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When Does a Business Have Nexus?

Presented by Nellie Akalp

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A veteran entrepreneur in the online legal document filing space since 1997, Nellie has helped more than half a million small businesses and licensed professionals get their businesses and clients set up and running. She has developed a strong following within the CPA and small business community having been honored as a Small Business Influencer Champion and was named women entrepreneur of the year by NAWBO.

Today's Agenda

Your business clients may have adopted to a permanent work-from-home policy, or they could have expanded into new states due to increased demand. These are just some situations where a business has established nexus.

In this webinar, we'll review:

- A review of Nexus
- How to educate your clients on compliance
- Nexus at the state level
- When foreign qualification may be needed when doing business in multiple states
- Steps to setup payroll for a remote team
- A review of sales and use tax

What is Nexus?

What is Nexus?

- When a business has "Nexus" in another state, it implies the company has a connection to the state in some way.
- There is no specific shared definition of nexus across the 50 states.
- Rules for determining nexus change constantly.
- This means that a business must look at each state individually when determining nexus and must stay on top of changing regulations.
- In general, a business has nexus when:
  - The business has physical presence like an office, store, or warehouse, in the state.
  - Economic activity without a physical presence might also constitute a nexus.
  - Most states have thresholds that require sales tax nexus for companies with more than 200 sales transactions or $100,000 in sales within the state annually.

Types of Nexus

Physical Nexus

- Physical nexus is the presence of employees, agents, brokers, representatives, or subcontractors working on behalf of the entity within another state.
- Physical nexus can also be created by the presence of property such as offices, real estate, vehicles, physically located within another state.
- Physical nexus can be triggered by an out of state brick and mortar business too.
- Out of state warehouses with inventory also trigger physical nexus.
- Qualifying criteria for physical nexus varies by state.

Economic Nexus

- Economic nexus, simply stated, requires sellers to collect sales tax in states where the seller's sales exceed the state's monetary or transactional threshold.
- Because sales tax regulations vary by state, each state has its own rules, registration process, and tax rate for out-of-state retailers that reach economic nexus in that state.
- In most cases, when a remote seller or marketplace facilitator without a physical presence in a state has “nexus” in that state, it must obtain a seller’s permit and collect and remit the state’s sales tax on each taxable purchase.
- Nearly every state has enacted nexus laws that affect remote sellers.

Income Nexus

- If you have employees working and/or residing in another state, then you have income nexus in that state.
- Nexus occurs when your employee conducts work in a different state, whether or not the employee resides in that state.
- As an employer, you must comply with the other state's payroll tax regulations.
- Many states have reciprocal agreements with other states, so make sure you know which states participate.
- For example, Arizona has reciprocal taxation agreements with California, Indiana, Oregon, and Virginia.
- Therefore, residents in these states who conduct business in Arizona can request an exemption from income tax withholding in Arizona.

