



MOSSADAMS

# State & Local Tax for E-commerce

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# Presenters

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# Topics for Today

There are many tax implications for companies selling through E-commerce platforms that can significantly impact the bottom line if left unattended.

**01 SALES AND USE TAX**

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**02 INCOME AND FRANCHISE TAX**

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**03 OTHER KEY CONSIDERATIONS**



# Sales and Use Tax Considerations: Nexus

Is physical presence nexus a consideration with the Wayfair economic nexus thresholds?

## AUDIT RISK

We anticipate more audit activity this year.

- Auditors are more aggressive with their assessments, which requires the company to incur fees to appeal the assessment.
- Clients could benefit from involving Moss Adams earlier in the audit to address issues.

## LIABILITY MITIGATION RISK

A taxpayer's voluntary disclosure agreements or amnesty could be impacted if the state identifies tax years in which there was physical presence nexus.

- Historically, voluntary disclosure program were not available if the company was registered for sales tax purposes with a particular state.
- We are seeing more leniency by the states.



# Sales and Use Tax Considerations: Nexus (cont.)

## FINANCIAL STATEMENT RISK

A taxpayer's tax reserves could be impacted if a taxpayer files returns based on economic nexus without considering physical presence nexus.

- Statute of limitations will not start for the pre-economic nexus periods.

## MULTI-CHANNEL SELLERS

Many states require the taxpayer to determine the economic nexus threshold based on all the company's sales.

- It is important to accumulate sales data by state for each distribution channel: company's website, Amazon, Spotify, etc.
- For reporting purposes, the taxpayer must separate Amazon and Spotify sales because tax should be collected based on the state's Marketplace Facilitator rules.



# Sales and Use Tax Considerations: Nexus (cont.)

## AMAZON FULFILLMENT CENTERS

Inventory located in Amazon Fulfillment Centers creates physical presence nexus.

- There could be issues in locating reports that show location of inventory within the U.S. and outside the U.S. could cause issues in proving inventory was not in a particular jurisdiction.

## DROP SHIPMENTS

Nine (9) states prohibit a taxpayer from providing an out-of-state resale exemption certificate.

- Taxpayer is forced to have nexus in these nine states otherwise it could be charged sales tax by its vendor..



# Sales and Use Tax Considerations: Taxability

It is critical for taxpayers to understand the taxability of their products and services because of the states' economic nexus standards.

- Food products v. Supplements
- Exemptions for certain clothing items
- Medical equipment and products

States are attempting to increase revenues from sales/use taxes without an increase in the tax rate.

- Digital Goods
- Advertising
- SaaS and Technology Providers



# Sales and Use Tax Compliance & Integration

Most eCommerce businesses are implementing software programs to calculate sales tax in the states where it conducts business but struggle with the implementation.

- Multiple internal and external stakeholders.
- Implementation of the sales tax software program does not address the company's compliance, financial statement, and staffing considerations.

eCommerce businesses should assess whether they are Marketplace Facilitators and the related compliance obligations.

- Expand customer base by offering another business' goods and services through the client's website
- Tax liability if the Marketplace Facilitator does not remit the correct tax



# POLLING QUESTION

Are you awake?

1. Yes, but barely
2. No, so don't expect me to answer the polling question correctly
3. Absolutely, I'm starting to hit my stride



# Income and Franchise Tax Considerations

An eCommerce business should consider nexus implications as it grows.

- Remote work force
- Inventory at Amazon Fulfillment Centers
- Public Law 86-272 erosion

An eCommerce business should consider sourcing of its revenues for purposes of calculating its state apportionment factors.

- Changes in nexus creating activities could cause a mismatch between states with taxable income and states with tax attributes
- Consider costs and benefits of filing prior year returns to capture historic operating losses
- California's suspension of Net Operating Losses accelerates many client's need for a sales factor sourcing study to reduce the client's California apportioned taxable income



# Income and Franchise Tax Considerations (cont.)

eCommerce businesses should consider the implications of international expansion and contract manufacturers located outside the United States.

- Water's Edge filing group members
- Economic nexus considerations
- Repatriation considerations



# Gross Receipts Tax Considerations

A growing number of states are implementing gross receipts taxes in addition to or in lieu of net income taxes (e.g., Nevada, Oregon).

- Increase tax liabilities during loss years
- Tiering of taxes because few states have combined filings so intercompany sales (or royalty) transactions are not eliminated
- Sourcing of eCommerce sales transactions – where is the market?

Many local jurisdictions have business taxes based on gross receipts.

