



Internet Sales Tax Reform Update



A NOTE FROM SCHAAF-PARTNERCENTRIC

Federal and state legislative activity regarding the internet sales tax reform remains to be a hot topic in the Performance Marketing Industry. We have worked in conjunction with our legal counsel to prepare this updated list of nexus legislation and activity in each state.

Most states' nexus is triggered by two events: a financial threshold and the activities of your in-state affiliates if you are an out-of-state retailer. Specifically, a nexus tax goes into effect after a specific revenue threshold is met, usually around \$10,000, and that sale happened through an affiliate "in-state," meaning based in that nexus law state.

To our knowledge as of August 2016, we are not aware of any companies that have been the subject of enforcement actions seeking to collect additional taxes. However, we are aware that certain states have signaled they will begin enforcing their nexus tax laws as many states have made clear that they feel their nexus laws are enforceable, though few spoke about concrete plans to enforce their laws. For example, the Washington Department of Revenue has formed a unit to enforce the state's tax on out-of-state wholesalers and online retailers with no physical presence in Washington state. Additionally, the Alabama Department of Revenue has indicated it will begin enforcing the state's tax on out-of-state sellers with more than \$250,000 in in-state sales.

While the [Marketplace Fairness Act](#) has been going through our federal system for years, there is no legislation at the federal level actively being reviewed that specifically addresses this issue.

Schaaf-PartnerCentric recommends an on-going audit of affiliate activities, not just in nexus tax states but even more broadly to cover FTC and marketing practices. It is recommended that this process, findings, and corrective actions are thoroughly documented.

We hope this guide provides clarity around the current web of nexus laws, and proves to be a useful reference as you implement and adjust your program strategies. Check back often for updates!

- The Schaaf-PartnerCentric Team

Disclaimer: This information is not tax or legal advice, nor does it represent Schaaf-PartnerCentric's position(s). It is provided as a courtesy for your convenience. Schaaf-PartnerCentric shall not be responsible for the accuracy of such information, especially considering a portion of the information may be provided by third parties. We therefore disclaim all liability and responsibility arising from any reliance placed on such information. You should consult with your own legal and tax advisors before taking or refraining from taking any actions.

How to Use this Guide

Click on a state that has passed a nexus law, has one pending, or has a click-through policy to see more details on how nexus affects that state.



Details of the law or bill in that state



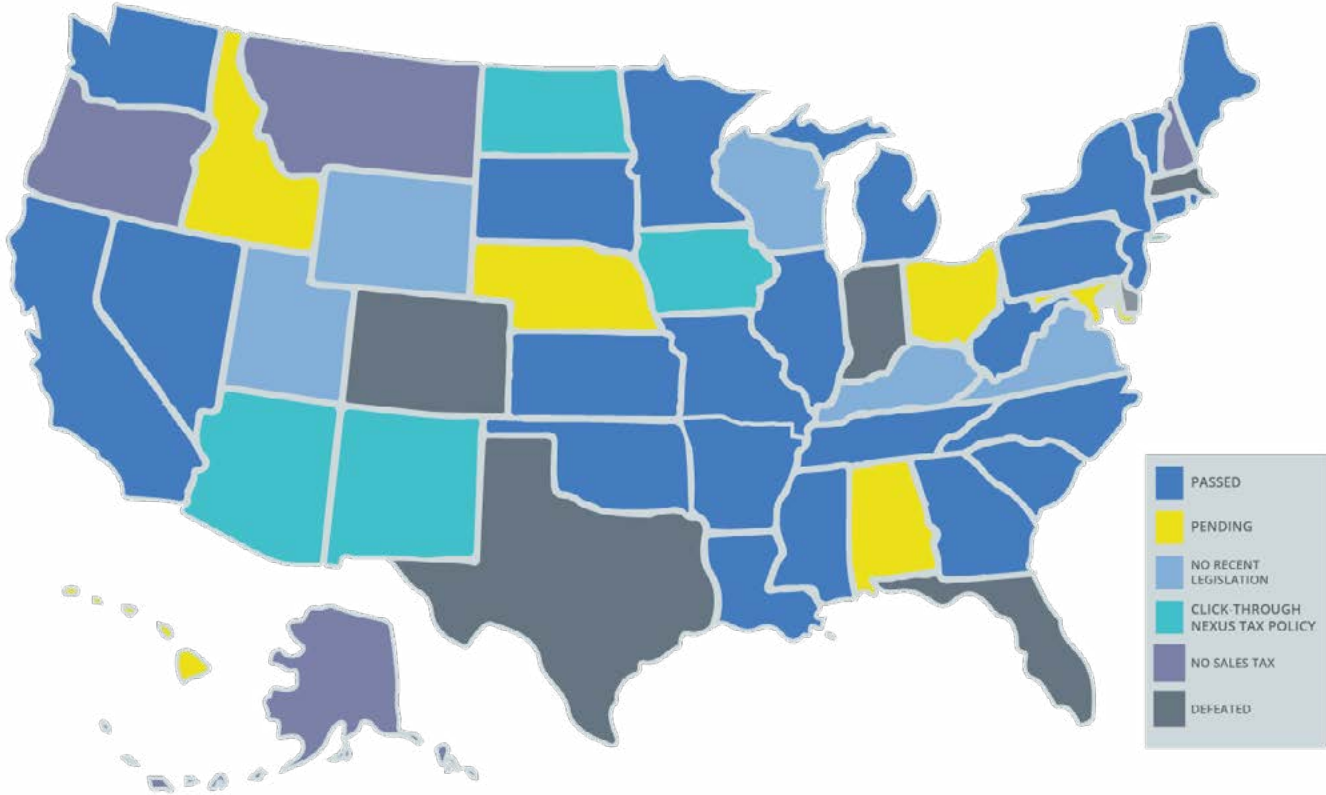
Name of the law or bill as well as link to online resource



