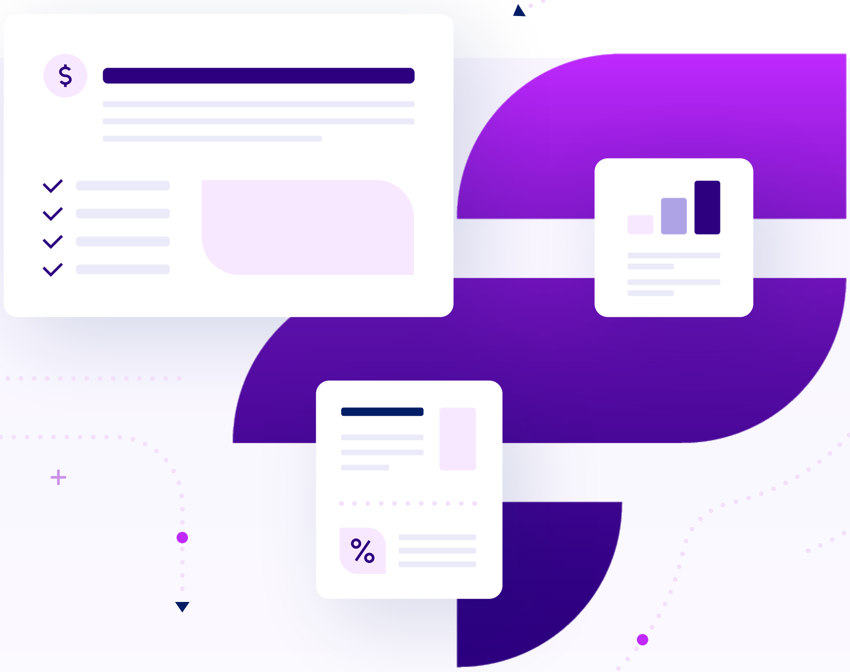
Inteserra



Sales Tax Nexus:
A Simplified Guide

What is a Sales Tax Nexus?

A sales tax nexus is a connection between your business and a state that requires you to register for, collect, and remit sales tax. “Nexus” is simply a legal term to describe the substantial connection between your business and a state.

If your business does not have a nexus in a state, it’s not required to collect and remit sales tax in that state. States in which you do have a nexus will generally require you to register for a sales tax permit.

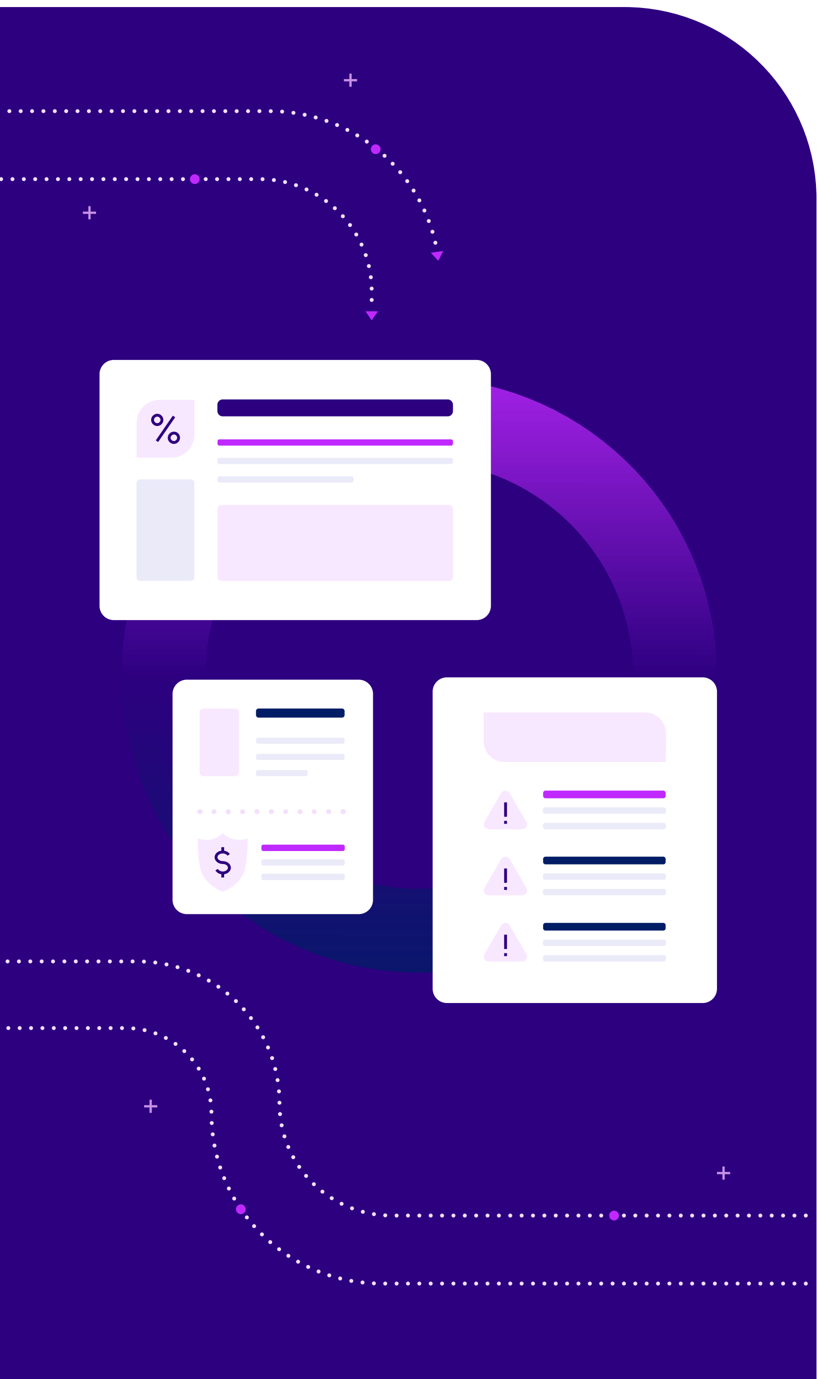
Physical Location Traditionally Determines Sales Tax Nexus

