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Tax Planning for Businesses:
Year-End and Beyond

Tax Planning for Businesses – Year-End and Beyond

Agenda

- Tax, Regulatory and Industry Update
- Federal Update 2023
- State and Local Tax Update

Today’s Presenters

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Tax, Regulatory, and Industry Update

2023 Legislative and Regulatory Landscape

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- **No new significant federal tax legislation that affected middle market taxpayers in 2023**
  - From a business tax standpoint were hoping for:
    - Relief from the Sec. 174 R&D capitalization requirement,
    - Renewed 100% bonus depreciation, and
    - Relief from the limitation on the deductibility of interest expense
- **Continued expansion of PTET (will be covered in detail later)**
- **Enhanced funding is still authorized for the IRS**
  - We expect there will be increased audit activity in the coming years, particularly amongst pass-through entities
  - 87,000 new employees
- **We don’t expect any changes to occur in 2023**

2024 Expectations

Elections – November 5, 2024

- President
- Over 30 Senate seats
    - Between regular scheduled elections and vacancies
- Entire House of Representatives

Hot button issues

- Economy
- Looming expiration of certain TCJA provisions, including those resulting in:
    - Increased Individual tax rates
    - Expiration of 199A (20% QBI deduction) while Corporate rates remain at 21%
    - Elimination of $10k SALT Cap

Transaction Climate

- Market has seen a slowdown in activity
- ERTC Issues
    - IRS has suspended the processing of new claims
    - Incredibly important for buyers to ensure they’re not unknowingly taking on potential ERTC exposure from target companies

With the economic and legislative uncertainty, flexibility will likely be valuable, and now is not the time to fall behind on any house keeping – make sure you’re staying on top of income taxes, sales and use taxes, state nexus, etc.

Corporate Transparency Act

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Important to understand the upcoming requirements

Reporting certain information on the owners and influential individuals in business entities to the Financial Crimes Enforcement Network

This is not something we will be handling as part of our standard tax engagements

