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Sales & Use Tax:

Opportunities & Updates

PRESENTED BY

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Wayfair Update

- *Prior to Wayfair*
- *Wayfair: The Decision*
- *Post Wayfair Tax Implications*
- *Other Notable Updates*

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Prior to *Wayfair*

- Physical presence was required for a state to impose a sales tax on remote sellers
  - Office, warehouse, inventory, employees, attending trade shows, delivering in own vehicles, etc.
- Businesses were not considered to have sales tax “nexus” without physical presence, therefore, no requirement to collect and remit taxes
- Handful of states had “economic” nexus thresholds in place, however, not enforced

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Wayfair: The Decision

- Groundbreaking sales tax court case overturning Quill, eliminating the physical presence requirement
- Implemented "economic" nexus thresholds via sales and/or transactions
  - South Dakota was first to impose thresholds for remote sellers ($100K in sales or 200+ transactions)
- Court not clear on conclusion, leaving it up to the individual states to decide
- Left several questions unanswered
  - What sales should be included in determining the thresholds?
  - Local jurisdictions – Do they follow the state set thresholds?
  - Transaction threshold effect on small businesses?
  - What about marketplace facilitators and sellers?

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Post *Wayfair* Tax Implications

- All states that impose a sales tax have implemented an economic nexus threshold, majority of them mirroring SD thresholds of $100K in sales, except:
  - AL, MS ($250K);
  - CA, NY, TX ($500K)
- Most states include gross sales to determine if exceeding thresholds, except:
  - AR, FL, MO (taxable sales only)
- Some states are removing the transaction thresholds, including:
  - CO, LA, ME, SD, WA, WI (removed);
  - FL, MO, NM (initially set without a transaction threshold)

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Polling Question 1

- How many states does your business have more than $100,000 in sales to?
  a) 0
  b) 1-5
  c) 6-15
  d) More than 15
  e) Unsure

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Post *Wayfair* Tax Implications

- Local jurisdictions either mirroring state thresholds or creating own
  - AK – Does not have a state-imposed sales tax, however, several cities within impose one
- Marketplace facilitators required to collect sales tax on behalf of sellers
  - Shifting the tax burden from the seller to the marketplace facilitator themselves
  - Sellers on marketplace may need to still report the sales through marketplace, but not tax collected
- Intended for sales tax, however, you are seeing other taxes being affected, including income/franchise
  - Certain internet functions could eliminate P.L. 86-272 protection;
  - States are implementing thresholds similar to *Wayfair* for gross receipts, CAT or franchise/income taxes
- Revenues from state sales tax increased drastically, so not going away
  - $3.2M in 2018 (prior to *Wayfair*) to $23.1M in 2021 (Post *Wayfair*)

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Wayfair: Final Takeaways

- Impacts all businesses that sell tangible personal property into other states
- Physical presence nexus still exists, just not required
- All states that impose a sales tax now have implemented an economic threshold
- Generally, $100K in sales triggers economic nexus and a legal requirement to collect and remit sales taxes*
- Marketplace facilitators are required to collect sales tax on behalf of their sellers**
- *Wayfair* intended for sales tax, however, now affecting other state and local taxes

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Polling Question 2

- How comfortable are you that your business is compliant with economic nexus standards?
  a) Very comfortable
  b) Somewhat comfortable
  c) Not comfortable
  d) Please help!

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How Can Cohen & Company Help?

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Service Offerings

- Nexus Studies/Risk Assessments
- Voluntary Disclosure Agreements (VDAs)
- Registrations/Closures
- Compliance
- ERP/Tax Automation Implementation assistance
- Exemption Certificate Management
- Taxability Matrices
- Tax Recovery Review
- Audit Defense

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Nexus Studies

- *Nexus Studies/Risk Assessments*
- *Voluntary Disclosure Agreements (VDAs)*
- *Registrations/Closures*

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Nexus Studies/Risk Assessments

- Because of *Wayfair*, taxpayers could have nexus in states where no physical presence exists
- Cohen & Company helps taxpayers determine their nexus footprint and quantify the level of potential risk in each state
- Based on our review, we lay out individual options and partner with the taxpayer to determine the best approach forward
- Once a plan is chosen, we guide the taxpayer through the process to become compliant with taxing authorities

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Voluntary Disclosure Agreements (VDAs)

- If liability necessitates, a VDA could be the best approach toward compliance
- VDA benefits:
  - Limited lookback (36 or 48 month in most states)
  - Waives penalties
  - Taxpayer provides information instead of state auditing
  - Most states allow anonymous applications
  - Some states allow payment plans
- At completion of VDA, Taxpayer will be registered and collect/remit sales tax going forward