Any business that has a sufficient connection to a state has a sales tax nexus within that state.

Historically, this connection has been determined by looking at where a business has a physical presence. There is no more obvious connection to a state than having facilities or other physical assets within the state, and a notable Supreme Court case has upheld this criterion.

Quill Corp v. North Dakota (1992) determined that states couldn’t collect sales tax made from out-of-state businesses and sellers because the Dormant Commerce Clause prevented such practice. The court’s ruling noted that Congress could pass legislation that would allow for tax collection on purchases made from out-of-state sellers. These bills were introduced in the Senate multiple times but never passed the House of Representatives.

The law has changed substantially since this 1992 ruling, but the physical presence criterion remains firmly in effect. Your business has a sales tax nexus in any state where the company maintains facilities or another physical presence.



Your Business’ Home Tax Nexus

Your business will have a sales tax nexus in its home state because of the physical location criterion. Whether your business’s primary location is a multi-acre office complex or a P.O. box where you receive packages, this central location establishes the home tax nexus.

Other Potential Locations

If your business maintains additional facilities, these other facilities might expand your sales tax nexuses to other states. Satellite offices, storefronts, and warehouses in your home state won’t increase the home state tax nexus, but any facilities in other states would create sales tax nexuses in those other states.

Additional Criteria That Establish a Sales Tax Nexus

The Quill Corp. v. North Dakota ruling essentially allowed eCommerce companies to operate without collecting tax for years. However, as online selling became more prevalent, multiple states passed laws that established nexuses with businesses located outside of a state. These state laws were known as "kill Quill" bills, and the first to reach the Supreme Court was South Dakota.

South Dakota v. Wayfair, Inc (2018) overruled the previous Quill decision, eliminating the requirement that businesses must have a physical location within a state to establish a nexus. The Supreme Court stated in a 5-4 decision that the Quill ruling was now "unsound and incorrect" in light of the eCommerce boom.

The Wayfair ruling of 2018 allowed states to collect sales tax on purchases made from out-of-state remote sellers. A nexus had to be established without using physical location as the criterion, and states introduced several ways to create a nexus.

States now have multiple ways that your business may establish a nexus with them. The following are some of the more common criteria that states use. Many of these are primarily applicable to retail companies that sell in more than one state.

Employees or Independent Contractors

Having employees work in a state other than your business' home nexus state automatically establishes a nexus with that state. Any W-2 employees permanently, temporarily or periodically in another state will likely establish a sales tax nexus with that state. These employees are involved in your business' direct operations, and your company has a substantial connection to the state where they work as a result.

