

Webinar to Begin Shortly

**Avoiding State Indirect Tax Headaches:  
*Practical Approaches to Proactive Sales & Use Tax  
and Gross Receipts Tax Compliance***

Event Disclaimer

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August 23, 2023

elliott davis

The background is a dark blue map of the United States with white text overlaid. The text is centered and reads: "Avoiding State Indirect Tax Headaches: Practical Approaches to Proactive Sales & Use Tax and Gross Receipts Tax Compliance".

# Avoiding State Indirect Tax Headaches: *Practical Approaches to Proactive Sales & Use Tax and Gross Receipts Tax Compliance*

August 23, 2023

elliott davis



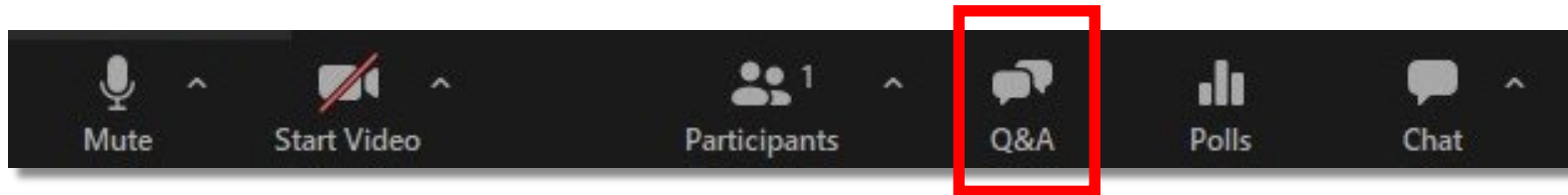
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# Questions

Submit questions via the Q&A box  
Questions will be addressed at the end, or via email



# CPE Requirements



Stay on for the duration of the webinar



Respond to all 4 polling questions

*For technical difficulties with polling, please notify us via the Q&A box in Zoom*



Complete and submit the survey following the webinar

# Replay Link

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A replay link will be emailed to you in the coming weeks  
A copy of the slides presented today will also be made available at that time

# Feedback Welcomed

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We welcome and appreciate your feedback  
Goal of always getting better

# Upcoming Events

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Please visit [elliottdavis.com/events](https://elliottdavis.com/events) to view upcoming webinars and events



# Speakers

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**Will Clarke, JD EA**  
**Senior Manager, State and Local Tax**



**Gunner Huggins, CPA**  
**Manager, State and Local Tax**



# Agenda

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- 1 Indirect Tax Introduction: Why Sweat It?
- 2 Sales & Use Tax: Nexus Expansion
- 3 Gross Receipts Taxes: What You Should Know
- 4 Considerations for Managing Risk
- 5 Compliance Best Practices







# Polling Question #1

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# Indirect Taxes: Why Sweat It?

# Current Landscape

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## AI

Implementation of  
Advanced Technologies



## 3rd Parties

Utilization of 3<sup>rd</sup> Party  
Contingent Fee Auditors



## Increased Scrutiny

State DORs Taking More  
Aggressive Stances



## Wayfair (5+ years later)

Growing Interest and Penalties  
Unlimited Lookback

# Why Is It Important?

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- Constant concern over historical exposures and risk of audit
- Unlimited lookback periods
- Growing penalties and interest
- Due diligence
- ASC 450 / ASC 740





# Sales & Use Tax: Nexus

*“The Wild West of State Taxation”*

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## Polling Question #2

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# Sales & Use Tax: Important Considerations

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## Avoid Non-Compliance!

Non-compliance with collection and remittance obligations turns it into direct cost to the company!



## ASC 450: Financial Statement Audit Implications

Is the likelihood of a loss **probable**? Can the loss be **reasonably estimated**? If yes, calculate loss and accrue loss contingency!