More information regarding revenue thresholds



Indicates states that have non-solicitation agreements



STATUS OF LEGISLATION STATE BY STATE

Click on a colored (and active) state to see that state's law.



ALABAMA



On March 10, 2016, Alabama legislature is currently considering H.B. 116, which would establish Click Through Nexus tax legislation. If passed, an obligation to collect and remit sales tax is created if sellers use in-state affiliates to make retail sales.



HB 116



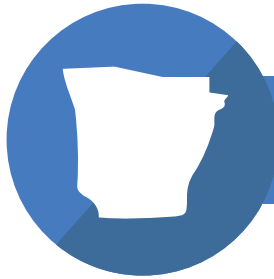
ARIZONA



On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.



More Info: Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the in-state resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



ARKANSAS



On April 1, 2011, Arkansas' governor signed a bill into a law enacting a provision that is aimed at requiring certain out-of-state retailers to collect local sales tax based upon their relationships with in-state parties.



Non-Solicitation Agreement Workaround



SB 738



More Info: May require out-of-state retailers with Arkansas affiliates who refer at least \$10,000 in sales from Arkansas purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.



CALIFORNIA



The original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012.



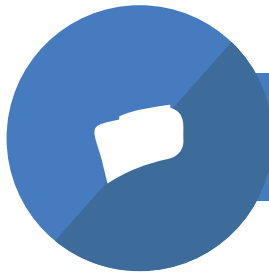
Non-Solicitation Agreement Workaround



Section 6203 of Revenue and Taxation Code



More Info: May require out-of-state retailers with Arkansas affiliates who refer at least \$10,000 in sales from Arkansas purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.



CONNECTICUT



Connecticut added affiliate nexus language to its budget bill, SB 1239, which was passed by the legislature and signed by the Governor on May 4, 2011. SB 1239 may require out-of-state retailers who have Connecticut affiliates that refer at least \$2,000 in sales from Connecticut purchasers to collect and remit sales tax. SB 1239 has an effective date of July 1, 2011.



SB 1239



More Info: May require out-of-state retailers who have Connecticut affiliates that refer at least \$2,000 in sales from Connecticut purchasers to collect and remit sales tax effective as of July 1, 2011. Contact your tax/legal expert for more info.



GEORGIA



Georgia added affiliate nexus language to an omnibus tax bill, HB 386. It was passed by the governor of Georgia April 25, 2012



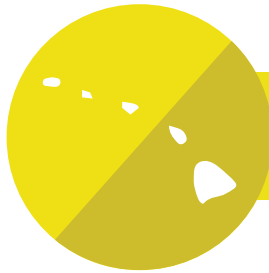
Non-Solicitation Agreement Workaround



HB 386



More Info: May require out-of-state retailers who have Georgia affiliates that refer at least \$50,000 in sales from Georgia purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.



HAWAII



The Hawaii House of Representatives has approved a bill that would require retailers to collect taxes on Internet sales transactions. The Hawaii Senate must pass the bill before it becomes law.



HB 1257



IDAHO



On March 18, 2016, the Idaho legislature is currently considering H.B. 581, which would establish Click Through Nexus tax legislation. If passed, retailers using Idaho affiliates will be required to collect and remit sales tax.