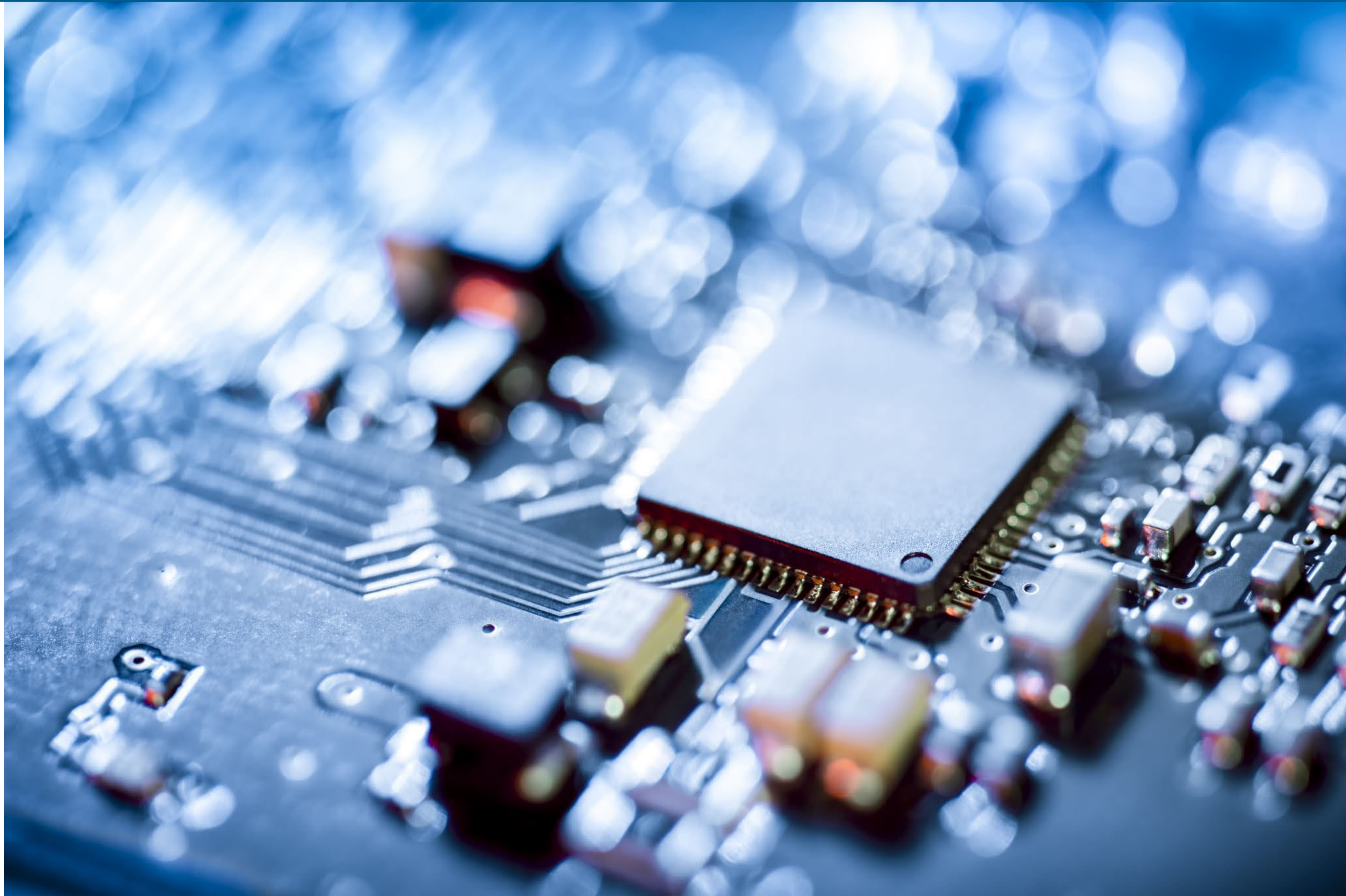
Limited guidance exists on the topic

Generally assumed attorneys who are forming entities will handle the initial filings that are required within 30 days of entity formation

Still uncertain how the ongoing filings will be handled, and which professional advisor will be best positioned to assist with compliance

Technological and Industry Landscape

- The accounting job market (both in industry and CPA firms) will likely remain tight for the foreseeable future
  - Lack of new accounting graduates
  - Continue retirements of long-term employees
- Generative AI
  - ChatGPT released on November 30, 2022, many have followed



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Federal Update 2023

Traditional Tax Planning – Accelerating Deductions & Deferring Income

Tax depreciation

- Bonus depreciation is 80% for 2023 (continues to phase down by 20% per year with no bonus in 2027).
- Includes used property now (only for taxpayers' first use of the property).
- Bonus can take the business into a loss situation.
- Watch state decoupling rules.

Qualifying Assets Placed in Service	% Bonus Depreciation in the first year
09/28/17-12/31/22	100%
01/01/23-12/31/23	80%
01/01/24-12/31/24	60%
01/01/25-12/31/25	40%
01/01/26-12/31/26	20%

- Vehicles weighing over 6,000 pounds (heavy trucks, vans, SUVs) – still no limit on bonus depreciation

Traditional Tax Planning – Accelerating Deductions & Deferring Income

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Tax depreciation

- Section 179 is $1,160,000 and begins to phase out with $2,890,000 of total equipment purchases. Section 179 cannot take business into a loss situation.
- Property must be placed in service to qualify
- Comparing 80% bonus depreciation and Sec 179 expensing election in 2023

	Bonus Depreciation[1]	Section 179 Expensing Election[2]
Deduction Limit	None	$1,160,000
Investment Limit	None	$2,890,000
Taxable Income Required?	No	Yes
Used property eligible?	Yes	Yes
Roofs, HVACs, Fire protection and Security systems	No	Yes
Qualified Improvement Property	Yes	Yes

[1] 80% bonus depreciation available on qualifying assets placed in service beginning January 1, 2023
[2] Expensing election also applies against qualifying real property available

Traditional Tax Planning – Accelerating Deductions & Deferring Income

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Year-End Bonuses

- Pay in December for cash basis
- 2½ month rule for accrual basis
- Owner’s bonuses

Traditional strategy works if you expect to be taxed at a lower (or same) rate in 2024 – deferring income and accelerating deductions.

