



# Nexus Studies

## An Opportunity to Come Into Compliance with the Law

### 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

Many business owners and managers understandably question the expense and time involved in conducting a sales/use tax 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." These are typical thoughts when a nexus study is proposed to a business manager.

Should a business have a periodic nexus study completed? If your first thoughts are similar to those above, the answer is yes. Nexus standards are continually changing as well as normal changes in business activities over time. Any reservations concerning potential undiscovered exposure are probably rooted in knowledge of changes suspected to be troublesome. A properly conducted nexus study will identify any troublesome activities before they bite the business.

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

"Nexus" is that minimum level of business activity which would subject a business to taxation in a state. The U.S. Constitution and the U.S. Supreme Court have defined minimum "nexus standards". The Due Process and Commerce Clauses of the U.S. Constitution define U.S. constitutional limitations on state jurisdiction to tax. The nexus requirements of both Clauses must be satisfied before an out-of-state seller may be subject to the taxing jurisdiction of a state.

Due Process nexus is satisfied for application of the seller's use tax collection responsibility when a person has economic or physical presence in a state. Economic presence is satisfied when a business purposefully, on its own or through a representative, avails itself of the benefits of an economic market in a state.

The U.S. Supreme Court recently addressed the Commerce Clause substantial nexus requirement for use tax collection. The Court stated that substantial nexus for use tax collection is physical presence.

A properly conducted nexus study seeks to identify the normal business activities in relation to the various nexus standards of the states involved. If "nexus" is found to exist and the taxpayer has not been filing tax returns, they will be advised to enroll in a voluntary disclosure program.

### What is the benefit to my business?

Control is the objective. Like most other aspects of business management, the manager has some limited control of nexus creating activities. 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 nexus risk. Where the activities creating nexus are unavoidable but the tax is unacceptably high, restructuring the business to isolate the nexus creating activities might be in order.



## Nexus Studies (Continued)

### 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.

Seller's use tax (sales tax) nexus is difficult to control. In most states, this liability is passed on to the customer. . If all sales to a state are exempt, it may not be necessary to register as a collection agent. However, the seller has liability for any tax not collected from the customer unless proper documentation of a valid exemption was obtained. Satisfying this documentation requirement may not be possible years later when the department of revenue requires you to substantiate the exempt sale transactions.

State revenue departments are also becoming more sophisticated. With modern computer technology, some states are querying your customers' vendor files. This is done in conjunction with a computerized audit of your customers' business, and your customers are probably not aware of the state's range of abilities to examine raw computer data. Quite simply, they 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 will generate nexus questionnaires to businesses not matched to registrations in the state.

State tax regulations and statutes provide various time limitations for the state revenue departments to perform sales and use tax audits and issue a notices of tax deficiencies. These time limitations generally do not apply if a sales and use tax return is required but not filed. If sales and use tax returns have not been filed and the business is not able to demonstrate satisfactorily that no tax is due, the states will typically assess tax, penalty and interest for the past ten years. It may be possible to identify a significant change in business activities, marking a time when "nexus is created" limiting tax liabilities to years after that event. Stepping forward with a voluntary disclosure agreement can frequently provide relief for older years if initiated by the business.