# Nexus

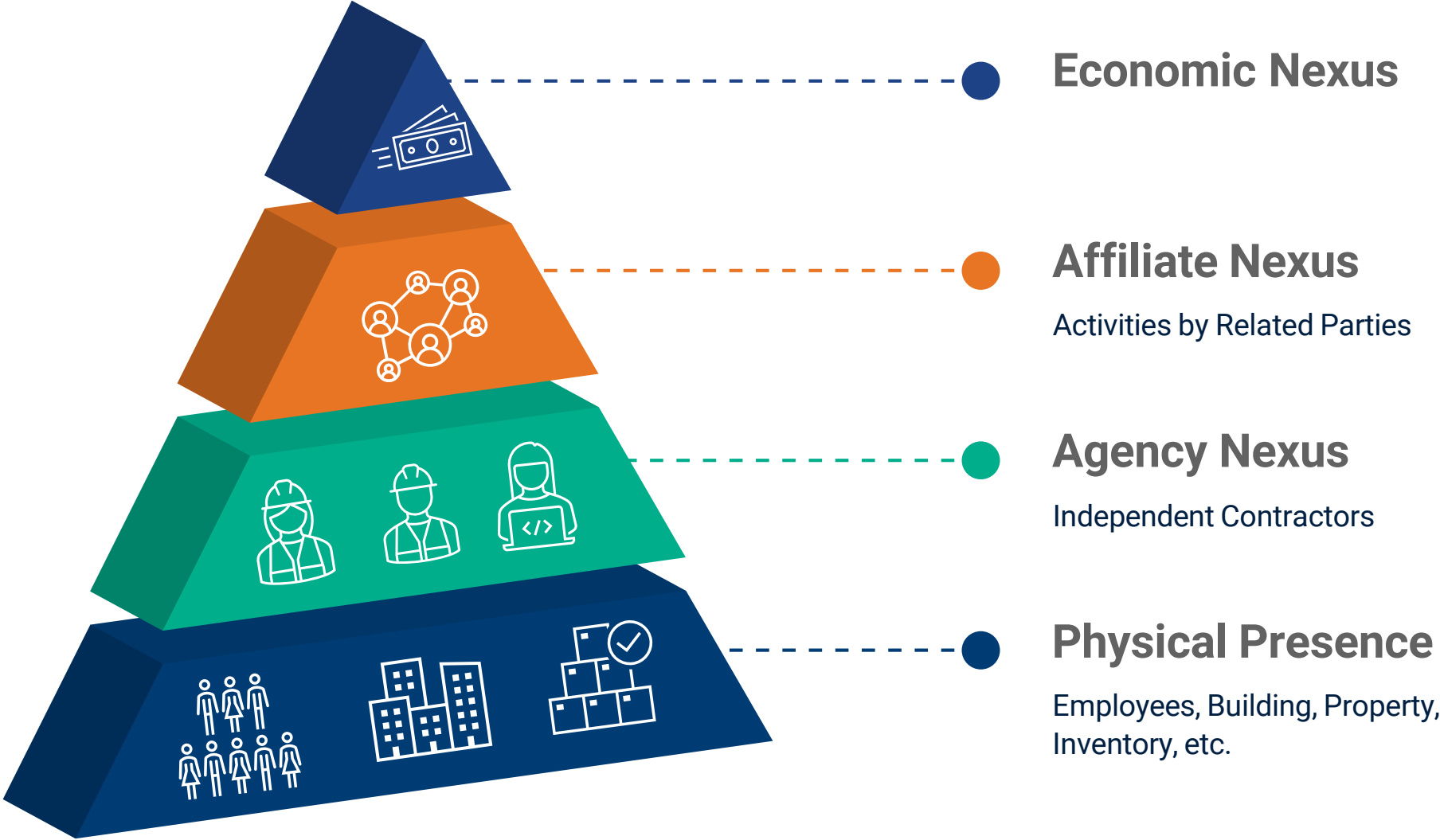
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- **Sufficient Contact Required:** For a state to impose tax or a tax collection obligation on a company, the company **must** have a sufficient level of contact with the state to create nexus.
  - Typically, in most states, if a company has a physical presence in the state, nexus is established and thus, a filing requirement now exists.
- **De Minimis Rules:** Most states offer a “de minimis” threshold where regular systematic presence over a certain number of days in state per year may create nexus. (Think Traveling Sales Reps)
  - One Day, Four Days, Six Days – nexus determined based on circumstances and state specific regs.





# Nexus



# Economic Nexus

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- **Economic Nexus:** Utilizes the notion of a simple “economic presence” in a state being sufficient to establish nexus. No longer requires a physical presence.
- **Wayfair v. South Dakota** Supreme Court Decision changed up the landscape and helped defined economic nexus rules as well as the notion of a “remote seller”
- **Remote Seller:** A remote seller is any business that sells taxable goods or services in a state where they have no physical presence.