- De minimis expensing election – with audited financial statements $5,000 per item or invoice; without audited statements $2,500.
    - Accounting policy must be in place to be used for book purposes.
    - Annual election required.
- Review business bad debts for potential write off
    - (Accrual basis - specific identification = write off in year deemed uncollectible)
- Inventory write-downs – worthless or subnormal
- Accrued liabilities – accelerate payments
- **Note: opposite planning should be applied if you expect to be in higher tax bracket in 2024**

Cash Method of Accounting

TCJA expanded availability by increasing the level of permissible gross receipts, and by allowing businesses with inventories to also use the cash method.

- ✓ Check qualifications
  - ✓ $29M (for 2023)
  - ✓ $30M (projected 2024)
- ✓ Delay billing to move income into 2024
- ✓ Overall simplification in business operations and tax methods required
  - ✓ Accounting for inventories and business interest limitation

Consider a Cost Segregation Study

- ✓ Accelerate depreciation – Bonus or Section 179
- ✓ Watch limitations on usage of losses generated by bonus depreciation
- ✓ Pay attention to state rules (decoupling from federal rules)

Qualified Business Income Deduction

Maximize the 20% qualified business income deduction (QBI or QBID), expires 1/1/26

- ✓ **Wages**
- ✓ **Unadjusted basis of assets is important for real estate entities rented to operating business with common ownership**
- ✓ **Does not apply for service businesses**

Watch the TCJA-Related Revenue "Raisers" (Less Taxpayer Favorable)

Limitation of business interest expense, now based on EBIT not EBITDA

Excess business losses – MFJ $578,000; other taxpayers $289,000

Meals 50% deductible – tracking is key!

Entertainment is not deductible

Should an owner of a closely held business consider gifting interests?

