Lauterbach & Amen, LLP
CERTIFIED PUBLIC ACCOUNTANTS

& Ancel Glink, P.C.

Navigating Internet Sales and Streaming Tax

February 10th, 2021

10:00-11:00am

Actuarial **Audit** **Financial Services** **Pension** **Tax**

Meet the Panelists

Adam Simon, J.D.

Adam is partner at Ancel Glink, P.C. and has represented local governments for over 20 years. Adam emphasizes responsiveness and pragmatic solutions when counseling clients. Adam's practice focuses on a variety of areas, including public finance, zoning and economic development, real estate law, and telecommunications.

Derke Price, J.D.

Derke is an equity partner at Ancel Glink. Derke represents municipalities, park districts, school districts, townships, libraries & special agencies. His practice includes appeals and trial work in both federal and state courts and concentrates in construction, land use and development, and environmental matters.

Jack Carney, CPA

Jack is a tax specialist at Lauterbach & Amen. He has experience in state and local taxes for all 50 states covering income tax, sales tax and excise taxes. He has also led multiple Voluntary Disclosure Agreement projects in 45 states. He graduated from Indiana University with a degree in Accounting.

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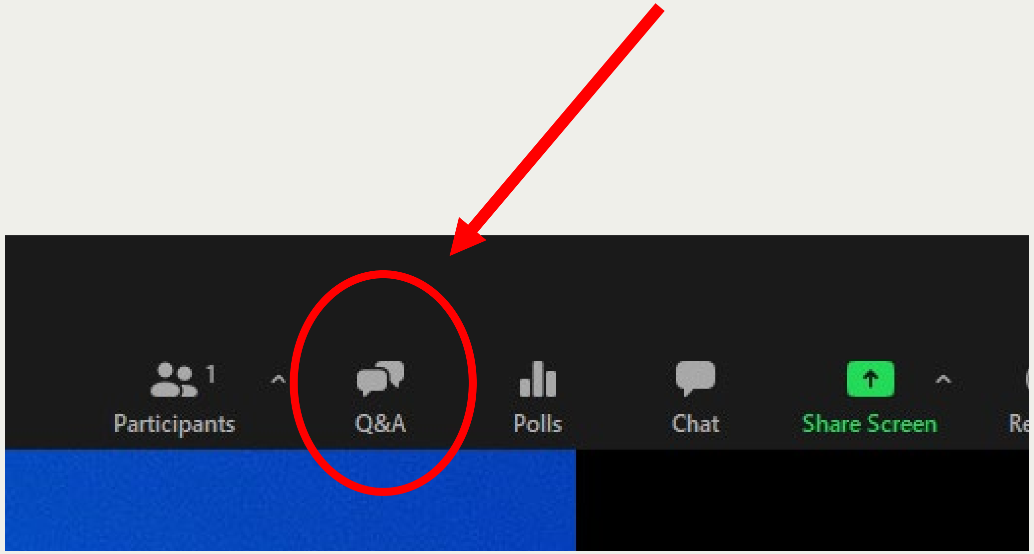
Agenda

- Nexus Overview
- Sales Tax Nexus
- South Dakota v. Wayfair
- COVID Impact
- Illinois Municipalities
- Streaming Tax Discussion

Submitting Questions

There will be a live Q&A session with the panel after each of the topics. Please submit your questions to the Q&A function at the bottom of your screen, and we will do our best to answer all questions throughout the presentation.



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What is Nexus?

- **Nexus** is defined as the minimal connection between a state and the entity it wants to tax.
- When Nexus is established in a jurisdiction, a filing requirement arises.
- Traditionally, Nexus may be triggered by having employees, independent contractors, or property in a jurisdiction.

