



# Nexus Studies

## To Determine if a Filing Obligation Exists

### EHTC State and Local Tax Services

#### INCOME & FRANCHISE TAX

- Tax Minimization Studies
- Business Structure Reviews
- Allocation and Apportionment Planning
- Combined, Consolidated, & Unitary Planning
- Nexus Studies
- Amended State Tax Returns from IRS Audits
- Single Business Tax Training

#### SALES & USE TAX

- Reverse Audits
- Compliance System Review
- Direct Pay & Compliance Agreements
- Exemption Certificate Documentation
- Industrial Processing / Manufacturing Exemption
- Utility Studies
- Nexus Studies
- Sales & Use Tax Training
- Transportation Company
- Procurement Company

#### PROPERTY (AD VOLOREM) TAX

- Real Property Tax Reviews
- Personal Property Tax Reviews

#### TAX AUDIT & APPEALS

- Sales & Use Tax Audit Defense & Appeals
- Income & Franchise Tax Audit Defense & Appeals
- Property Tax Audit Defense & Appeals
- State and Local Tax Litigation Support
- Merger & Acquisition Due Diligence Reviews
- Voluntary Disclosure

#### BUSINESS INCENTIVE SERVICES

- Business Relocation & Expansion Services
- Tax Credits, Exemptions, & Abatements
- Grants, Financing, & Infrastructure Assistance

All the states, with a few exceptions, impose some kind of annual privilege tax. In most states it takes the form of an income or franchise tax based on net income. Some states impose a gross receipts tax, while other states impose a hybrid that may include several factors. With more businesses involved in interstate commerce and selling to customers not just across town, but also across the country, there is an increased likelihood of filing requirements in more and more states and localities. The states are also getting more aggressive in finding non-filers doing business in their states. A "Nexus Study" is designed to identify whether a company has tax filing requirements in states where the company is engaged in a business activity.

Many business owners and managers understandably question the expense and time involved in conducting a nexus study. "We have too much to do already, why add more?" "We just can't justify it when the likely result will be an increase in administrative burden and tax expense."

Should a business have a periodic nexus study? If your first thoughts are similar to those above, the answer is yes. Both nexus standards and your company's business activities are changing over time. A properly conducted nexus study will assist your company in identifying areas of exposure and developing strategies on how to deal with them.

### What is nexus? What is a Nexus Study?

"Nexus" is that minimum level of business activity or connection with a state, which will result in your business being subject to taxation in a state. The U.S. Supreme Court has defined minimum "nexus standards".

A properly conducted nexus study seeks to identify your company's normal business activities in relation to the various nexus standards. Generally, this will include investigating whether your company activities are sufficient to subject your company to a state's net income taxes, franchise taxes or gross receipts taxes. Both the advantages and disadvantages of nexus creation in each state will be explained. Our analysis will include a presentation of the tax impact of nexus creation in each state where the business has significant activities.

### What is the benefit to my business?

Awareness and control is the objective of a nexus study. Like most other aspects of business management, the manager has some limited control of nexus creating activities. Depending on the business structure and the activities involved, it may be desirable or undesirable to create nexus in a particular state.



## About EHTC

Echelbarger, Himebaugh, Tamm & Co., P.C. (EHTC), a professional corporation was established in 1977 by Dennis M. Echelbarger. Since that time, our Firm has grown to become one of the largest, most successful, local accounting firms in the Greater Grand Rapids, Michigan area, and we are a recognized leader in the business community. Our success is based on building partnering relationships with our customers. We are large enough to serve a wide diversity of customers but small enough to maintain personalized attention.

EHTC's professional team is highly trained to provide technical and consulting services in the areas of accounting, taxes, and strategic planning to nonprofit, profit and service organizations and related entities.

Minimizing your tax liability requires careful, advance planning rather than preparing tax returns as deadlines near. Our tax professionals provide complete tax services and are assisted by our extensive tax library and the latest technology.

We pay careful attention to your unique circumstances such as your current requirements and your plans for the future. We then recommend a plan that best suits your needs while minimizing financial risk.

A company may want to create nexus in a state in order to export tax base to the target state, where there may be no tax or the tax base is taxed at a lower rate. Simple things such as information on a salesperson's business card, telephone listings, how mail is addressed to a salesperson or where a salesperson meets customers can have a significant impact on creation of nexus for net income tax in a state.

Nexus avoidance is often the primary tax planning strategy of some businesses. Nexus should be avoided, if possible, in high tax rate states. However, management may want to avoid nexus just to reduce the administrative burden of filing tax returns. If nexus avoidance is the objective in a state, nexus creating activities that have limited benefit to the business can be identified and altered to reduce the risk of creating nexus.

In a state where the activities which result in the creation of nexus are unavoidable, but the tax is unacceptably high, restructuring the business to isolate the nexus creating activities might be in order. A typical restructuring plan calls for the transferring of the nexus creating activities into a separate entity with little or no tax base.

## Compliance Considerations

State revenue departments are also becoming more sophisticated. With modern computer technology, many states are starting to query the vendor files of customers within the state. This is done in conjunction with a computerized audit of the business, and the taxpayer may not be aware of what's being done. The in-state auditors may be looking at invoices to insure that proper sales or use tax is paid and also looking for out-of-state businesses with potential nexus in the state. This may generate nexus questionnaires to businesses not matched to registrations in the state.

Time limits are placed on state departments of revenue in which to conduct audits and to assess deficiencies. These time limits generally **do not apply** if a tax return is required, but has not been filed. States typically will assess liabilities for up to ten years, if returns were not filed. It may be possible to identify a significant change in business activities, which marks a time when "nexus is created", thus, limiting tax liabilities to years after that event.

Finally, coming forward voluntarily with a request for a voluntary disclosure agreement frequently provides relief from tax for all but the most recent three or four years and the waiver of penalties, but only if initiated by the business.