

Two Down and One to Go Florida and Pennsylvania Join the Economic Nexus Party

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Published June 21, 2021 - If there is one thing that brings both Republicans and Democrats together, it's the ability to increase revenues by taxing those who can't vote in your state. One way to do that is to join the other 43 states in jumping on the Economic Nexus bandwagon. While the Supreme Court cracked the door open when they decided *Wayfair vs South Dakota*, the states have rushed through faster than college kids leaving for Spring Break.

These last couple of months have been busy with the legislatures of both Florida and Kansas deciding that they didn't want to be left out of the ability to tax those businesses which are selling into the state but are not physically present in the state. Although they both have established a threshold of \$100,000 and an effective date of July 1, 2021, there are some notable differences between the two.

Florida is very unique in several ways. The first is that any sales done through a marketplace seller (think Amazon, Etsy, or eBay) are specifically excluded from calculating the threshold. The reason for this? Those sellers are required to charge and remit sales tax under their own separate law. Second, each business is allowed to take a deduction of 2.5% (up to a limit of \$1,200) from the amount to be remitted. This is to help compensate the businesses for the additional cost to comply with the law. Lastly, to make things "easier" for businesses to be able to comply, the state is requiring all of the returns be filed, and any taxes owed to be paid, using an electronic method. They were kind enough to put a link front and center on their website.

But heads up! If you want a waiver on any penalties and interest from not filing on any pre-July 1st sales that you maybe should have, you must register your business with the state by October 1st, 2021. If they catch you after that, it could become more costly.

The Kansas' Department of Revenue, on the other hand, had previously stated that, based on their interpretation of state laws, a business having a mere \$1 of sales into the state was creating enough Economic Nexus to be required to collect and remit sales tax. The Kansas Attorney General disagreed. Rather than leaving a window open for a costly legal fight up to the Supreme Court, the Kansas Legislature judiciously decided to settle the matter and follow the crowd, setting their threshold by law at the \$100,000.

Now, as a reminder, Economic Nexus is just one standard that can cause a business to be subject to the tax rules of a state. Physical Nexus is still alive and well. So, when you are considering if you have to collect, file, and remit, you must look at your operations in light of both standards.

But of the 46 states that charge a sales tax, this now leaves Missouri as the lone hold-out on the Economic Nexus landscape.

My bet? It won't be for much longer.

And once Economic Nexus becomes the standard nationwide for sales tax, it shouldn't be long before someone decides to challenge the physical presence standard for income tax. Stay tuned...

Dopkins can assist you in determining your state filing requirements. For more information, please contact your Client Service Coordinator or [Victoria S. Carlin](mailto:Victoria.S.Carlin@dopkins.com) at vcarlin@dopkins.com.

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