Registrations/Closures

- Cohen & Company can assist with opening accounts and obtaining sales tax permits
  - Based on nexus study, if registrations are required but no liability and a VDA is not necessary
- If businesses have sales tax accounts in jurisdictions where no future activity will occur, Cohen & Company can close accounts and file final returns

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Compliance

- *Compliance*
- *ERP/Tax Automation Implementation assistance*
- *Exemption Certificate Management*
- *Taxability Matrices*

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Compliance

- Partner with taxpayer to implement/improve filing processes and procedures
- Ensure businesses are filing accurate returns, on time, in the necessary jurisdictions
- Improve efficiencies and look for additional areas to minimize risk
- Manage Tax Notices
- Assist with training key business resources and communicating any applicable tax law changes

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ERP/Tax Automation Implementation Assistance

- Help taxpayer maximize value out of the system they pay for
- Coordinate demos from different software providers to ensure the best fitting solution is chosen
- Tax engines are most useful when setup properly
  - Extensive testing and knowledge of sales tax issues
- Automation reduces risk by limiting manual efforts
- Period monitoring, maintenance and evaluation of the effectiveness of systems

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Exemption Certificate Management

- Review business process and procedures for CERTs
- Help ensure CERTs are accurate and complete
- Reduce potential audit risk
- Help optimize processes and procedures
- Partner to implement software if necessary

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Taxability Matrices

- Work to understand business product offerings
- Review revenue streams/product offerings for taxpayers
- Analyze business revenues and taxability for each applicable taxing jurisdiction
  - Seek letter rulings when necessary
- Research to periodically update taxability decisions, at taxpayer direction
- Include proper citations to document technical support and enable training/education opportunities

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Polling Question 3

- How is your sales and use tax compliance currently done?
  a) In-house
  b) Third-Party Provider
  c) Combination of In-house and Third-Party Provider
  d) What's compliance?

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Tax Recovery

How Does Tax Recovery Work?

- Review the taxpayer's purchase information for potential refund opportunities and exposure items
- Discuss potential refund opportunities/exposure items and cost/benefit of filing a refund
  - Can file a refund claim for past 3 or 4 years, depending on state
- Once the taxpayer and Cohen & Company agree, we drive the refund process with state taxing authorities
  - Work to get as much information before filing as possible
  - We work the refund process from beginning to end, working directly with the state auditor in collaboration with the taxpayer (Accounting/IT/HR)

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How Does Tax Recovery Work?

- Can be done on a contingent fee basis for most taxpayers
  - Cashflow benefit for taxpayer
- Once state approves refund items:
  - Additional refund claims can be filed
  - Taxpayer systems can be updated to fix prospectively

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Who Is Tax Recovery for?

- Multistate companies
  - Especially with headquarters in Ohio
- Significant A/P purchases
- High-growth

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Who Is Tax Recovery for?

- Financial Institutions
- Manufacturers
- Distribution
- Food and Beverage
- Retail

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Audit Defense

Audit Defense

- Best preparation is to have systems in place before audit
  - Projects previously discussed all help ensure proper processes are in place
  - Best practice to catch issues before an audit arises
  - File all returns correctly and timely as possible, with no noticeable errors
- Cohen & Company can assist at any point in the audit defense project lifecycle
  - Best results if we are involved from inception
  - Can provide as much or as little assistance as the taxpayer requests
  - Act as an agent on the taxpayer’s behalf

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Audit Defense

- Cohen & Company can:
  - Manage communication with the auditor
    - Negotiate timeline with the auditor for successful audit
    - Ensure only information requested is provided to the auditor
    - Maintain timely communication
  - Work with the auditor on information to be reviewed
    - Accounts reviewed
    - Statistical sampling
  - Leverage sales tax knowledge to minimize audit liabilities
  - Potential penalty reduction

Audit Defense

- Assist with post audit identification of:
  - Significant issues
  - Necessary process changes
  - Potential training/education opportunities

Polling Question 4

- What service offering do you think would be the most beneficial to your business?
  a) Nexus Studies
  b) Compliance
  c) Tax Recovery
  d) Audit Defense
  e) More than One

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Thank You!

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Estate & Succession Planning 101: Planning Basics

Wednesday, August 2
11 a.m. to Noon EDT

Estate & Succession Planning 201: Wealth Transfer Strategies

Wednesday, August 9
11 a.m. to Noon EDT

Inflation Reduction Act: Incentives for Investment in Energy Efficiencies and Emerging Technologies

Wednesday, August 16
11 a.m. to Noon EDT

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