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SALES TAX

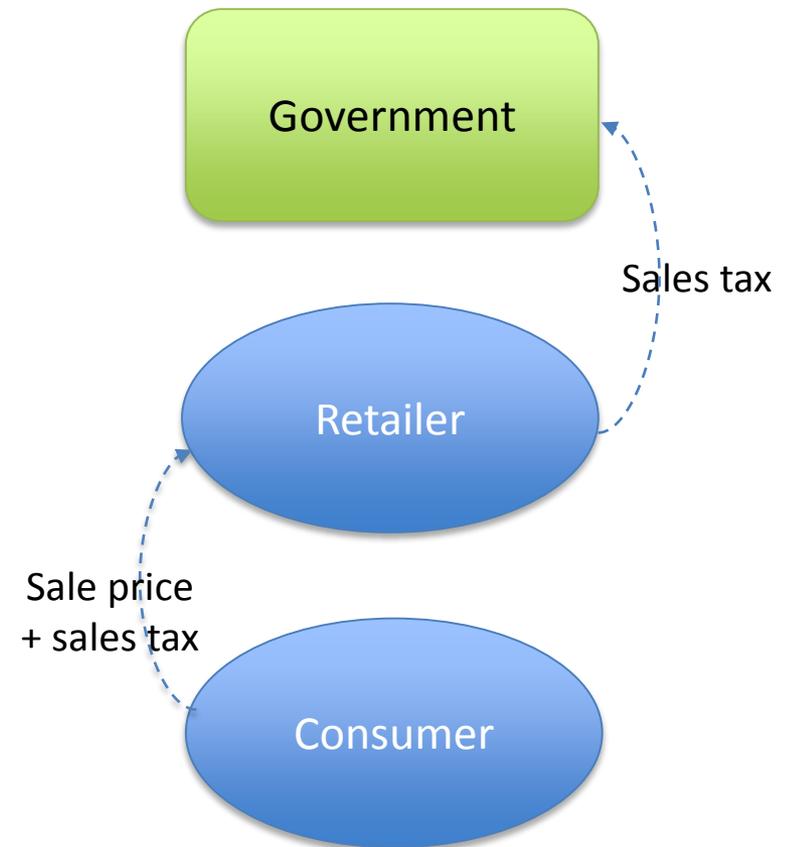
WHAT YOU NEED TO KNOW

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Fred Kahn, Partner

What is Sales Tax?

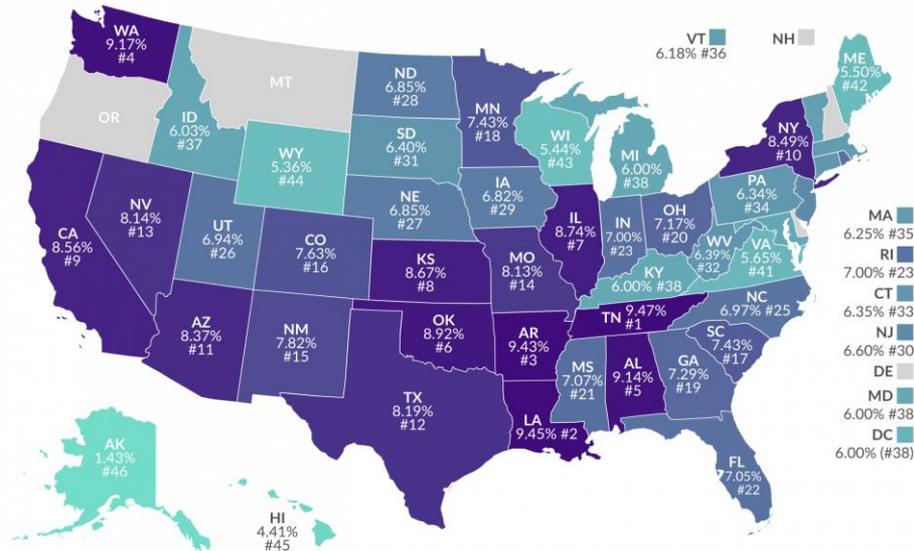
- Sales tax is a consumption tax imposed by the government on the sale of certain goods and services.
- Although the additional cost is borne by the consumer, the retailers are responsible for collecting and remitting to the state taxation authority on a regular basis.