Hiring independent contractors in another state is not as clear-cut. Paying 1099 contractors in another state might create a nexus in that state, or it may not. Whether a nexus is created depends on the state's specific laws and the contractors' work scope.

Affiliate Marketers

Affiliate marketers located in another state can also create sales tax nexuses in those states for your business. Not only do the affiliates themselves likely have a nexus in their home state, but the primary companies that they promote could also have a nexus.

In this situation, an affiliate marketer functions like a contractor establishing and maintaining a market for a business. State laws may treat an affiliate marketer slightly differently than other independent contractors, but the principle behind why these marketers can establish nexuses is the same.

Notably, some states' thresholds for an affiliate nexus is relatively low. For instance, New York considers a sales tax nexus established if an affiliate marketer in the state uses your business' trademark (which nearly all affiliates do).

The affiliate sales tax nexus should be a significant consideration for someone online businesses. This business model has been successful and continues to grow.

Inventory in Storage

In several states, simply storing inventory at a facility within the state constitutes a sales tax nexus with the state. Rhode Island, Pennsylvania, Virginia, Arizona, and Washington all have laws to this effect, although the rules are varied and sometimes counterintuitive.

Virginia's inventory sales tax nexus laws show how these can be counterintuitive. The state says that any remote seller who stores inventory within the state has a nexus in Virginia. It's the marketplace facilitator of the transaction that must collect and file sales tax, though. In most situations, this means that third-party sellers may have nexuses -- but it's a platform's (e.g., Amazon's, Etsy's, Ebay's, etc.) responsibility to take care of sales tax.

In Washington, marketplaces likewise must collect and remit sales tax in most cases. Smaller remote sellers are responsible for collecting sales tax on any direct transactions with customers that don't go through a marketplace, though. Remote sellers often must file specific reports with the Department of Revenue, too, regardless of whether they sell through a platform or directly.

Event Attendance

If your business sells at events in different states, the business may have a nexus with any state where it goes to an event. As is true with other types of sales tax nexuses, whether a nexus is formed depends on the state's specific laws and the event's specifics.

For instance, selling at an event in Arizona creates a nexus with the state if you peddle goods or services for two or more days per year. Washington allows you to go to one event annually without creating a nexus. Texas isn't so generous, and selling at just a one-day trade show or festival could create a nexus there.

Trailing Nexus

Should your business create a sales tax nexus by selling at an event, a trailing nexus may continue even after you've closed up operations within the state. A trailing nexus can also be formed if you close down facilities within a state. Trailing nexuses may last until the end of the year or longer in some cases.

You likely won't have to collect and remit sales tax on a trailing nexus, for this type of nexus only exists after you no longer sell within a state. Your business may still need to submit sales tax returns for the duration of the trailing nexus, though, and not submitting the documents by the designated day of the month or quarter could lead to trouble.

Click-Through and Other Nexuses

There are still more causes that could create a sales tax nexus between your business and a state. If you advertise, have a link on an in-state website, deliver goods, or reach an economic nexus threshold, your business may have a nexus with that state.

The click-through nexus shows just how complicated navigating these issues can be. A click-through nexus is generally established when a link to your website is placed on a site that's hosted within the state.

Approximately 20 states have click-through nexus laws on the books, with some individually stipulating a minimum amount of sales before the nexus applies. Another handful of states have enacted but then repealed similar laws.

Can Your Business Keep Up With Sales Tax Nexus Changes?

These laws are already complicated, and they continue to evolve as more states enact bills to target remote sellers and collect sales tax from online purchases.

Does your business have the resources necessary to determine where it has sales tax nexuses and monitor laws for changes? Do you have the legal and accounting resources required to manage this on your own? Can you collect at the proper state sales tax rates and meet every state's sales tax compliance requirements?

For the vast majority of businesses, particularly SMBs, the details of sales tax nexus issues are too complicated to monitor fully.

A Sales Tax Firm Will Take Care of Nexus-Related Issues

If your business needs help determining and monitoring where it has a sales tax nexus, contact Inteserra. Our team has been helping businesses with sales tax nexus and similar issues for over 25 years. We have the expertise to properly assist you with sales tax collection, remittance, and all related matters.