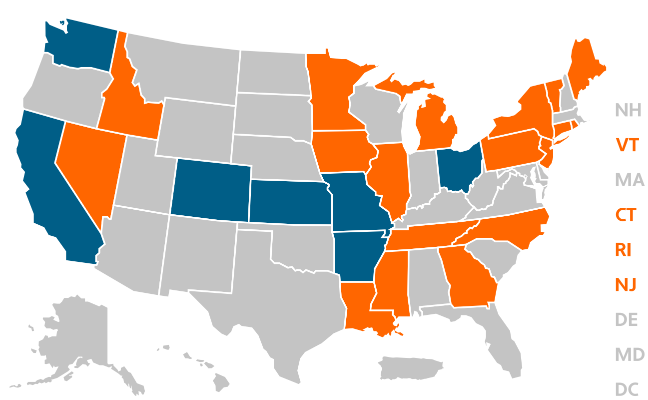
More than $50,000 in taxable sales annually

PENNSYLVANIA
None

As of September 23, 2021

CLICK-THROUGH NEXUS LAWS BY STATE

- States with click-through nexus laws
- States that repealed click-through nexus laws
- States that don't have click-through nexus laws



As of October 12, 2021

DELIVERY AND DISTRIBUTION

As long as you ship goods to customers by a common carrier such as the U.S. Postal Service, UPS, or FedEx, you're unlikely to trigger a sales tax obligation through delivery. Delivering products to customers in your own vehicle, however, can trigger nexus. An out-of-state business that sells to customers in **New York** and regularly uses its own vehicles for delivery has to register to collect and remit sales tax. Regular delivery means "at least 12 times a year."

Nexus becomes complicated if you use a drop shipper. With drop shipping, a retailer doesn't keep items in stock, but orders them from a third party and has them shipped directly to the customer. As a result of economic nexus, businesses are increasingly impacted by drop shipping rules. But it's not always apparent who's responsible for collecting and remitting sales tax – the retailer, the supplier, or the drop shipper. And depending on the circumstances, retailers and drop shippers can be required to collect resale exemption certificates. Refer to our **drop shipping reference guide** for help.

For help with drop shipping, view our reference guide.

TRAILING NEXUS

Once you've established nexus in a state, it can linger longer than you might imagine. Nexus may continue even after you cease doing business or having a presence in a state, for a period that can last through the end of the calendar year or even longer. This is important to remember, especially if you trigger nexus through a temporary presence, like event attendance.

In **Washington** state, for example, a seller who stops nexus-creating activity continues to have nexus through the following calendar year.

Nexus may continue even after you cease doing business or having a presence in a state, for a period that can last through the end of the calendar year or even longer.

HOW DO YOU KEEP UP?

If you made it this far, you now know all the ways that nexus can be tough.

It can be hard to understand the different types of nexus, and harder still to understand what they mean for your business. But knowing where you have nexus now, and where you could have it in the future, is crucial.

In short, getting nexus right takes a lot of time and dedicated effort. Unfortunately, if you don't give state nexus laws the attention they demand, the consequences of noncompliance can cost you even more time – and money.

When it comes to staying up to date with nexus and your associated requirements, Avalara offers software solutions and professional services to help you determine where you have nexus, register in new jurisdictions, and much more. To learn how Avalara can meet your specific needs, visit avalara.com or call 877-780-4848 to talk with one of our automation specialists. If you're already an Avalara customer and have questions about nexus, please reach out to your account manager.

Avalara
255 South King St., Suite 1800
Seattle, WA 98104

877-352-4646
avalara.com