Affiliate Nexus

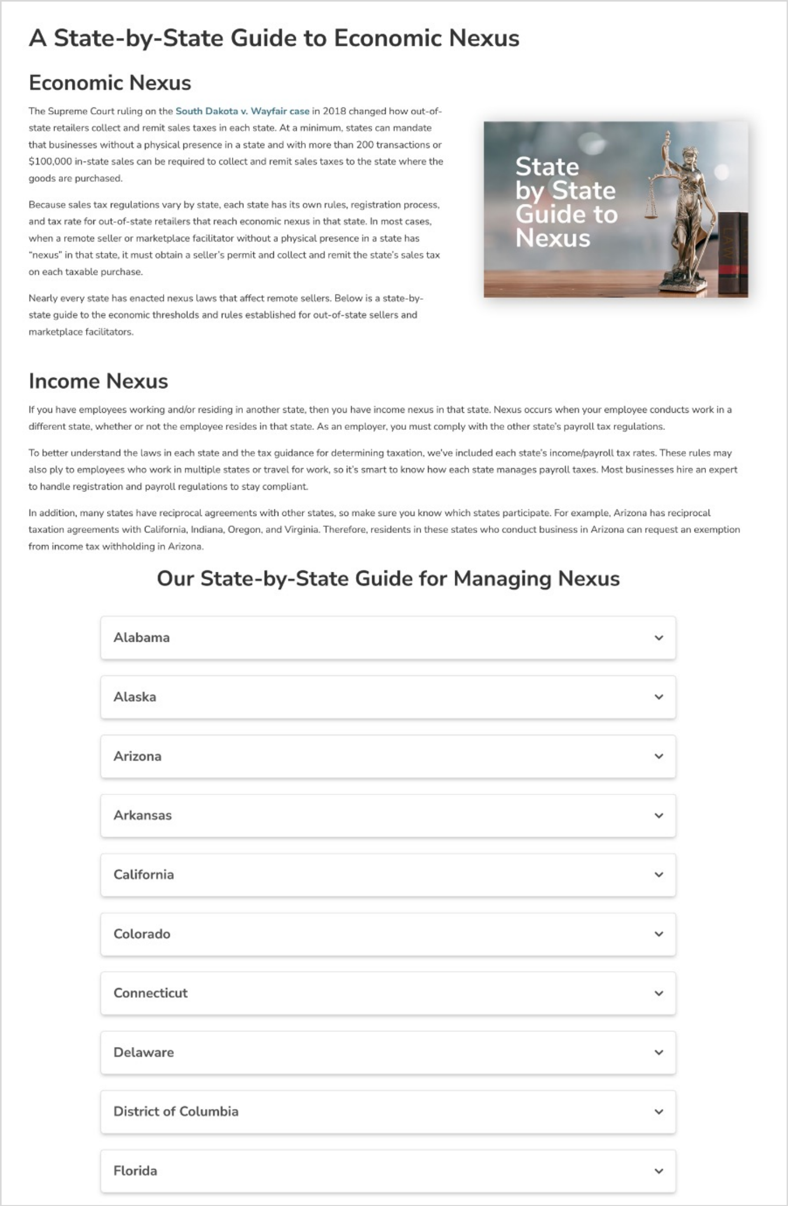
- The most common affiliate nexus is click-through nexus.
- Click-through nexus enables states to tax a business that receives a significant amount of referrals from other businesses in the state.
- Even if the business doesn’t have a substantial physical or economic presence there.
- Click-through nexus means that the sales you make through referral programs and affiliate links are taxable.
- Click-through nexus predates economic nexus and falls under affiliate nexus.

State-by-State Rules for Nexus

Because nexus rules vary by state, a state-by-state guide is more than we can cover in today's webinar.

You can visit the below link for a state-by-state guide on Nexus rules:

CorpNet.com/blog/state-guide-economic-nexus/



A State-by-State Guide to Economic Nexus

Economic Nexus

The Supreme Court ruling on the South Dakota v. Wayfair case in 2018 changed how out-of-state retailers collect and remit sales taxes in each state. At a minimum, states can mandate that businesses without a physical presence in a state and with more than 200 transactions or $100,000 in-state sales can be required to collect and remit sales taxes to the state where the goods are purchased.

Because sales tax regulations vary by state, each state has its own rules, registration process, and tax rate for out-of-state retailers that reach economic nexus in that state. In most cases, when a remote seller or marketplace facilitator without a physical presence in a state has "nexus" in that state, it must obtain a seller's permit and collect and remit the state's sales tax on each taxable purchase.

Nearly every state has enacted nexus laws that affect remote sellers. Below is a state-by-state guide to the economic thresholds and rules established for out-of-state sellers and marketplace facilitators.

Income Nexus

If you have employees working and/or residing in another state, then you have income nexus in that state. Nexus occurs when your employee conducts work in a different state, whether or not the employee resides in that state. As an employer, you must comply with the other state's payroll tax regulations.

To better understand the laws in each state and the tax guidance for determining taxation, we've included each state's income/payroll tax rates. These rules may also ply to employees who work in multiple states or travel for work, so it's smart to know how each state manages payroll taxes. Most businesses hire an expert to handle registration and payroll regulations to stay compliant.

In addition, many states have reciprocal agreements with other states, so make sure you know which states participate. For example, Arizona has reciprocal taxation agreements with California, Indiana, Oregon, and Virginia. Therefore, residents in these states who conduct business in Arizona can request an exemption from income tax withholding in Arizona.

Our State-by-State Guide for Managing Nexus

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida

Examples of Nexus

Physical Nexus

Example 1:

Location of Business: Ohio

Location of Employees: Ohio, California, Colorado, and Georgia

Example 2:

Location of Business: Ohio

Location of Dropship Vendor: California

Example 3:

Location of Business: Ohio

Location of Physical Inventory Stored in Out of State Warehouse: Alabama

Economic Nexus

Example 1:

The location of business is in Ohio

Business receives annual sales over $100,000 in Arizona and Colorado

Example 2:

The location of business is in Ohio

Business receives 200 orders annually in Arizona and Colorado

Affiliate Nexus

Example 1:

The location of business is in Ohio

Business receives annual sales over $2,000 via affiliate links in Connecticut

Example 2:

The location of business is in Ohio

Business receives annual sales over $10,000 via affiliate links in New York

Do you manage business incorporation and compliance activities for your organization or on behalf of your clients?