HB 581



ILLINOIS



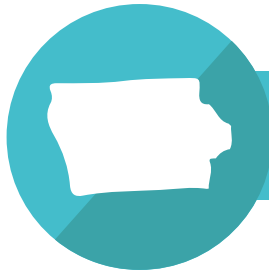
The original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012.



**Section 6203
of Revenue
and Taxation
Code**



More Info: May require out-of-state retailers who have Georgia affiliates that refer at least \$50,000 in sales from Georgia purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.



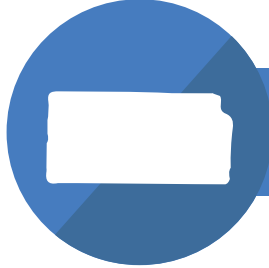
IOWA



On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.



More Info: Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent ("Click-Through Nexus Tax"). The seller must be making commission payments to the in-state resident for any orders that come about as a result of the click-through referral from the resident's website. Contact your tax/legal expert for more info.



KANSAS



On April 16, 2013, the state legislature passed affiliate nexus tax legislation introduced earlier this year. Effective on or around July 1, 2013, out-of-state sellers with Kansas affiliates referring at least \$10,000 in annual sales to purchasers in Kansas, will be required to collect and remit sales tax to the state.



HB 1257



More Info: Effective July 1, 2013, out-of-state sellers with Kansas affiliates referring at least \$10,000 in annual sales to purchasers in Kansas will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



LOUISIANA



The original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012.



**Section 6203
of Revenue and
Taxation Code**



MAINE



The state legislature passed an affiliate nexus tax bill, and the governor signed it into law. Effective on July 1, 2013, out-of-state sellers with Maine affiliates referring exceeding \$10,000 in annual sales to purchasers in Maine, will be required to collect and remit sales tax to the state.



**HP 228 and
HP 251**



More Info: Effective July 1, 2013, out-of-state sellers with Maine affiliates referring \$10,000 in annual sales to purchasers in Maine, will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



MARYLAND



On February 13, 2015, the Maryland state legislature is currently considering HB 726, which would establish Click-Through nexus tax legislation. If passed, an obligation to collect and remit sales and use tax is created if a retailer enters into a referral agreement with a Maryland resident whose referrals generate more than \$10,000 during the preceding four quarterly periods.



HB 726



MICHIGAN



On January 15, 2015, the Michigan legislature passed S.B. 658, establishing Click-Through nexus tax legislation. Effective October 1, 2015, an obligation to collect and remit sales and use tax is created if a seller enters into a referral agreement with a Michigan resident whose referrals generate more than \$10,000 and the seller's total cumulative gross receipts from the sales to purchasers in-state exceed \$50,000 during the preceding twelve months.



HB 658



More Info: Out-of-state sellers with Michigan affiliates referring at least \$10,000 in annual sales to purchasers in Michigan will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



MINNESOTA



On May 23, 2013, the state legislature passed an affiliate nexus tax bill, and the governor signed it into law. Effective on July 1, 2013, out-of-state sellers with Minnesota affiliates referring at least \$10,000 in annual sales to purchasers in Minnesota, will be required to collect and remit sales tax to the state.



SF 8



More Info: Effective July 1, 2013, out-of-state sellers with Minnesota affiliates referring at least \$10,000 in annual sales to purchasers in Minnesota will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



MISSISSIPPI



The state legislature passed affiliate nexus tax legislation requiring out-of-state sellers lacking a physical presence in Mississippi to register and begin collecting use tax if their prior-year retail sales of tangible personal property to Mississippi customers exceeded \$250,000. Those sellers meeting this threshold would be deemed to have a “substantial economic presence” in the state.



HB 480



MISSOURI



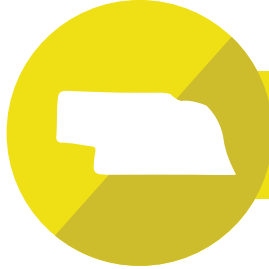
7/5/13 The state legislature passed affiliate nexus tax legislation that was signed into law by the Governor on July 5, 2013. Effective on August 18, 2013, out-of-state sellers with Missouri affiliates referring at least \$10,000 in annual sales to purchasers in Missouri, will be required to collect and remit sales tax to the state.



SB 174



More Info: Out-of-state sellers with Missouri affiliates referring at least \$10,000 in annual sales to purchasers in Missouri will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



NEBRASKA



4/20/16 Nebraska legislature is currently considering L.B. 1087, which would establish Click Through Nexus tax legislation. If passed, an obligation to collect and remit sales tax is created if sellers enter into referral agreements with in-state affiliates whose referrals generate more than \$10,000 during the preceding twelve months.



