SALES AND USE TAX NEXUS DECISION TREE

Physical Presence[1]	Click-Through[2]	Affiliate[3]	Economic[4]	Nexus Conclusion Generally

DOES YOUR BUSINESS HAVE THE FOLLOWING?

START

1. Facilities, employees, inventory or other property permanently located in the state
   - **YES** → Traditional Physical Presence Nexus Established
   - **NO** → go to 2
2. Employees or property temporarily located in the state (solicitation, installation, services, delivery trucks)
   - **YES** → Traditional Physical Presence Nexus Established
   - **NO** → go to 3
3. Agents permanently or temporarily in the state (independent sales representatives, service providers, subcontractors)
   - **YES** → Traditional Physical Presence Nexus Established
   - **NO** → go to 4
4. In-state referal agent (paid fees or commissions) that assists with establishing the market in-state
   - **YES** → Click-Through Nexus Presumption Established
   - **NO** → go to 5
5. In-state, related entity that assists your business with establishing a market in the state (solicitation, services, similar name or brand)
   - **YES** → Affiliate Nexus Established
   - **NO** → go to 6
6. In-state presence consisting of annual sales revenue or sales transaction volume exceeding state's threshold
   - **YES** → Economic Nexus Established
   - **NO** → NO NEXUS

Footnotes:

1. All states have traditional physical presence nexus (Quill Corp v. North Dakota, 504 US 298 (1992)).
2. Approximately 20 states have click-through nexus provisions that establish a nexus presumption if click-through sales exceed the state's threshold (commonly, $10,000 of sales from annual referrals). Another dozen or so states indicate that existing general nexus provisions already include click-through nexus activities.
3. Approximately 13 states have affiliate-nexus provisions where an in-state, related entity can establish nexus for the out-of-state affiliate retailer (e.g., accept customer returns, sell under same name or brand).
4. Several states have adopted or proposed economic nexus statutes or regulations establishing nexus for out-ofstate retailers meeting certain economic conditions (commonly annual sales of $100,000 or 200 sales transactions annually (when accompanied by certain marketing activities). The legality of such provisions is being challenged in some states due to apparent conflict with the Quill standard.

IMPORTANT: Sales tax nexus is a complex and quickly evolving area. The above chart provides an overview of the general decision making involved in making nexus determinations and should not be used in place of a detailed nexus study to determine state-specific tax obligations. There are many variations of the above nexus provisions among the states that must be considered and there may be additional considerations not represented in the above chart.