- Yes, for my organization
- Yes, on behalf of my clients
- Yes, I advise my clients
- Not currently, but I am interested in offering this service

Polling Question #1

When Foreign Qualification May be Needed

Foreign Qualification

To legally conduct business in a state other than the state where the LLC or Corporation was initially formed (also referred to as the home state), the Corporation or LLC needs to foreign qualify within the state that business is intended in.

Examples when a foreign qualification is needed:

- If you have a physical presence in the state, office space or retail store.
- If you apply for a business license in the state.
- If you often conduct face-to-face meetings with clients in the state.
- If a substantial amount of company revenue comes from the state.
- If employees are working in the state and you are paying state payroll taxes.

Domestic vs. Foreign

- Domestic and foreign in this context refers to the state where the LLC is created.
- A company which is registered as an LLC in Michigan, and which does business in Michigan is operating as a domestic LLC.
- If the same company is “doing business” in Illinois (a physical presence), it is operating as a foreign LLC in the other state.
- This commonly comes up when LLCs are formed in states with business-friendly tax laws but do business in their home State. It may also occur when a business starts expanding into other States.
- A foreign LLC is required to register with the Secretary of State in the foreign State. The LLC certificate (and other documents) issued by the home State will be needed.

What Qualifies as Doing Business?

When reviewing the need for foreign qualification, you have to look closely at your business activities.

The exact definition of “doing business” varies by state, but typically it equates to:

- The business has a physical presence (office, warehouse, or retail store) in the state
- The business conducts in-person meetings with clients or customers in the state
- The business is structured as a LLC, corporation, or limited partnership
- The business has employees living/working in the state
- You’ve reached a sales threshold in that state

What Doesn't Qualify as Doing Business?

In most states, the following business activities do not constitute transacting business in a state:

- Defending or settling a lawsuit
- Dealing with internal LLC or corporate business such as member meetings
- Having a bank account in the state
- Selling through independent contractors
- Securing or collecting debts
- Conducting an isolated transaction that is completed within 180 days and not repeated

Risks of Not Filing for Foreign Qualification

Failing to foreign qualify when it's required can cause significant issues for your business clients, including being penalized for operating illegally in the states where business is conducted.

Some of the penalties include:

- Fines and interest for the time the company was conducting business in the state and was not foreign qualified
- Payment for missing filing fees the company should have paid.
- Payment of back taxes for the time the company was doing business without being foreign qualified.
- Ineligibility to sue in the state, because an entity can't bring suit in a state where it isn't registered.

How do you currently manage business incorporation and compliance activities?

- I currently use CorpNet
- I use another filing and compliance service
- Internet research and spreadsheets
- Other

Polling Question #2

Employment Taxes

Tax	Description	Government	Paid By
Income Tax Withholding	Taxes withheld from employee pay for federal income taxes owed by the employees. The amount is determined by the employee's W-4.	Federal & State	Employee
FICA Tax	Social security and Medicare taxes, called FICA (Federal Insurance Contributions Act), are shared between employees and employers.	Federal	Both
Additional Medicare Tax	An employer must withhold part of social security and Medicare taxes from employees' wages. The employer also pays a matching amount.	Federal	Employee
FUTA Tax	The Federal Unemployment Tax Act (FUTA) provides for payments of unemployment compensation to workers who have lost their jobs.	Federal	Employer
Self-Employment Tax	Self-employment tax (SE tax) is a social security and Medicare tax primarily for individuals who work for themselves.	Federal	Employee
Unemployment Insurance Tax	State unemployment instance (SUI) tax is similar to FUTA, but controlled at the state level. Amounts, requirements, and ownership vary by state.	State	Employer
Disability Tax or Insurance	Disability tax (or insurance) is controlled at the state level. Amounts, requirements, and ownership vary by state.	State	Employer
Worker's Compensation Tax	Provides temporary benefit payments to workers for non-work-related illness, injury, or pregnancy. Varies by state.	State	Employee
State and Local Income Tax	State income tax (SIT) and local taxes varied by state, county, or city.	State & Local	Employee

Payroll Tax Processing

Home State vs. Out-of-State Payroll Tax Requirements

- Let's say you have employees living in different states from where the business is located (all the more possible with so many remote workers getting hired), what do you do then?
- As an employer, you must withhold and deposit federal taxes and withhold state income taxes in the state where the employee lives.
- Employing workers in other states requires your business to register with that state's tax agency, acquire a state income tax withholding number, get an unemployment insurance number, and withhold income taxes.
- You must also register with the state's Department of Labor and follow the state's laws for employees including, minimum wage, labor regulations, state disability insurance, and worker's compensation rules.