LB 1087



NEVADA



On May 27, 2015, Nevada passed affiliate nexus tax legislation. Effective October 1, 2015, an obligation to collect a sales and use tax is created if retailers enter into referral agreements with Nevada residents whose referrals generate more than \$10,000 during the preceding four quarterly periods.



AB 380



More Info: Out of state sellers with Nevada affiliates referring at least \$10,000 in annual sales to purchasers in Nevada will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



NEW JERSEY



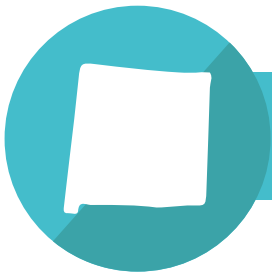
On July 3, 2014, the New Jersey passed a sales nexus tax law requiring out-of-state online retailers making sales to New Jersey consumers to collect sales tax, if cumulative sales through those contractors exceed \$10,000 for the prior four calendar quarters.



AB 3486



More Info: Out-of-state sellers with New Jersey affiliates referring at least \$10,000 in annual sales to purchasers in New Jersey will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



NEW MEXICO



11/5/15 The state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.



More Info: Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the in-state resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



NEW YORK

On March 28, 2013, New York's highest court, the NY Court of Appeals, ruled in favor of the state's affiliate nexus law, which requires out-of-state retailers with sales to New York purchasers in excess of \$10,000 to collect and remit sales tax to the state. If the ruling is challenged, the US Supreme Court will decide whether the state affiliate nexus tax laws are ripe for resolution by the Court and if so, consider whether affiliate nexus tax laws are constitutional.



Non-Solicitation Agreement Workaround



1101 (b)



More Info: Out-of-state sellers with New York affiliates referring at least \$10,000 in annual sales to purchasers in New York will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



NORTH CAROLINA

On September 15, 2012, the original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012. Section 6203 of the Revenue and Taxation Code can be found at the following link on the State Board of Equalization website.



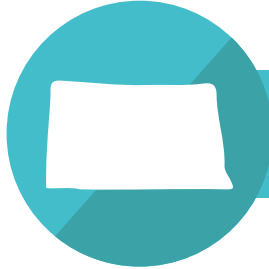
Non-Solicitation Agreement Workaround



6203 of Revenue and Taxation Code



More Info: Out-of-state sellers with North Carolina affiliates referring at least \$10,000 in annual sales to purchasers in North Carolina will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



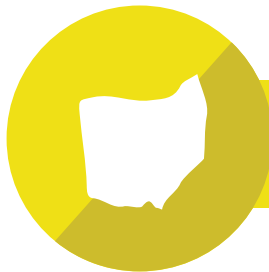
NORTH DAKOTA



On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.



More Info: Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the in-state resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



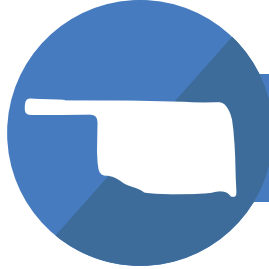
OHIO



6/30/15 On June 30, 2015, the Ohio legislature is currently considering H.B. 232, which would establish Click-Through nexus tax legislation. If passed, an obligation to collect and remit sales and use tax is created if retailers enter into referral agreements with Ohio resident’s whose referrals generate more than \$10,000 during the preceding twelve months.



HB 232



OKLAHOMA



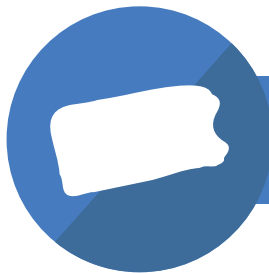
On May 17, 2016, Oklahoma passed Click-Through nexus tax legislation. Effective November 1, 2016, the legislation requires out-of-state retailers using in-state affiliates to collect and remit tax for Oklahoma.



HB 2359



More Info: Out-of-state sellers with Oklahoma affiliates referring at least \$100,000 in annual sales are required to notify Oklahoma purchasers of their personal obligations to pay state use tax at the point of checkout or payment. Contact your tax/legal expert for more info.



PENNSYLVANIA



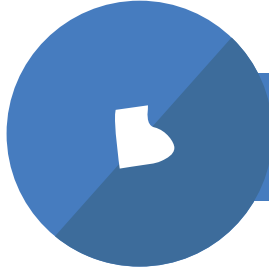
The Pennsylvania Department of Revenue issued a press release and a sales and use tax bulletin on December 1, 2011, which provides guidance concerning which activities establish nexus in Pennsylvania and therefore may obligate remote sellers to collect and remit sales tax to the state. The Pennsylvania Department of Revenue is basing this guidance on their interpretation of existing tax law and the United States Constitution.



