CJBS | Protecting + expanding the value of mid-size companies

MoneyTrends

STATE NEXUS REQUIREMENTS

As states search for new ways to expand their tax bases and increase revenues, some are increasingly redefining the definition of "doing business" in the state, that is used to determine whenever a business is required to file a business income tax return. Failure to keep abreast with these changes may lead to an unexpected tax liability, plus interest and penalties.

If you are engaging in any of the following activities you may be considered to be doing business in the state:

1. Perform Services (direct or through third parties including subcontractors paid by your company), including:
   a. Construction
   b. Installation and repairs
   c. Training/troubleshooting/engineering
2. Have Property in Other States, including:
   a. Rentals
   b. Inventory, including consigned
   c. Inventory at fulfillment sites (e.g. Amazon)
   d. Inventory at public warehouses
   e. Dies, jigs, molds, equipment at contract manufacturers
3. Have Employees in other states, who:
   a. Work from home
   b. Travel for sales solicitations
   c. Travel for repairs and maintenance

   This includes company officers or partners who are actively involved in the business.

In addition, even if you are not engaged in any of the above, some states are becoming even more aggressive. Some states are adopting new non-traditional nexus standards such as:

1. Factor Presence Nexus Standards – in general, under this standard a business will be considered to be doing business in a state if certain factor thresholds are met, such as sales over a certain threshold.
   a. Alabama, California, Colorado, New York, Ohio, Tennessee, Virginia and Washington State have adopted variations of this factor presence nexus standard.
2. "Market-based" sourcing of sales of services and intangibles – traditionally, these sales were sourced to the location where the majority of the cost of performance occurred. Usually this meant the state where services were performed. The "market-based" approach looks to where the purchaser of the service received the benefit of the services.
   a. Alabama, Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New York, Oklahoma, Ohio, Pennsylvania, Rhode Island, Utah and Wisconsin have all adopted some variations of 'market-based" sourcing of sales of services.

Other states are currently evaluating these and other methods for increasing the reach of their business taxes.

If you have questions about whether the level of activity your business is conducting in a state that may give rise to a tax liability, our office can help you evaluate your exposure. Please contact us at your earliest opportunity.

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