Sales Tax Rates across the USA

How High Are Sales Taxes in Your State?

Combined State & Average Local Sales Tax Rates, January 1 2019



Note: City, county, and municipal rates vary. These rates are weighted by population to compute an average local tax rate. Three states levy mandatory, statewide, local add-on sales taxes at the state level: California (1.25%), Utah (1.25%), and Virginia (1%); we include these in their state sales tax. The sales taxes in Hawaii, New Mexico, and South Dakota have broad bases that include many services. Special taxes in local resort areas are not counted here. Salem County, N.J. is not subject to the statewide sales tax rate and collects a local rate of 3.3125%. New Jersey's local score is represented as a negative. D.C.'s rank does not affect states' ranks, but the figures in parentheses indicate where it would rank if included.

Source: Sales Tax Clearinghouse, Tax Foundation calculations, State Revenue Department websites



TAX FOUNDATION

@TaxFoundation

When does sales tax apply?

Sales tax is imposed on a state by state basis if a sale meets all three of the following criteria:

- **Nexus** – the company has some connection to the state in which the purchaser is located;
- **Taxability** - the product or service is taxable in that state;
- **End user** - sales must be retail sales to an end user in the state.

Nexus – physical presence

Sales tax nexus occurs when your business has some kind of connection to a state.

Some common examples of physical presence:

- office
- employee
- warehouse
- storing inventory

Note that the physical presence thresholds for sales tax are lower than for income tax purposes. Temporarily doing physical business in a state for a limited amount of time may be sufficient to trigger sales tax nexus in the state. (i.e. a trade show, or employee performing services at customer location)

Nexus – economic presence

- *South Dakota vs. Wayfair*

On June 21, 2018, the US Supreme Court issued a ruling which eliminates the physical presence requirement for sales tax. A company is considered to have sales tax nexus with the state when it **“avails itself of the substantial privilege of carrying on business”** in a jurisdiction.

- No bright-line test was determined.
- South Dakota’s economic nexus thresholds were upheld:
 - \$100,000 in sales; or
 - 200 transactions

Nexus – economic presence (cont.)

More than 35 states have passed economic nexus laws. Most are based on South Dakota's legislation, but vary with regard to:

- Thresholds
- Effective date of legislation
- Sales which serve as basis for threshold
- Period which serves as basis for threshold

Taxability

As a general rule, tangible products are taxable and most services are not. However, each item sold must be considered carefully to determine taxability in all relevant states .

- Five states (New Hampshire, Oregon, Montana, Alaska, and Delaware) do not impose any statewide sales tax.
- Four states (Hawaii, South Dakota, New Mexico, and West Virginia) tax services by default, with exceptions only for services specifically exempted in the law.
- The remaining 41 states — and the District of Columbia — do not tax services by default, but services enumerated by the state may be taxed.

Taxability – software

Software and digital products must be analyzed to determine the precise product definition. States have varying opinions as to whether these are considered tangible products or services, with nuanced details that may affect the taxability.

For example:

- Custom or canned software
- SAAS / “cloud computing”
- Medium of delivery (tangible or electronic)
- Maintenance and support

Taxability - exemptions

If you make a taxable sale in a state in which you have nexus, you are required to collect sales tax on any order delivered to that state unless a valid exemption is applied.

