

Business Tax Updates



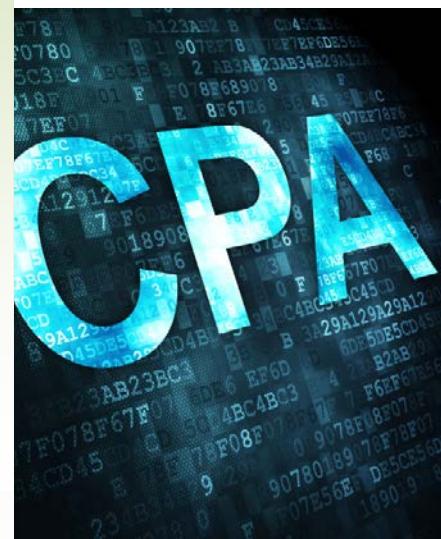
Our Team

About Us

Gordon J. Maier & Company, LLP was founded in 1935 and is still locally owned. We are managed by partners who have been with the company for over 17 years. They all take an active role in day-to-day operations. In turn, the company has made a commitment to their professional growth, including continuing professional education programs.

One of the unique benefits you receive working with Gordon J. Maier & Company, LLP results from our operating style — that of being accessible and quickly responsive to your needs. Due to our long-standing experience, we know personalized attention is the key to establishing and maintaining successful relationships. During the past several decades, we have developed a network of relationships with the finest, most respected law firms, banks and other professional organizations in the Southeastern Wisconsin area. The mutual respect we share is a source of pride within our company.

“There are now 16 states that have adopted some form of economic nexus.”



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Do you have Sales Tax Nexus?

When was the last time your company took a look at your sales compliance? Now is the time to review which states you should be paying sales tax in. Over the last several years sales tax compliance has been reliant on different court cases within the Supreme Court. The biggest decision known historically has been the Quill Case which relied on the physical presence test in order to have the obligation to collect and remit sales tax to that state. The most recent case was South Dakota v. Wayfair, Inc. This case relates to economic presence and how it can trigger nexus within the state. Economic presence is when the company is making sales within the state. This could be either online sales or sales within the state. In the ruling under this case, the Supreme Court liked the threshold that South Dakota had come up with which is \$100,000 in gross taxable sales or 200 transactions within the state. So, what does this mean for you?

There are now 16 states have adopted some form of economic nexus. Every state is different but it is important to check the rules and make sure that you are complying with each state that you do business in. The states that have adopted the economic nexus standard are Alabama, Connecticut, Georgia, Hawaii, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maine, Mississippi, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, and Wyoming. It should be noted that economic presence does not discount physical presence. For example, if a company already has physical presence in the state and is already collecting and remitting sales tax, economic presence would not apply but nexus still occurs due to physical presence. It is likely that most states will go this direction.

Economic nexus and Physical presence are not the only types of nexus. There is also Affiliate nexus and Click-through nexus. Both of these are very similar. Affiliate Nexus is created when an affiliated person of the retailer has physical presence or with employees in the state to obtain sufficient nexus, the retailer will need to collect sales and use tax within that state. Click-Through Nexus occurs when an out-of-state business gets referred by an in-state online business by using links to the out-of-state's website to buy products. This occurs when a compensation agreement is put into place between the seller and in-state business. The following states have affiliate nexus thresholds: Alabama, Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, and West Virginia. The following states have Click-Through Nexus: Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Washington.

Some people may have some confusion about whether this relates to what is taxed. What is taxed depends upon each state. Each state will have different rules on the certain taxability of each type of transaction so it is important to look at your business and what type of sales would constitute taxability within each state business is being done.

Each state that has adopted the economic nexus has come up with different thresholds and is dependent on different facts and circumstances. Does your company have sales in many different states and not sure if you are in compliance with all of these rules? Contact our office today for a consultation!

Meals and Entertainment

Historically, Businesses have been able to take a 50% deduction on their tax return for meals and entertainment. Recently with the 2017 Tax Cuts Act, some changes have been made.

Here is what you should know:

- Any amounts paid or incurred after December 31, 2017, entertainment expenses are generally not deductible. Entertainment typically includes entertaining guests at night clubs, sporting events, theaters, etc.
- After 2025, meals will also be taken out of the deductible expenses.

Employee Benefit Plan Compliance: Understanding Audit Requirements

Employee benefit plans such as profit sharing, 401(k) and defined benefit plans are required to report their annual activity on Form 5500, *Annual Return/Report of Employee Benefit Plan*. The due date for Form 5500 is the last day of the seventh month after the plan year ends (July 31 for a calendar-year plan), so with the deadline quickly approaching it is important for plan sponsors to review the filing requirements for their employee benefit plan.

One important aspect plan sponsors need to be aware of is the number of eligible participants there in the plan at the beginning of the plan year. Under the Employment Retirement Income Security Act of 1974 (ERISA), plans with 100 or more eligible participants at the beginning of the plan year are required to have an annual audit of plan financial statements done by an independent qualified public accounting firm. Plans meeting these criteria are considered to be a “large plan”. When calculating the number of eligible participants, the following are included:

- Former/retired employees who have a balance in their account on the first day of the plan year
- Active employees who are eligible and currently participating in the plan on the first day of the plan year
- Active participants who have chosen not to participate, but are still eligible to the participant in the plan on the first day of the plan year

Employees that are not eligible to be a participant on the first day of the plan year are not included in this calculation. An employee becomes eligible to participate in their employer’s retirement plan when they meet certain conditions stated in the plan document. In a qualified plan, generally employees would meet the eligibility requirements if they are at least 21 years of age and have at least 1 year of service; however, all plans are different so it is important to review your plan document when determining eligible participants. There is an exception to the threshold of 100 eligible participants. Technically, any 401k plan with over 100 eligible participants is considered a “large plan”, which requires an audit under the provisions of ERISA. However, due to what is known as the “80-120 participant rule”, any plan that was filed in the previous year as a “small” plan and is still between 80 and 120 participants can continue to file as a “small” plan and avoid this audit requirement. However, if the number of eligible participants reaches 120 by the first day of the plan year, an ERISA audit requirement is triggered.

The penalties for filing a late employee benefit plan audit can be very costly. Depending on the size and nature of the plan, penalty fees for late Form 5500 filings are around \$25 for each day after the deadline, up to \$15,000. Due to the implications involved, it is important for plan sponsors to talk with their third-party administrators about the number of eligible participants and the filing requirements involved with their employee benefit plan.

For more information on this topic, or to learn how Gordon J. Maier employee benefit plan specialists can help, contact our team.

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