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Valuation discounts

Reduces future taxable estate

Estate/gift exemption is scheduled to decrease on 1/1/2026

Preplanning is needed – start now

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State and Local Tax Update

SALT Revenues
Pass-Through Entity (PTE) Planning
State Nexus Considerations

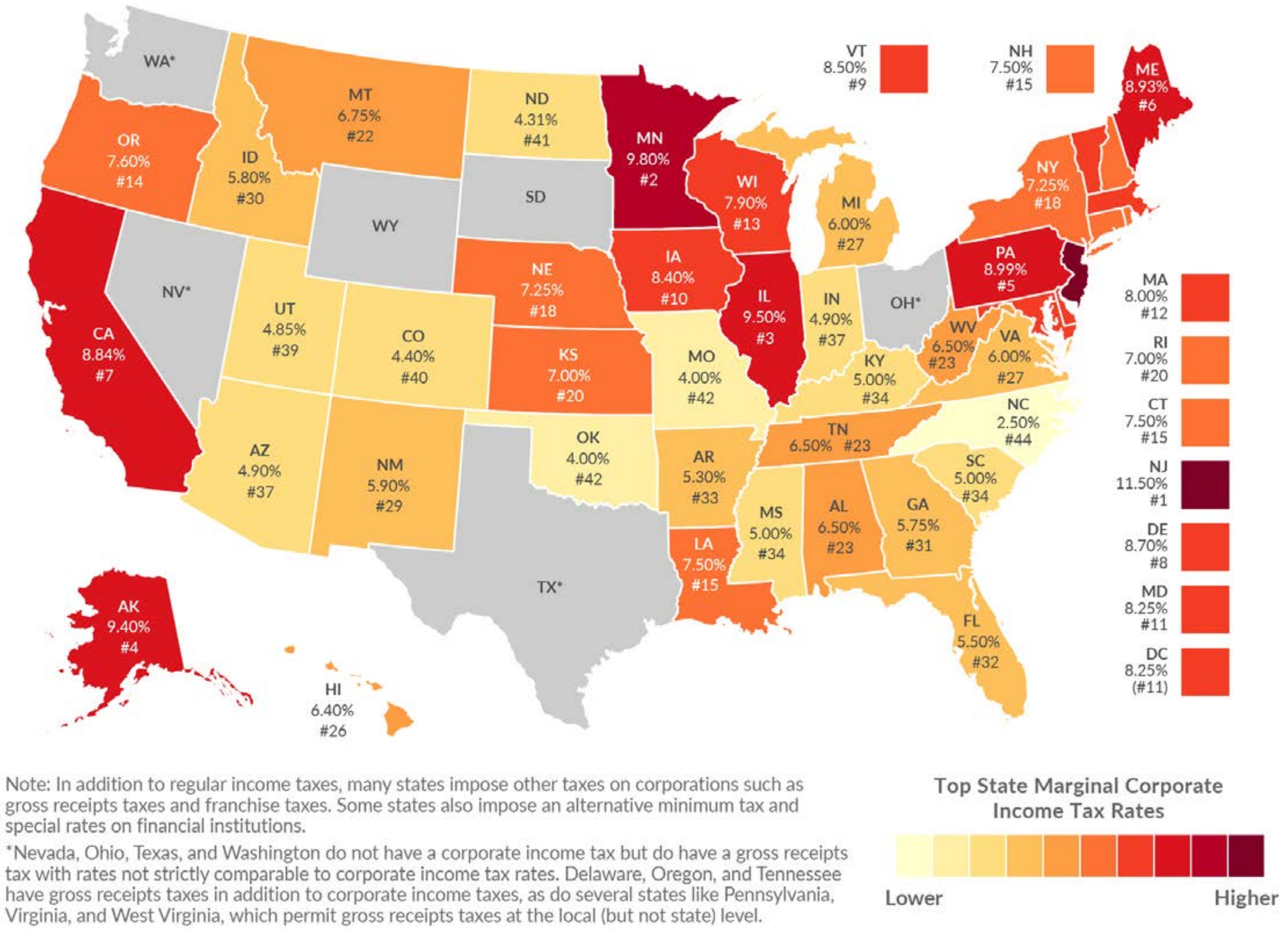
State Revenues

- Data shows year-over-year declines in state tax revenue collections in the third quarter of 2023
- Nominal state tax revenue collections declined by 1.2% in Q3 2023 compared with the same period in 2022
    - Primarily due to declines in personal income tax revenues
- States’ fiscal path forward remains highly uncertain, particularly for states that enacted permanent tax rate cuts
    - Large rainy-day funds could help ease the transition to slower revenue growth
    - A further slowing economy may impact tax revenues forcing action on spending and/or tax rates

State & Income Sales Tax

How High are Corporate Income Tax Rates in Your State?

Top Marginal Corporate Income Tax Rates as of January 1, 2023



Note: In addition to regular income taxes, many states impose other taxes on corporations such as gross receipts taxes and franchise taxes. Some states also impose an alternative minimum tax and special rates on financial institutions.

*Nevada, Ohio, Texas, and Washington do not have a corporate income tax but do have a gross receipts tax with rates not strictly comparable to corporate income tax rates. Delaware, Oregon, and Tennessee have gross receipts taxes in addition to corporate income taxes, as do several states like Pennsylvania, Virginia, and West Virginia, which permit gross receipts taxes at the local (but not state) level.

Connecticut has historically charged a 10% surtax on a business's tax liability if it has gross proceeds of $100 million or more, or if it files as part of a combined unitary group. This surtax expired on January 1. Legislators have extended the surtax in the past and will decide whether to do so again this session

Illinois' rate includes two separate corporate income taxes, one at a 7% rate and one at a 2.5% rate.

In New Jersey, the rates indicated apply to a corporation's entire net income rather than just income over the threshold. A temporary and retroactive surcharge is in effect from 2020 through 2023, bringing the rate to 11.5% for businesses with income over $1 million.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg Tax.