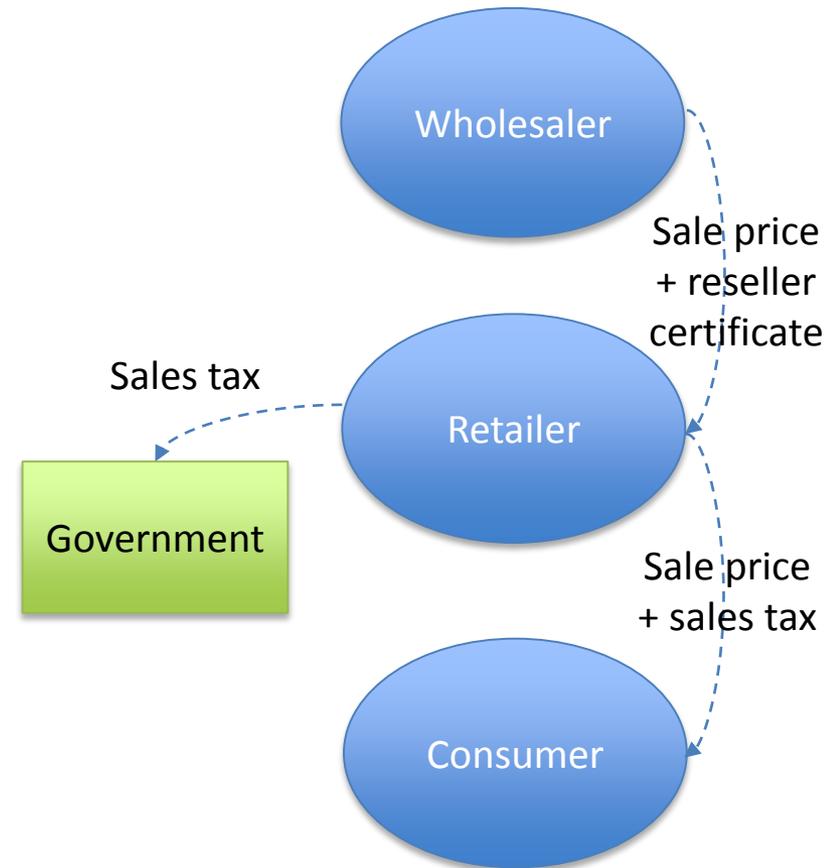
Common exemptions:

- Type of item sold
 - Medical devices
 - Necessity items (food, clothing)
- Type of purchaser
 - Government agencies
 - Hospitals, non-profit organizations
 - Direct pay permits

Exempt organizations must provide an exemption certificate.

End user

- The most common exemption is a resale exemption. Goods purchased to be resold in the same form in which they are purchased qualify for a resale exemption. When that reseller later sells the goods, they are required to collect sales tax on the full selling price of the product.
- States that allow for resale exemptions either accept a state issued resale certificate or, in some cases, a multi-state certificate.



What does this mean for my business?

- Nexus analysis & mapping exposure
- Define customer type
- Define the product/s
- Taxability research

- Action items:
 - Sales tax added to invoice based on ship-to address
 - Registration with state
 - Sales tax filings
 - Periodic economic nexus analysis check

Remote sellers

- International sellers

Economic nexus rules apply to foreign sellers as well.