Reciprocity and Reciprocal States

- Reciprocal agreements between states allow employees that work in one state (but live in another) to only pay income taxes to their state of residency.
- If reciprocity exists between the two states, employees will need to complete and deliver a non-residency certificate to you in order to have residency state tax withheld instead of the work state tax.
- While reciprocity is determined by an employee's home address and pertains to their income tax withheld, unemployment liability is typically determined by an employee's work address.

State	Reciprocity States	Non-Resident Certificate
Arizona	California, Indiana, Oregon and Virginia	WEC
Illinois	Iowa, Kentucky, Michigan and Wisconsin	IL-W-5-NR
Indiana	Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin	WH-47
Iowa	Illinois	44-016
Kentucky	Illinois, Indiana, Michigan, Ohio, Virginia, West Virginia and Wisconsin	42A809
Maryland	Pennsylvania, Virginia, Washington, D.C. and West Virginia	MW 507
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio and Wisconsin	MI-W4
Minnesota	Michigan and North Dakota	MWR
Montana	North Dakota	MT-R
New Jersey	Pennsylvania*	NJ-165
North Dakota	Minnesota and Montana	NDW-R
Ohio	Indiana, Kentucky, Michigan, Pennsylvania and West Virginia	IT-4NR
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia	REV-419
Virginia	Kentucky, Maryland, Pennsylvania, Washington, D.C. and West Virginia	VA-4
Washington, D.C.	Maryland and Virginia	D-4A
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania and Virginia	WV/IT-104
Wisconsin	Illinois, Indiana, Kentucky and Michigan	W-220

Steps to Setup Payroll for a Remote Team

Setup a Formal Payroll Process

- Obtain an EIN.
- Register for EFTPS.
- Obtain a local or state business ID if required.
- Collect your employee information: name, start date, social security number, date of birth, compensation details, Form I-9, Form W-4.
- Classify your employees into: independent contractor vs. employee and exempt vs. nonexempt.
- Chose a pay period.
- Manually calculate your tax requirements per employee or pick a payroll system like Gusto or Paychex to make payroll a lot easier on yourself.

Preventing Payroll Tax Penalties

- All payroll taxes must be deposited with the government in a timely manner.
- Employers have the responsibility to file employment-related tax returns and deposit employment taxes according to set deadlines.
- If you fail to make a timely deposit, you may be subject to a failure-to-deposit penalty of up to 15%.
- Responsible staff in the company who fail to deposit the amounts withheld from employees' paychecks may be subject to a 100% personal liability.
- This recovery penalty is triggered when a person with the authority to make payment decisions willfully fails to deposit the taxes.

Tips for Controlling Costs

Hire Independent Contractors

- Independent contractors are not considered employees, and therefore, your business does not have to pay or match payroll taxes.
- Be careful to stick to the guidelines established for independent contractor status, or the IRS and/or the states' tax boards could come after you for back payment of employer taxes.

LLC's Can Electing S Corporation Status

- S Corporations are structured as a pass-through business entity, which means profits and losses are passed through to the company's owners/shareholders.
- S Corporation owners are also considered employees, so their taxable salaries can be lowered, and there are fewer payroll taxes to be paid.

Tips for Making Payroll Processing Easier

Use Automated Payroll Software

- Payroll software allows you to onboard employees online and pay your workers via direct deposit instead of by check.
- Some software services automatically calculate state and federal taxes while also handling your tax filings and payments.
- The investment can easily be worth the cost.

Quality payroll automation providers:

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Outsource Payroll Processing to a PEO

- A PEO is a professional employer organization.
- A PEO is an all-inclusive outsourcing option for your most time-consuming HR tasks and employer liabilities, such as payroll and benefits.
- A PEO can usually give you access to a wider range of benefits options, often at better rates, than what you could access on your own as a small or medium-sized organization.
- Through a co-employment relationship with a PEO – your company can effectively and efficiently mitigate a substantial portion of the risk and responsibility associated with having employees.
- PEOs help with payroll tasks such as: payroll processing, paying your employees, payroll record keeping and compliance, online paystubs and W-2s, payroll management reports, garnishment and deduction administration, and PTO accruals.