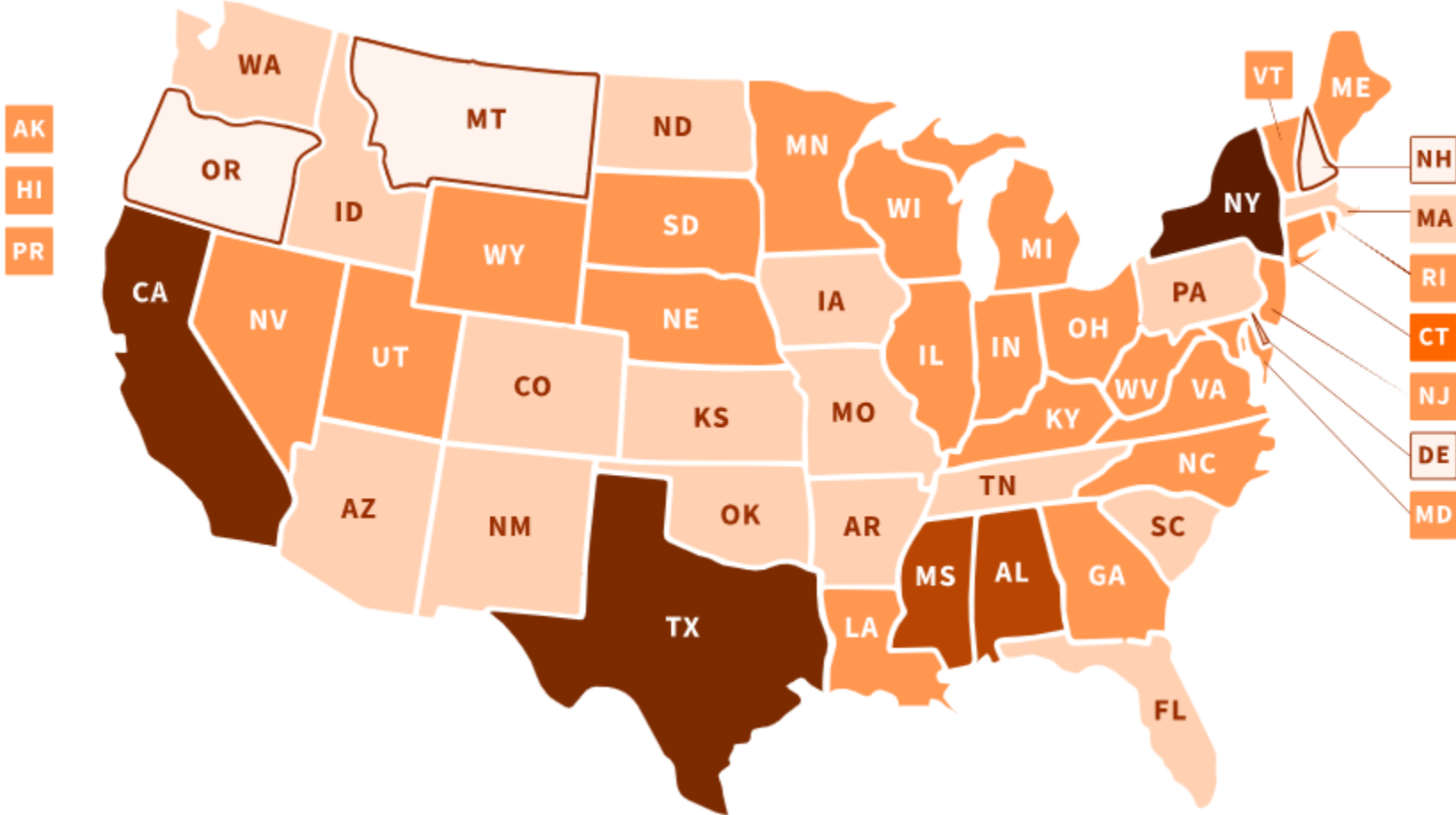
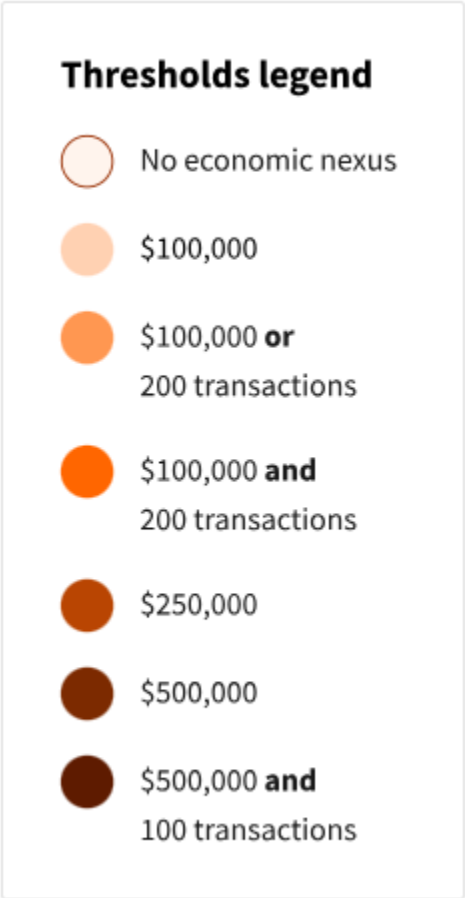
# Economic Nexus