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Income Tax Nexus vs. Sales Tax Nexus

- **Income tax**
  - Interstate Income Tax Act of 1959 (Public Law 86-272) protects against the collection of income tax from some out-of-state retailers resulting from the sale of tangible personal property
    - Several conditions have to be met to qualify for the exemption
  - Taxpayer can be subject to sales tax collection requirement, but not income tax if certain conditions are met

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Sales Tax Nexus

Types of Sales Tax Nexus

- Physical Presence Nexus
- **Economic Nexus**
- Marketplace Nexus
- Click-Through Nexus
- Affiliate Nexus

South Dakota v. Wayfair Decision

- South Dakota v. Wayfair (2018) was a **sales tax** case concerning physical presence vs economic nexus.
- The US Supreme Court held that physical presence is **not** necessary for sales tax nexus.
- The Court found SD's law to be reasonable, in part, because the thresholds reflected **substantial virtual economic contacts** with the state.
- "Rejecting the physical presence rule is necessary to ensure that artificial competitive advantages are not created by this Court's precedents."

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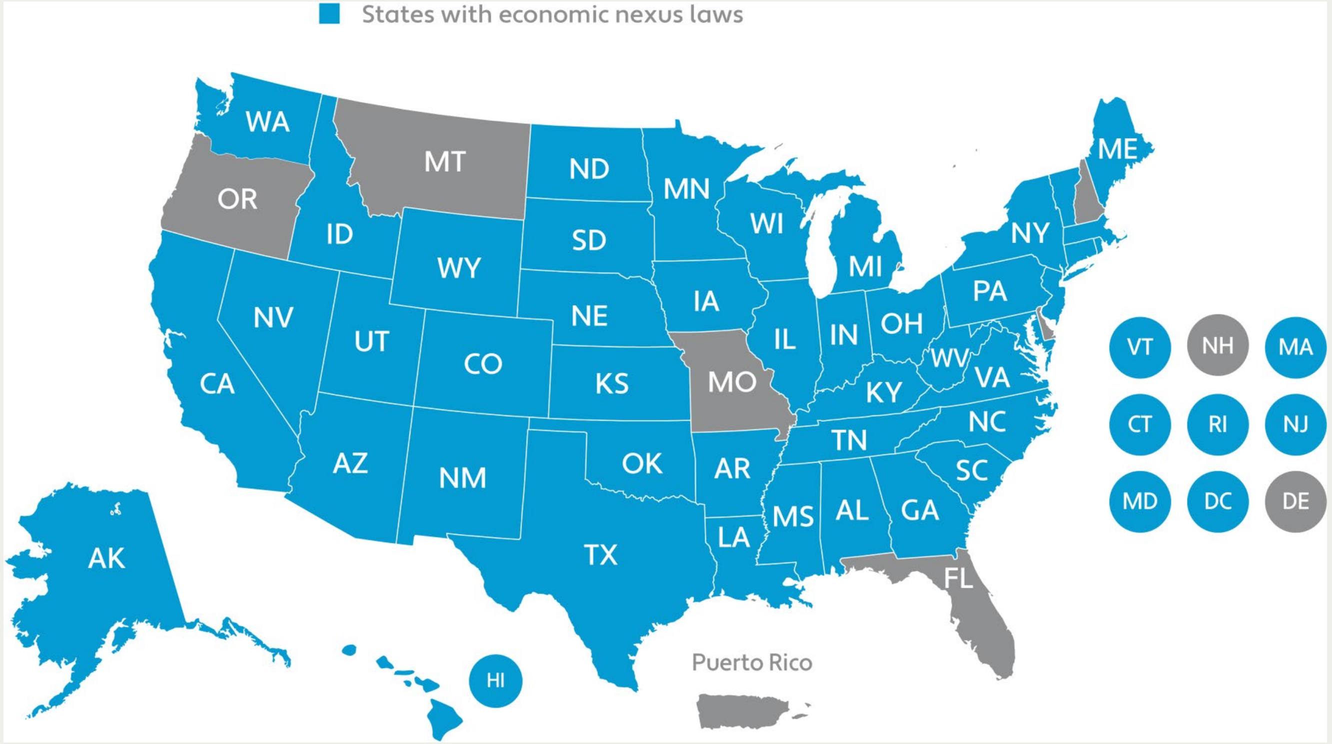
Economic Nexus

- This ruling allows the state to begin taxing remote sales via their economic nexus laws.
- South Dakota's law defines sales tax nexus as having at least $100k in annual sales or 200 annual transactions in the state.