How frequently do you form new entities or file reports for existing entities?

- 0-4 times per year
- 5-10 times per year
- 11-20 times per year
- 20+ times per year

Polling Question #3

Sales Tax Nexus

What is Sales Tax Nexus?

- Sales tax nexus is the link between the seller and state that requires the seller to register, collect, and remit sales tax in the state.
- Examples include:
  - Your business is in Ohio
  - You sell products through Amazon to a customer in California
  - Your products are distributed through one of Amazon’s warehouses in California
- In that case:
  - You have nexus in California
  - You must collect the California sales tax from the customer
  - You must remit the sales tax to the state

An Example of Nexus?

- Your business is in Ohio
- You sell products through Amazon to a customer in California
- Your products are distributed through one of Amazon’s warehouses in California
- In that case:
  - You have nexus in California
  - You must collect the California sales tax from the customer
  - You must remit the sales tax to the state

When Do You Have Nexus in a State?

- There is no specific shared definition of nexus across the 50 states.
- Rules for determining nexus change constantly.
- This means that a business must look at each state individually when determining sales tax nexus and must stay on top of changing regulations.
- In general:
  - Having a physical presence, such as an office, store, or warehouse, in the state establishes nexus.
  - Economic activity without a physical presence might also constitute a nexus.
  - Most states have thresholds that require sales tax nexus for companies with more than 200 sales transactions or $100,000 in sales within the state annually.

Remote Sellers and Nexus

Remote seller nexus comes in various flavors. A state may address one or more in its laws to require businesses that meet the criteria to register to collect and remit sales tax:

- **Click Through Nexus** – When an out-of-state business contracts with an in-state individual or entity that refers (either directly or indirectly) potential customers to the out-of-state business through a web link to receive a commission or other compensation when a sale is made.
- **Affiliate Nexus** – When an out-of-state business's employee, agent, or person otherwise affiliated with the out-of-state company has a physical presence in the state.
- **Marketplace Nexus** – When an online marketplace has its e-commerce infrastructure, customer service center, marketing operations, and payment processing services in the state. In this scenario, the marketplace operator has to obtain a seller's permit and collect and remit sales tax rather than the individual sellers that use the platform to sell products in that state.

Sales and Use Tax

Sales vs. Use Tax

Sales Tax

- Sales tax is a tax on the sale, transfer, or exchange of product or service that is taxable.
- Sales tax is often referred to as a retail tax because it is generally added to the sales price of the product or service and collected at the time of purchase.
- Sales tax is a consumer-based tax that is transactional.

Use Tax

- Use tax is a tax on the storage, use, or consumption of a taxable product or service on which no sales tax has been paid.
- This is generally made when the purchase is made outside the taxing jurisdiction.
- Use tax is broken down into two groups which include consumer use tax and seller use tax. Seller use tax is also referred to as retailer use tax, vendor use tax, or merchant use tax.

Sales Tax Jurisdictions

- Sales tax is imposed by most states and about 14,000 local jurisdictions that include counties, municipalities, and other local governmental bodies.
- Forty-five states and the District of Columbia collect some form of sales taxes.
- The five states that do not collect sales tax include Alaska, Delaware, Montana, New Hampshire, and Oregon.