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- All states that impose a sales tax have now rolled out legislation and or regulations setting forth economic nexus standards for remote sellers
- Most states utilize gross sales and or transaction count thresholds. Typical thresholds are \$100,000 of gross sales and/or 200 separate transactions.
- Some states have narrowed threshold down to only include “taxable sales”.
- Most statutes read in the 12 months and current calendar year have you exceeded X threshold.

# Economic Nexus Thresholds





Source: Avalara Economic Nexus Guide ([avalara.com/us/en/learn/guides](https://avalara.com/us/en/learn/guides))

# OK, I've Got Nexus – What's Next?

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 **Determine Taxability of Goods/Services**

 **Determine Tax Base, Understand Exemption Certificates Needed, Establish Process to Collect**

 **Register, Collect, Remit Sales Tax**

 **File Timely & Accurately and Avoid Penalties (up to 25%), and Interest (ranging from 10% - 15%)**

# OK, I've Got Nexus – What's Next?

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## Determining Taxability of Goods/Services

- Arguably the biggest curveball out there that results in significant exposures
- Imperative to understand taxability of EACH revenue stream
- Watch out for taxability of digital products, SaaS, digital processing services
- Repair, maintenance, installation services? Taxable in some states
- Understand applicable exemptions (Manufacturing, Farm Equipment, Medical Equipment, Clothing etc.)

# OK, I've Got Nexus – What's Next?

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## Determining the Tax Base

- What all is included in the “taxable base”?
- Are delivery costs subject to sales tax in the state?
- How does your state treat service fees?
- Using a “true-object” of the transaction test, what other incidental services are being provided that should be included in the taxable base?

# OK, I've Got Nexus – What's Next?

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- Register ASAP once you're confident nexus has been established
- CAUTION! If you believe nexus was established a while back (more than a few months ago) PAUSE and talk to your tax advisor.
- A sales tax registration will preclude you from any VDAs. (more to come)
- Collecting sales tax and not remitting is a big no-no. Can result in civil and criminal penalties.
- Utilize a trusted professional or software platform to manage sales tax compliance!





# Gross Receipts Taxes



# Polling Question #3

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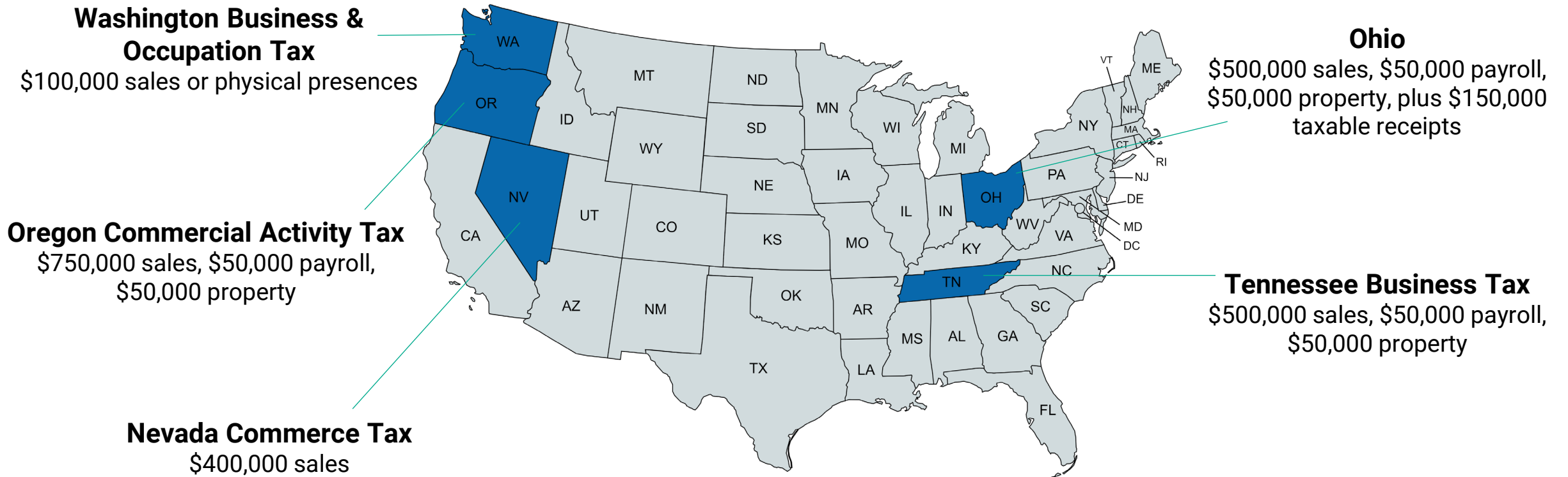
# States with a Gross Receipts Tax

