

**SALES & USE TAX NEXUS
DEVELOPMENTS, OUTLOOK
& ENFORCEMENT
INITIATIVES**

**NESTOA
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PANELISTS

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OVERVIEW

- Enforcement – what’s working under existing law
 - Solutions and approaches
- State law developments
 - Affiliate nexus, information reporting, etc.
- Emerging factual issues
 - Marketplace issues, “electronic” presence, etc.
- Federal legislation
 - Proposals and prospects
- Constitutional litigation
 - What may be coming

ENFORCEMENT PROGRAMS

- VDA programs
- Third-party purchase data mining
- Withholding tax match-ups
- MTC's Nexus Program
- Use tax audits – other audits and information

STATE LAW DEVELOPMENTS

- States that have adopted affiliate or click-through nexus
 - Half the states now have click-through statutes
 - Almost half have affiliate statutes
- Other state statutory proposals
 - Notice/information reporting requirements – 4 states
 - Economic or sales thresholds
- BNA Survey – positions states would take
 - States don't always issue statutory or regulatory rules
 - Incremental approach to state positions
- Other notable developments
 - MTC proposed Model Nexus Statute
 - NYS proposal to assert nexus over marketplace sellers
 - Alabama proposal

EMERGING FACTUAL ISSUES

- Constant change
 - From catalogue sales to Internet sales
 - Attempts to create nexus-remote entities
 - Marketplaces – do they create nexus for their third-party sellers
 - Does it matter what kind of marketplace?
 - Does it matter the kind of relationship?
 - “Electronic” presence
 - Cloud software
 - Use of instate servers
 - “White glove” delivery services
 - Other

FEDERAL LEGISLATION?

- Bills that have been introduced
 - Senate
 - Chairman Goodlatte proposal
 - Representative Chaffetz proposal
- Prospects and difficulties
 - Attach to ITFA extension?
 - Federal tax bills?
 - Other vehicle?
- PACT Act cases
 - Does Congress have the ability to authorize states to impose a tax collection duty where the seller lacks due process nexus in a state and is this a concern?

CONSTITUTIONAL LITIGATION

- USSC nexus or personal jurisdiction cases –
 - Commerce Clause – still waiting
 - Due Process – USSC rarely speaks - hundreds of lower court rulings
- State court nexus cases
 - Mostly state wins – affiliate, representative, other theories.
 - Connecticut’s history of nexus cases
- Cases that are pending
 - *DMA* in Colorado
 - CAT cases in Ohio
- Theories about where the Supreme Court might go
 - Justice Kennedy’s concurrence in *DMA*
 - Other