Pass-Through Tax

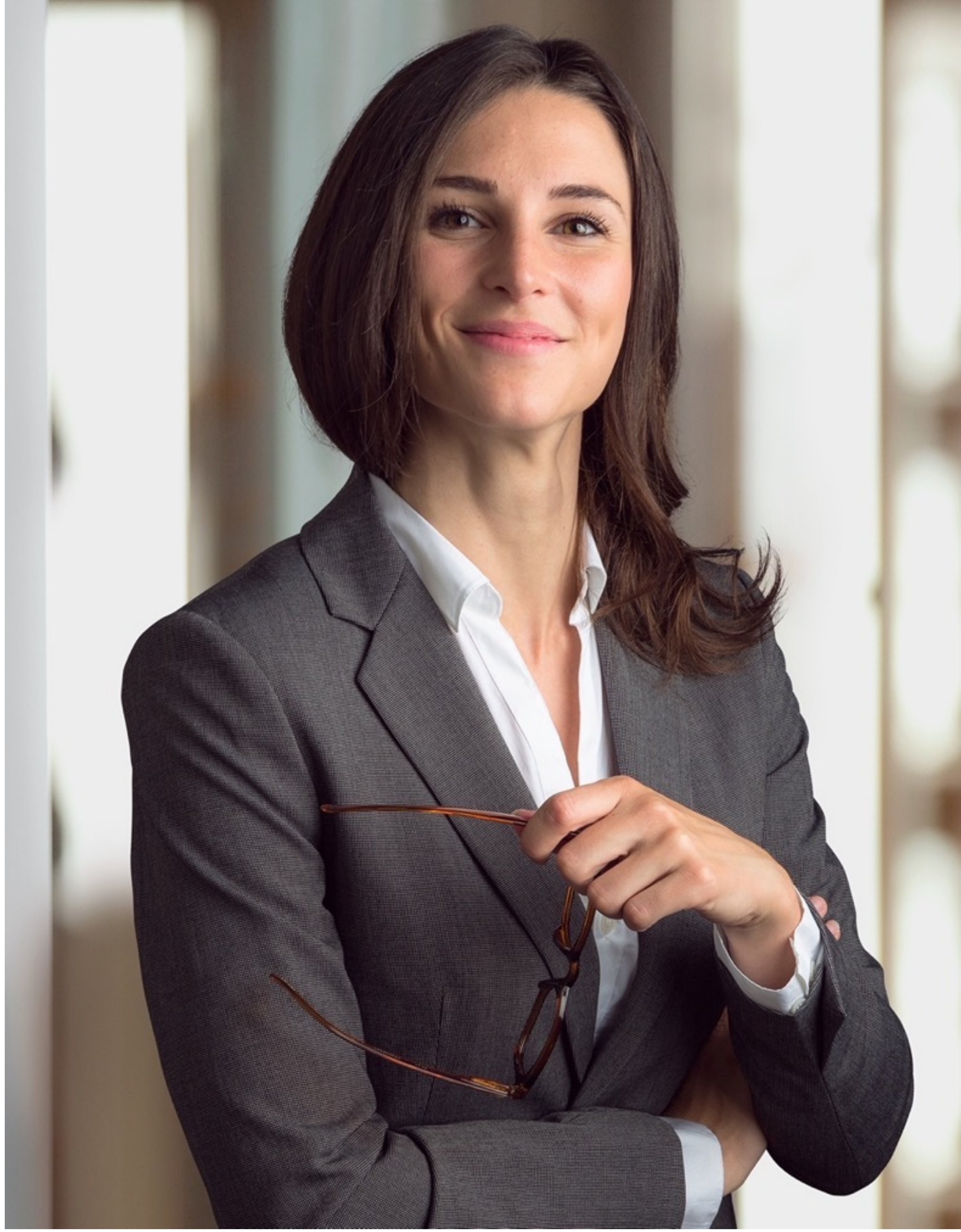
Consumer Pays Tax → Business Collects Tax → Government Receives Tax

- Sales tax is a pass-through tax
- This means the business owner doesn't actually have to pay the sales tax
- Instead, the business owner simply serves as a conduit to collect the sales tax from the consumer and transfers it to the government

Business Entities That Qualify as Pass-Through Entities

- Corporations, and LLCs that elect to be taxed as a corporation, are not considered pass-through entities.
  - General partnerships
  - Limited partnerships
- Limited Liability Partnerships
- Limited Liability Companies (LLCs)
- S Corporations

Sales Tax Processing



Important Steps for Sales Tax

- Register for sales and use tax by applying for a Sales Tax ID Number, Seller's Permit, or a Sales Tax Permit.
- Know your sales tax rates. Sales tax varies by state, so it's important for you to validate sales tax rates at the state, county, city, or zip code level for any states where you have nexus.
- Calculate and collect sales tax at the time of purchase.
- File a sales tax return and remit it to the proper tax authorities in the states where you have nexus.

Automation Options for Managing Sales Tax

- There are a number of sales tax automation companies that can help make this process efficient.
- The software will calculate the right sales tax to collect, create sales tax reports, and file reports for you.
- These services are especially helpful if you have nexus in many states or if you are in a state that changes sales tax at the county and city level.

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Would you like to learn more about working with CorpNet?

- Yes, I am interested in possibly using CorpNet within my organization
- Yes, I am interested in learning more about CorpNet's partner program
- Not at this time

Polling Question #4

Helpful Resources

CorpNet Tools Are Your Resources

- Business Name Search Tool
- Interactive Business Structure Wizard Tool
- CorpNet Compliance Portal With Monitoring and Proactive Alerts
- Annual Meeting Minutes Services
- Business Guides and Checklists
- The CorpNet Blog

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