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- **Ohio** Commercial Activity Tax
- **Tennessee** Business Tax
- **Oregon** Commercial Activity Tax
- **Washington** Business & Occupation Tax
- **Nevada** Commerce Tax
- Certain Municipalities



# When is Filing Required?



\*Certain thresholds adjusted annually for inflation

# Tax Rates

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- **Ohio**
  - 2023: \$150 minimum fee plus .26% on receipts exceeding \$1M
  - 2024: .26% on receipts exceeding \$3M
  - 2025: .26% on receipts exceeding \$6M
- **Tennessee Business Tax**
  - .02% - .1875% of receipts depending on revenue stream
- **Oregon Commercial Activity Tax**
  - \$250 minimum fee plus .57% on receipts exceeding \$1M
- **Washington Business & Occupation Tax**
  - .13% - 3.3% of receipts depending on revenue stream
- **Nevada Commerce Tax**
  - .058% - .331% of receipts exceeding \$4M

\*Certain exceptions apply to each tax depending on industry and type of revenue



# Exposure Mitigation Strategies

# Common Causes of Sales Tax Exposure

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- ✓ Changes in Taxability
- ✓ New Revenue Streams (cart before the horse!)
- ✓ Internal Communication Gaps
- ✓ Lack of Internal Review/Oversight in Sales Tax Filings
- ✓ Lack of Understanding of Sales Tax Nexus Footprint
- ✓ Manual Sales Tax Compliance Processes
- ✓ Internal Data Issues: Wrong manual tax code/class, wrong rates, etc.
- ✓ Failure to obtain and review exemption certificates

# Clean Up Time!

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## Regularly Complete Nexus Studies



## Voluntary Disclosure Agreement Programs (VDAs)

- Clean up of historical sales tax liabilities via one filing
- Limited look-back period (usually 3 years)
- Waiver of penalties



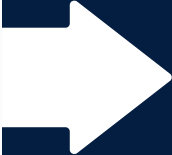
## Amnesty Programs

- Some states have amnesty programs periodically
- Pay all outstanding tax liabilities and obtain waiver of penalty



# Compliance Best Practices

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- Regularly update and collaborate with your CPA
  - Reduce Risk and Eliminate Manual Procedures
  - Periodically Review & Update Taxability Matrix
  - Educate All Departments on Sales Tax & Goods/Services

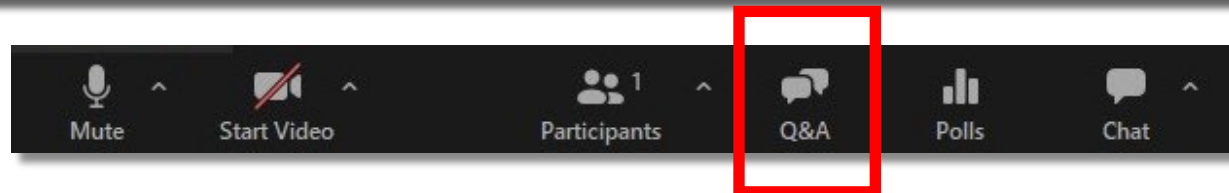


# Polling Question #4

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# Q&A

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# Contact Us

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