Georgia’s Sales & Use Tax Evolution By Mark L. Wyssbrod, CPA

Sales & Use Tax: A Growth Industry
Since June 21, 2018 the landscape of sales and use tax has been evolving as a growth industry. Many businesses, professionals and consumers are still unaware of the ramifications. The new environment many are finding themselves in is unfamiliar. The comfortable rules of a physical nexus stemming from the Supreme Court’s 1992 decision in Quill v. North Dakota can no longer provide safety. Although a physical nexus will remain to likely cause a sales tax nexus; not having a physical nexus will not longer guarantee not having a sales tax nexus.

On June 21, 2018 The United States Supreme Court ruled 5-4 in South Dakota v. Wayfair (Wayfair) that a business without a physical presence in a state with more than 200 transactions or $100,000 in-state sales collect and remit sales tax on transactions. Two new important sales and use tax terms are “economic nexus” and “click-through nexus.”

New Terms: Economic Nexus & Click-through Nexus
Economic nexus is a standard which looks to criteria other than a physical presence in linking a seller’s connection to a state. In the Wayfair, greater than 200 transactions or $100,000 of revenues delivered to a state created economic basis. Although the Supreme Court’s decision only applies to the Wayfair case it should be noted many states have since enacted rules to mirror the results of the Wayfair case. States have been transforming their new sales tax rules and regulations to the “economic nexus” standard which is based on number of transactions, revenue or other criteria. To emphasis, the new state rules and regulations highlight collection of sales tax base on the delivery address of the transactions instead of the seller’s location.

Additionally, many states have responded to the Wayfair ruling with click-through nexus rules. Click-through nexus is when there is an agreement to reward a person (or organization) in a state directly or indirectly for referring potential purchasers of goods (or services) through an internet link, website or otherwise.

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2 https://www.law.cornell.edu/background/internet/Quill.htm
3 https://www.aicpa.org/advocacy/state/south-dakota-v-wayfair.html
The amount for click-through nexus can be as little as $5,000; however, it is generally $10,000 for the preceding 12 months. It is important for organizations to inform their accounting, tax and outside advisor of their advertising and marketing arrangement which could trigger click-through nexus. A click-through nexus can generate a sales tax nexus for all other transactions.

**Georgia HB 61: Notices & Penalties**

Georgia has evolved its sales tax rules and following the Wayfair ruling as well as incorporating economic nexus standards. Georgia House Bill (HB) 61\(^5\) states out of state seller’s with more than $250,000 in sales or 200 transactions are required to collect sales tax as of January 1, 2019. As of January 1, 2020, out of state seller’s with more than $100,000 in sales or 200 transactions will be required to collect sales tax.

Georgia HB 61 also states as of January 1, 2019 businesses must notify each potential purchaser immediately prior to the completion of each retail sale transaction with the following statement:

“Sales or use taxes may be due to the State of Georgia on the purchase(s) identified in this statement as Georgia taxes were not collected at the time of purchase. Georgia law requires certain consumers to file a Sales and Use tax return remitting any unpaid taxes due to the State of Georgia.”

The seller must also deliver an annual statement to purchasers and the Georgia Department of Revenue on or before January 31 of each year. The statement includes each purchaser with $500.00 or more in aggregate purchases during the prior calendar year in an envelope containing the words ‘IMPORTANT TAX DOCUMENT ENCLOSED” on the exterior of the mailing by first class mail and separate from any other shipment. The annual statement must include:

- Total amount paid by the purchaser for retail sales from the seller during the previous calendar year
- Dates of purchases
- Amounts of each purchase
- Category of each purchase
- Whether or not the purchase is exempt from taxation
- The following statement:
  “Sales or use taxes may be due to the State of Georgia on the purchase(s) identified in this statement as Georgia taxes were not collected at the time of purchase. Georgia law

requires certain consumers to file a Sales and Use tax return remitting any unpaid taxes due to the State of Georgia.”

Penalties are $5 for failing to provide “check-out” notification and $10 for failing to mail annual report to purchaser, $10 for failing to mail annual report to the Georgia Department of Revenue. The penalties are on a per-customer, per-report basis. Companies may be required to place the statement on their website and highly visibly during the check-out process.

Time For A Checkup
Organizations should use this time to review their sales tax systems to ensure accuracy. Simple errors or unapplied updates in legacy systems may warrant a select or full system review depending on the circumstances. For instance, the State of Georgia considers charges for shipping, delivery, freight, etc. to be part of the sale price and thus taxable. This is even if you separately state the shipping charge on the invoice. Be certain company, clients and customers are collecting and remitting the correct sales and use taxes.

A Layered System
Sales tax is a layered tax system. States have a base rate in which counties, municipalities, cities and other government agencies add layered rates. The result is one state can have a variety of sales tax rates. The sales and use tax regulations in Georgia can affect over 159 counties in it adds a variety of sales tax options. Additionally, cities can include a selected sales tax option. Examples of sales tax options are MARTA, SPLOST, Education, Other, Special, and Transportation\(^6\). As a result, the sales tax rate in Georgia begins from the state base rate of 4% and then varies from 6% to 8.9% based on the zip code of delivery.

Georgia is just one state an organization may be required to comply with. Managers may conclude internal resources can be better utilized. Many organizations are engaging a third-party consultant, such as Avalara, TaxJar and Intuit QuickBooks Solutions to guide them through this transitional period. The third-party consultant will assist with nexus requirements, filing requirements and remittance.

In conclusions, companies, professionals as well as consumers will want to review Georgia HB 61. The compliance burden has increased for many in-state and out-of-state businesses. For a


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business to effectively plan and navigate Georgia HB 61 owners and managers will need the proper amount of time, resources and strategy.

Mark Wyssbrod has over 20 years of business experience. Mr. Wyssbrod transitioned to Industry after serving 15 years in Public Accounting. Mr. Wyssbrod is a small business owner and entrepreneur. In a CFO turn CFGrow position he increased team efforts and transitioned the traditional accounting system to an ERP.