Sales and Use
Tax Bulletin
2011-01



More Info: The Pennsylvania statute does not have a revenue threshold. Out-of-state sellers with Pennsylvania affiliates referring sales to purchasers in Pennsylvania will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



RHODE ISLAND



On February 7, 2011, Rhode Island has introduced HB 5115. This legislation proposes to repeal the affiliate nexus tax which was passed in 2009. HB 5115 may become effective upon passage.



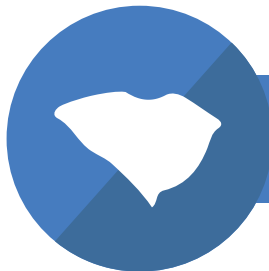
Non-Solicitation
Agreement Workaround



HB 1537



More Info: Out-of-state sellers with Rhode Island affiliates referring at least \$5,000 in annual sales to purchasers in Rhode Island will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



SOUTH CAROLINA



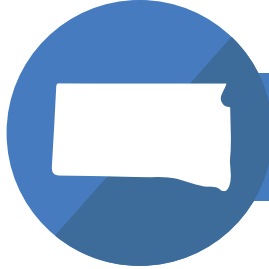
On May 12, 2015, South Carolina Senate passed click-through-nexus provision to the sales and use tax laws, effective Jan 1, 2016. The legislation provides that a retailer is presumed to be liable for the collection of sales and use tax in South Carolina if the seller enters into an agreement with a state resident under which the resident refers customers by a link on an Internet website or otherwise, to the retailer. The presumption requires that the gross proceeds from sales by the retailer be greater than \$10,000 during the preceding 12 months.



SB 170



More Info: Out-of-state sellers with South Carolina affiliates referring at least \$10,000 in annual sales to purchasers in South Carolina will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



SOUTH DAKOTA



On March 29, 2016, South Dakota's governor signed SB 106 into law, becoming effective on May 1, 2016. Out-of-state sellers with either sales exceeding \$100,000 or at least 200 transactions with South Dakota residents are required to charge and remit sales tax.



SB 106



TENNESSEE



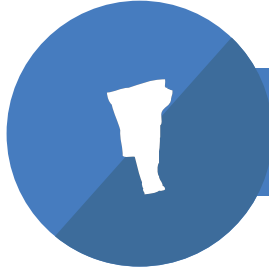
On May 5, 2015, the Tennessee Governor signed Click-Through nexus tax legislation. Effective July 1, 2015, an obligation to collect and remit sales and use tax is created if retailers enter into referral agreements with Tennessee resident's whose referrals generate more than \$10,000 during the preceding twelve months.



HB 1537



More Info: Out-of-state sellers with Tennessee affiliates referring at least \$10,000 in annual sales to purchasers in Tennessee will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



VERMONT



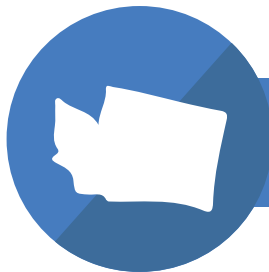
As of October 13 2015, at least 15 states adopted the click-through-nexus laws, triggering the 15-state threshold for Vermont law. The click-through nexus tax legislation came into effect Dec. 1, 2015.



32 VSA
Sec 9701



More Info: Out-of-state sellers with Vermont affiliates referring at least \$10,000 in annual sales to purchasers in Vermont will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



WASHINGTON



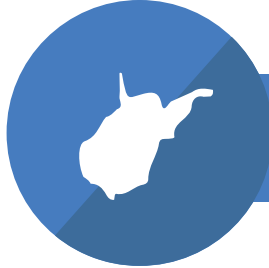
On July 1, 2015, Washington passed click-through nexus tax legislation, effective Sept. 1, 2015. The provision provides that out-of-state retailers who have a physical nexus with Washington and 1.) pay a commission or other consideration for referrals and 2.) gross more than \$10,000 in sales into Washington State during the prior year is responsible for the collection of sales tax.



ESSB 6138



More Info: Out-of-state sellers with Washington affiliates referring at least \$10,000 in annual sales to purchasers in Washington will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



WEST VIRGINIA



On April 30, 2013, West Virginia passed the Click-Through Nexus Tax legislation, effective July 12, 2013. The legislation provides tax collection on the out-of-state retailers using West Virginia affiliates to collect and remit sales tax.



HB 2754



More Info: Out-of-state sellers with Washington affiliates referring at least \$10,000 in annual sales to purchasers in Washington will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.

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Internet Sales Tax
Reform Update