- California (e.g., Los Angeles, San Francisco, Santa Monica)
- Washington (e.g., Bellevue, Seattle, Tacoma)
- Virginia (county tax)



# Credit and Incentive Considerations

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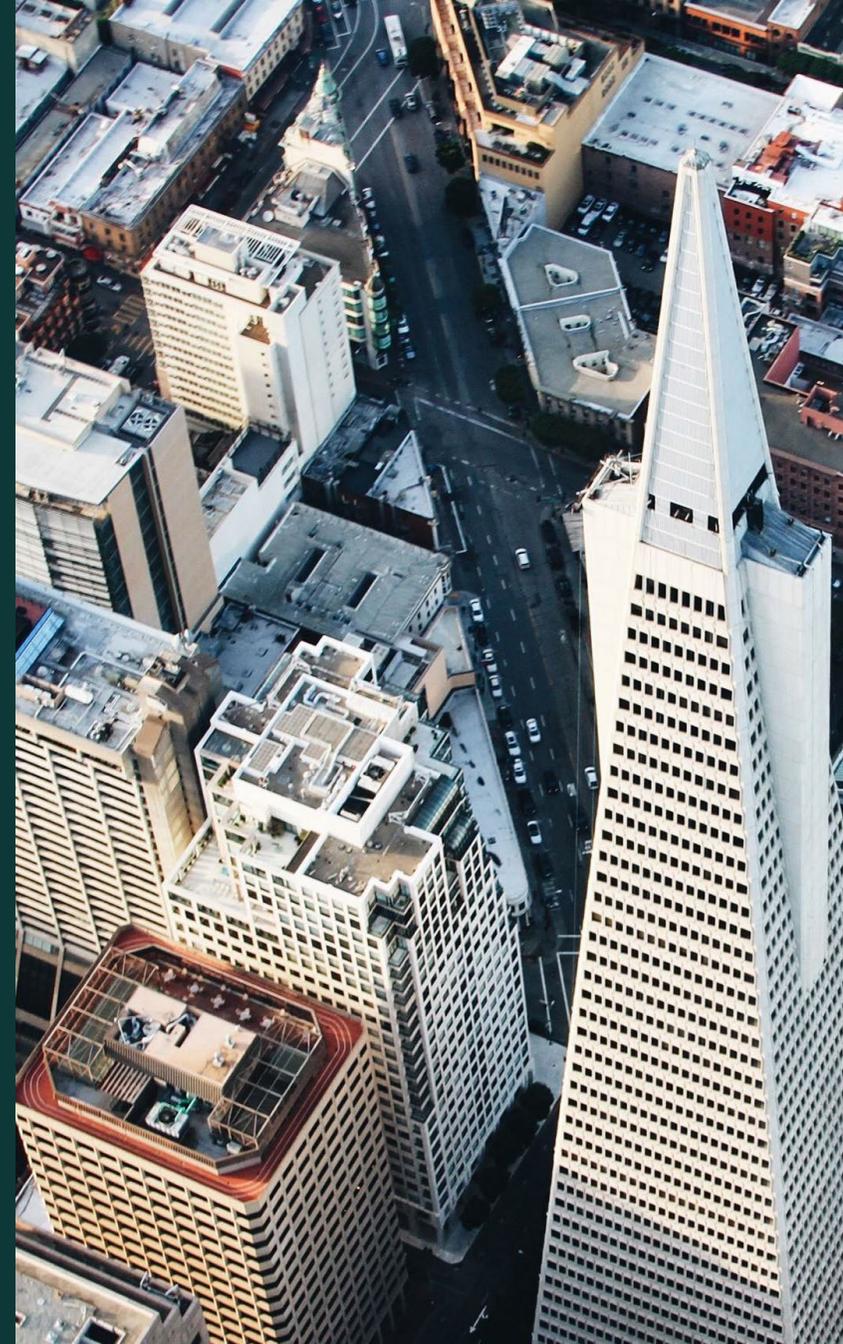
## **GROWTH OF WORKFORCE:**

- Training grants, hiring credits
- Employer Tax Credits
- Work Opportunity Tax Credits

## **EXPANSION OF DISTRIBUTION CHANNEL**

### Own v. Lease Fulfillment Centers

- Negotiated Incentives (e.g., property tax abatements, sales tax exemptions, payroll grants)
- Pennsylvania's Keystone Opportunity Zone
- Local sales tax sharing incentives