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Economic Nexus

- Generally correlates with a set level of sales or gross receipts activity within the state. **No physical presence is required.**
- On June 21, 2018 Quill was overturned in the Wayfair decision; therefore allowing states to require remote retailers to collect sales tax on sales into states **without regard for physical presence**.
- Examples:
  - **South Dakota** – requires remote retailers to register and collect sales tax if in the previous or current calendar year:
    1. The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds $100,000; or
    2. The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in 200 or more separate transactions.

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State	Revenue	Transactions	Enforcement Date
Illinois	$ 100,000	200	October 1,2018
Indiana	$ 100,000	200	October 1,2018
Iowa	$ 100,000	N/A	January 1,2019
Wisconsin	$ 100,000	200	October 1,2018

Economic Nexus

Why is this significant?

- While the physical presence standard still exists, nexus laws have expanded to include a sales tax obligation based on a certain level of economic (threshold) activity within the state, including sales revenue, transaction volume, or a combination of both.

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Looking Deeper

- The Court specifically said that the South Dakota satisfied the first prong of the test for whether a taxing structure substantially burdens interstate commerce

(1) apply to an activity with a ***substantial nexus*** with the taxing State,
(2) be fairly apportioned,
(3) not discriminate against interstate commerce, and
(4) be fairly related to the services the State provides.

- Implied that it probably met the other 3, but did not provide a specific ruling.

Looking Deeper

- The Supreme Court spoke broadly about the rationale for affirming an economic nexus statute. Why would its rationale apply any differently to state income tax or gross receipts tax?
- The Court uses examples to illustrate how distortive physical presence nexus is for companies with no physical presence but significant virtual/economic presence. These examples are equally applicable to other tax types.
- If the Court took a state income tax or gross receipts tax economic nexus case following Wayfair, would the Court not use this same rationale?

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COVID Implications

- With states reeling from financial loss from COVID-19, it is not unreasonable to believe that they will look to move more aggressively in multiple ways.
- States will aim to increase revenues by going after noncompliant businesses with regards to sales tax.
- States may try to challenge similar economic nexus standards to income tax or gross receipts tax.

Looking Ahead

- The federal government has **exclusive authority** to regulate interstate commerce.
- Various versions of the Main Street Fairness Act, designed to place local businesses on a level playing field with Internet businesses, have been debated for several years with no action – the very motivation for South Dakota to adopt its plan in the first place.
- There is speculation that the *Wayfair* decision will jump start the legislative process and result in a **nationwide sales tax program**.

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Updates

- In December 2019, Gov. JB Pritzker (D) signed Senate Bill 119, which delayed until January 1, 2021 the requirement that remote sellers collect the local portion of the state's sales tax (the Retailers' Occupation Tax), which is destination-sourced.
- Previously, remote sellers fell under Illinois' use tax statute, and since Chicago is the only Illinois locality with its own use tax, the compliance burdens were lower.
  - Use tax is distributed on a per capita basis for most municipalities, and will result in a much lower allocation of tax revenue than the retailers' occupation tax.

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Illinois Overview

- Tax allocation breakdown of the 6.25% state sales tax rate:
  - 5.00 percent: state portion (equivalent to 80 percent of tax collections)
  - 1.00 percent: local portion (equivalent to 16 percent of tax collections)
  - 0.25 percent: county portion (equivalent to 4 percent of tax collections)

- Home Rule or Non-Home Rule Sales Tax?
- Transit and School Sales Taxes?