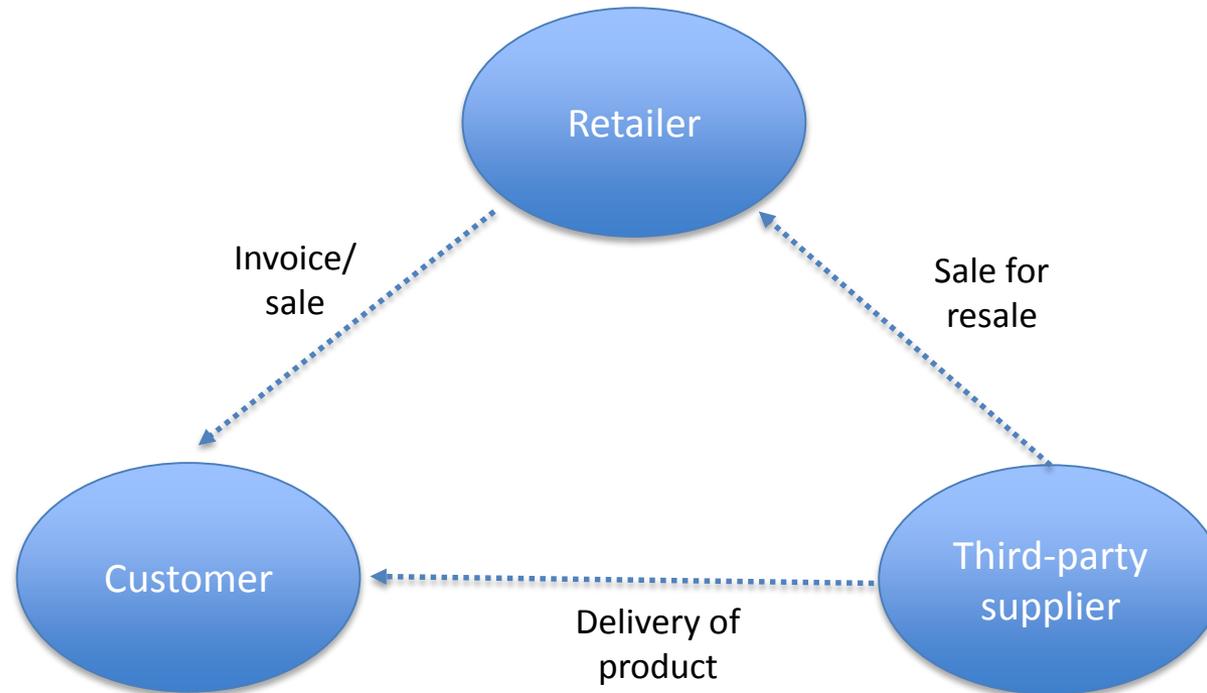
- Marketplace facilitators

Marketplace Facilitator legislation is a set of laws that shifts the sales tax collection and remittance obligations from a third party seller to the marketplace facilitator. To date, twelve states have passed such legislation.

- Fulfillment by Amazon (FBA)

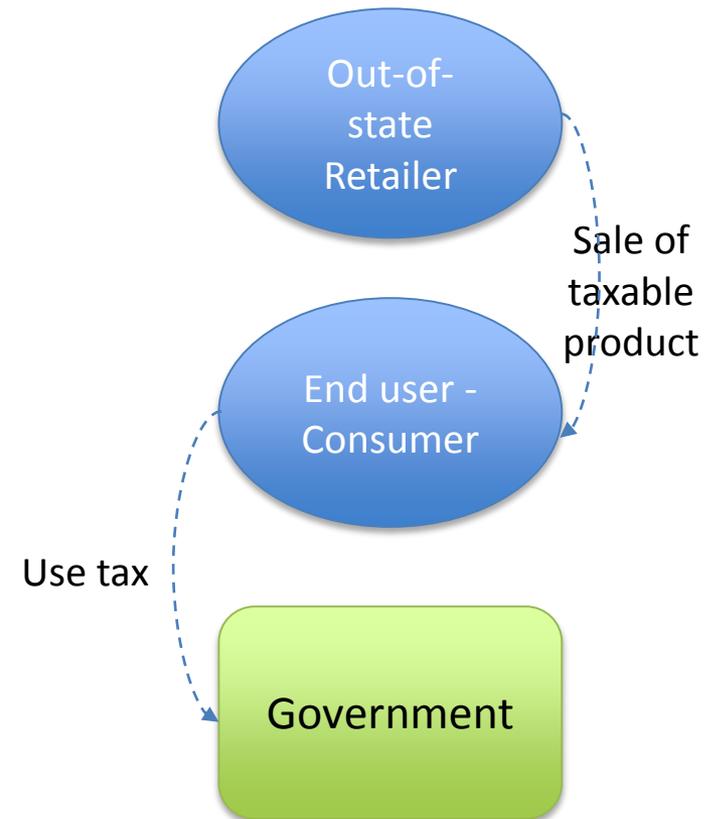
Inventory stored in Amazon Fulfillment Centers creates physical nexus in the state. To date, Amazon has FCs in more than 25 states. Third party sellers do not have control over which FCs their product are stored in, creating potential nexus in many states.

Drop-shippers



Use Tax

- Use tax is a sales tax on purchases of taxable items that will be used, stored or consumed in a state and upon which no tax was collected in the state of purchase.
- Use tax is self-assessed and remitted by the end consumer.
- The use tax rate is the same as the sales tax rate (state and local).



THANK YOU