# Property Considerations

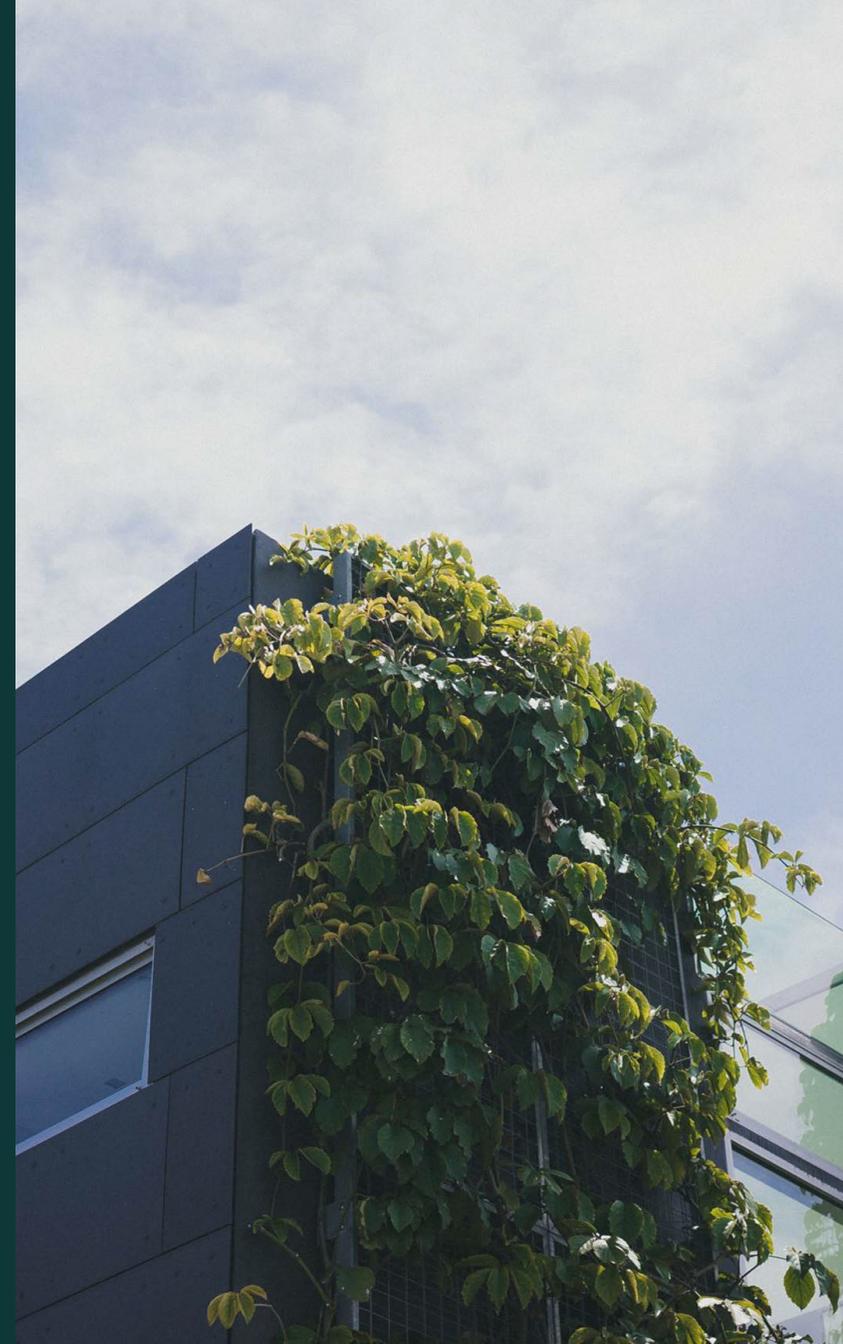
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## TANGIBLE PERSONAL PROPERTY

- Freeport Exemptions
- Compliance and appeals

## UNCLAIMED PROPERTY

- Gift cards
- Customer credits
- Compliance
- Voluntary Disclosures



# Action Items for You and Your Organization

Asking the four questions below should begin to establish how your business is managing your tax strategy.

1

*Have you considered historic liabilities prior to when you started filing in a state?*

2

*Have you thought about the implications to your state income taxes or expanding or changing your distribution channels?*

3

*Have you considered SALT implications for using amazon fulfillment?*

4

*Are you considering changing your enterprise system? If so, have you considered other tax-related software that would integrate or pair with that new system?*



# E-commerce Series: Up Next

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## The Path to Liquidity

August 3, 2021 at 10am



# ➤ QUESTIONS

Let's start a conversation.

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