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Illinois Collection Cycle

- The Comptroller's office generally issues warrants to municipalities or local districts within **two months** of the original tax filing (and **three months** after the transaction).
- Example:
  - John buys paint from a hardware store in January. Store collects John's payment including the sales tax portion.
  - On February 20^{th}, the hardware store files its January sales tax return (ST-1). Payment includes the tax John paid on the paint.
  - In March, the state of Illinois will compile the information from the return into a system. The return is edited for accuracy, and the tax is **divided** into the proper amounts due to the **state, municipality, county,** or other local taxing districts according to the location of the sale.
  - In April, IDOR authorizes warrants to be paid to the municipality, county, or other local taxing district.

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Statistical Grouping Report

- A local government (*i.e.*, a municipality or county) may request a statistical grouping report.
- This is a report listing four or more comparable businesses within a local government's taxing jurisdiction that provides the **aggregate total of the net revenue** distributed to their local government.
- The businesses must be comparable to make available reasonable statistics by grouping the contents of returns so that the information for any individual taxpayer is not disclosed.

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Statistical Grouping Report

Who is eligible to request statistical grouping reports?

- A request for a statistical grouping report can be made by:
- county governments; and
- municipal governments that were not eligible to receive confidential information under a Reciprocal Agreement for Exchange of Confidential Information prior to January 1, 2015 (for periods prior to January 1, 2015).

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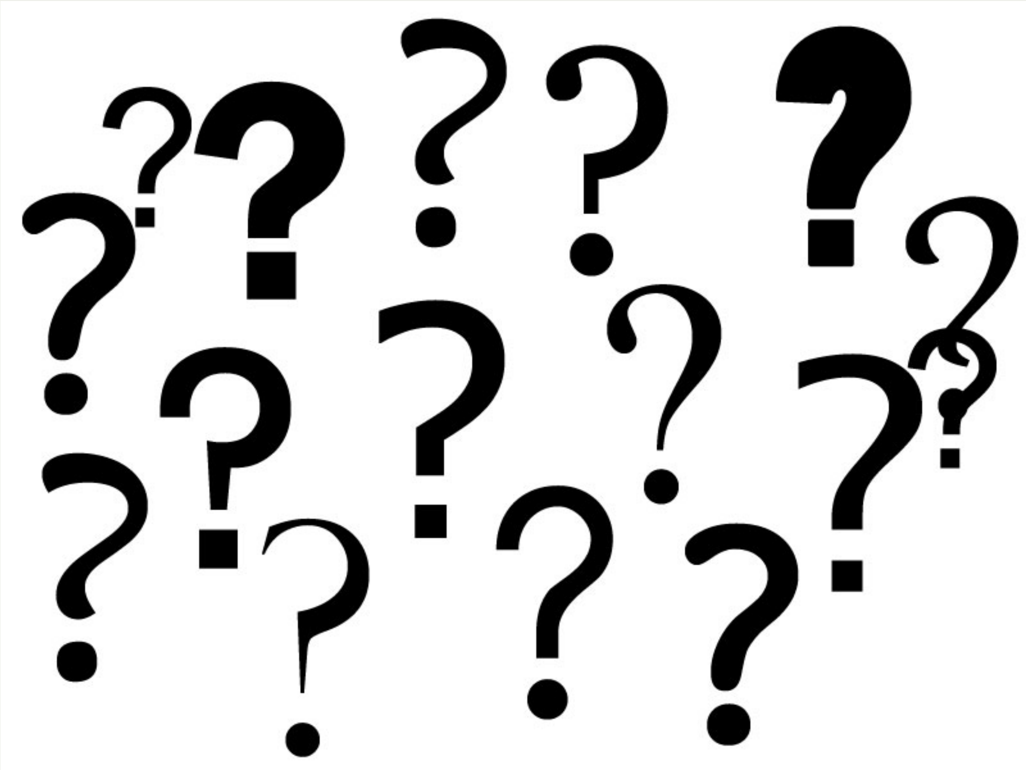
Statistical Grouping Report

- Examples of a statistical grouping report
  - A request for a local government's top 10 sales tax contributors for the last calendar year.
  - A local government may need to request the top four or more sales tax contributors for the last twelve months in order to secure insurance.

Q&A



Streaming Tax

Streaming Tax

- The Streaming Tax is actually an interpretation and application of the municipal amusement tax to forms of entertainment provided over the Internet

Streaming Tax

65 ILCS 5/11-42-5

- The corporate authorities of each municipality may license, tax, regulate, or prohibit hawkers…theatricals and other exhibitions, shows, and ***amusements*** and may license, tax, and regulate all places for eating or amusement.

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Streaming Tax

- Do you already have an **amusement** tax?

- Do you need to create an **amusement** tax?

Streaming Tax

- Definition of "amusement" needs to include:

"Any video streaming, audio streaming or remotely-accessed online games made available or delivered electronically to patrons on a rental or subscription basis."

Streaming Tax

- How much is the “streaming tax”?
  - No maximum rate.
    - Chicago – 9%
    - Evanston – 5%

Streaming Tax

prime video

Spotify®

XBOX
LIVE GOLD

hulu

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Streaming Tax

- The amusement tax is not administered and enforced by the Illinois Department of Revenue
- The amusement tax is a **locally administered** and enforced tax

Streaming Tax

- Adopt tax
- Set long lead time to establish collection system and send notice to tax collectors who provide the streaming services
- See Chicago; Evanston

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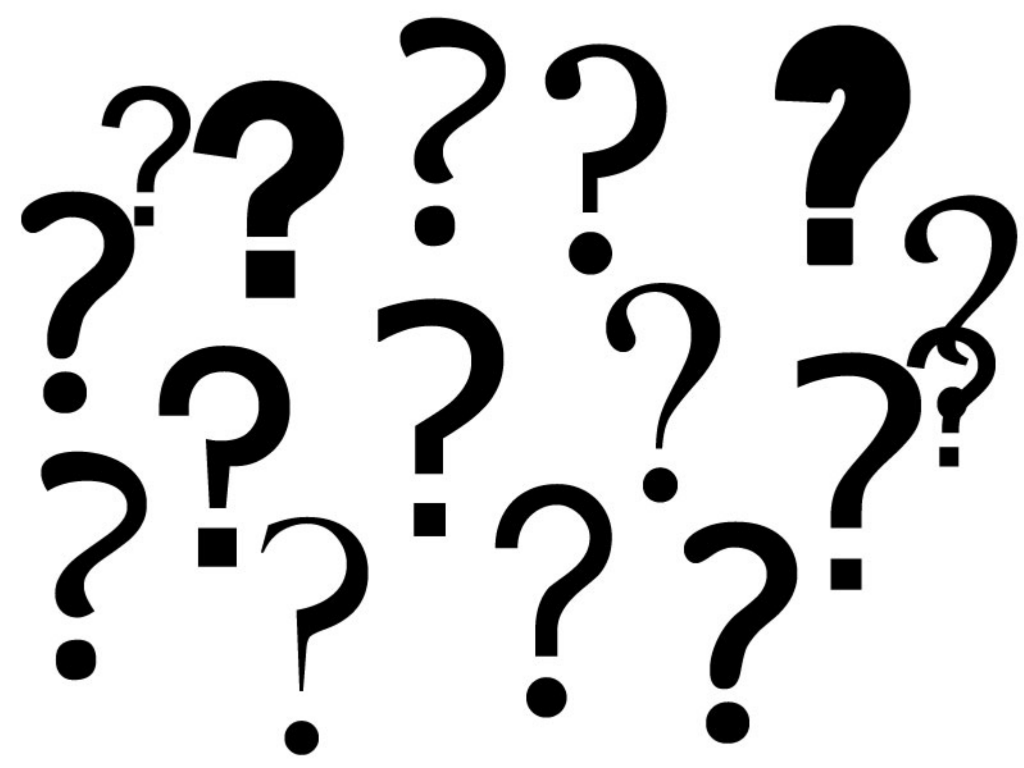
Q&A



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Thank you for attending!

More information on our March session coming soon.