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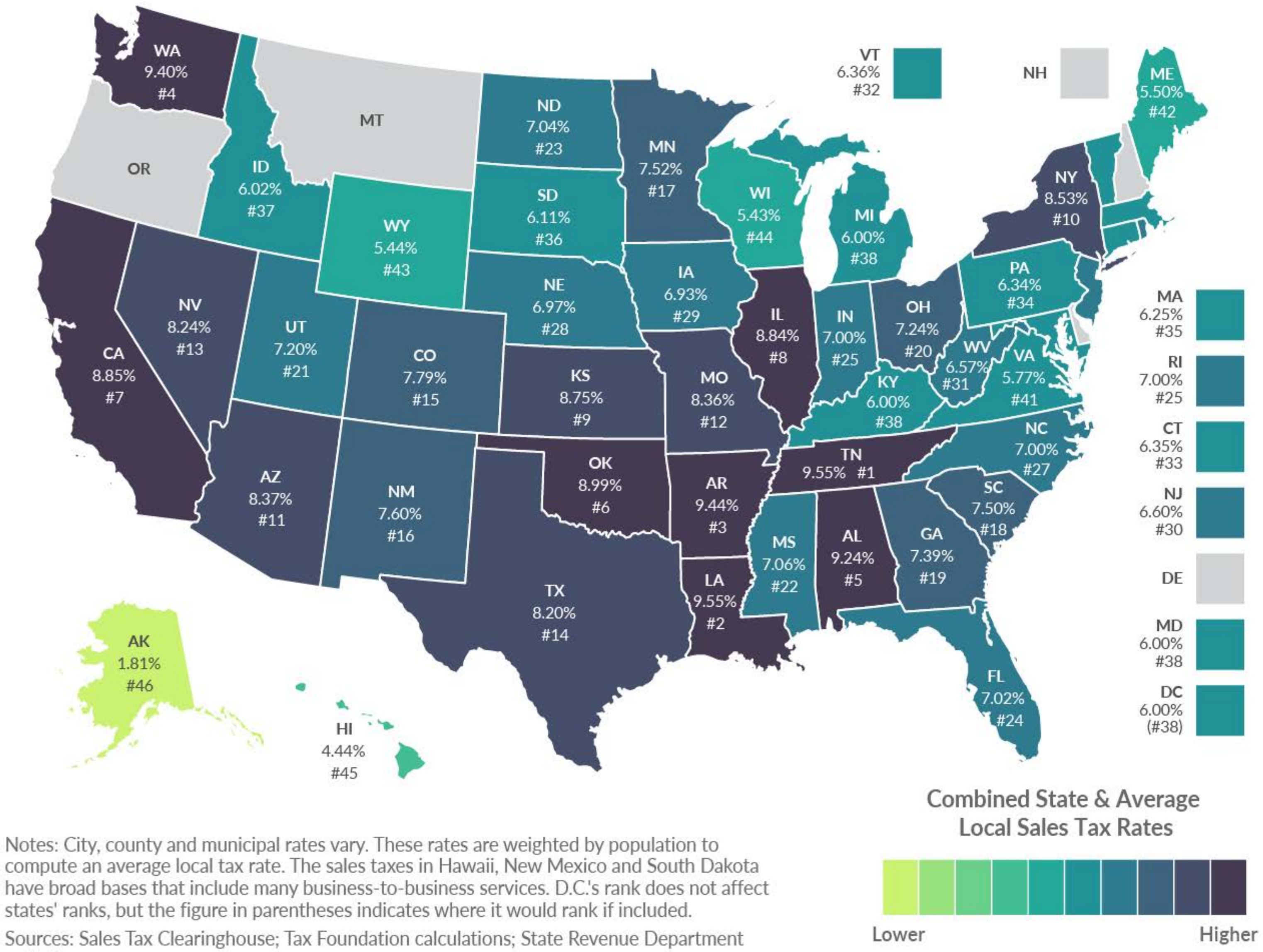
How High are Sales Taxes in Your State?

Combined State & Average Local Sales Tax Rates, July 2023



Notes: City, county and municipal rates vary. These rates are weighted by population to compute an average local tax rate. The sales taxes in Hawaii, New Mexico and South Dakota have broad bases that include many business-to-business services. D.C.'s rank does not affect states' ranks, but the figure in parentheses indicates where it would rank if included.

Sources: Sales Tax Clearinghouse; Tax Foundation calculations; State Revenue Department websites

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SALT Pass-Through Entity (PTE) Election Planning

SALT PTE Election Overview

- TCJA imposed an individual SALT deduction limit of $10K
- As a result, many states have recently passed legislation to circumvent the $10,000 SALT deduction limitation via an optional tax at the PTE level
- IRS Notice 2020-75 confirmed these Pass-Through Entity Tax (PTET) elections would allow businesses to fully deduct state and local taxes from the entity’s taxable income

PTE Election Planning

- In short – state tax paid at entity level instead individual level, thereby allowing the full SALT deduction for the individual
- Simple Example:

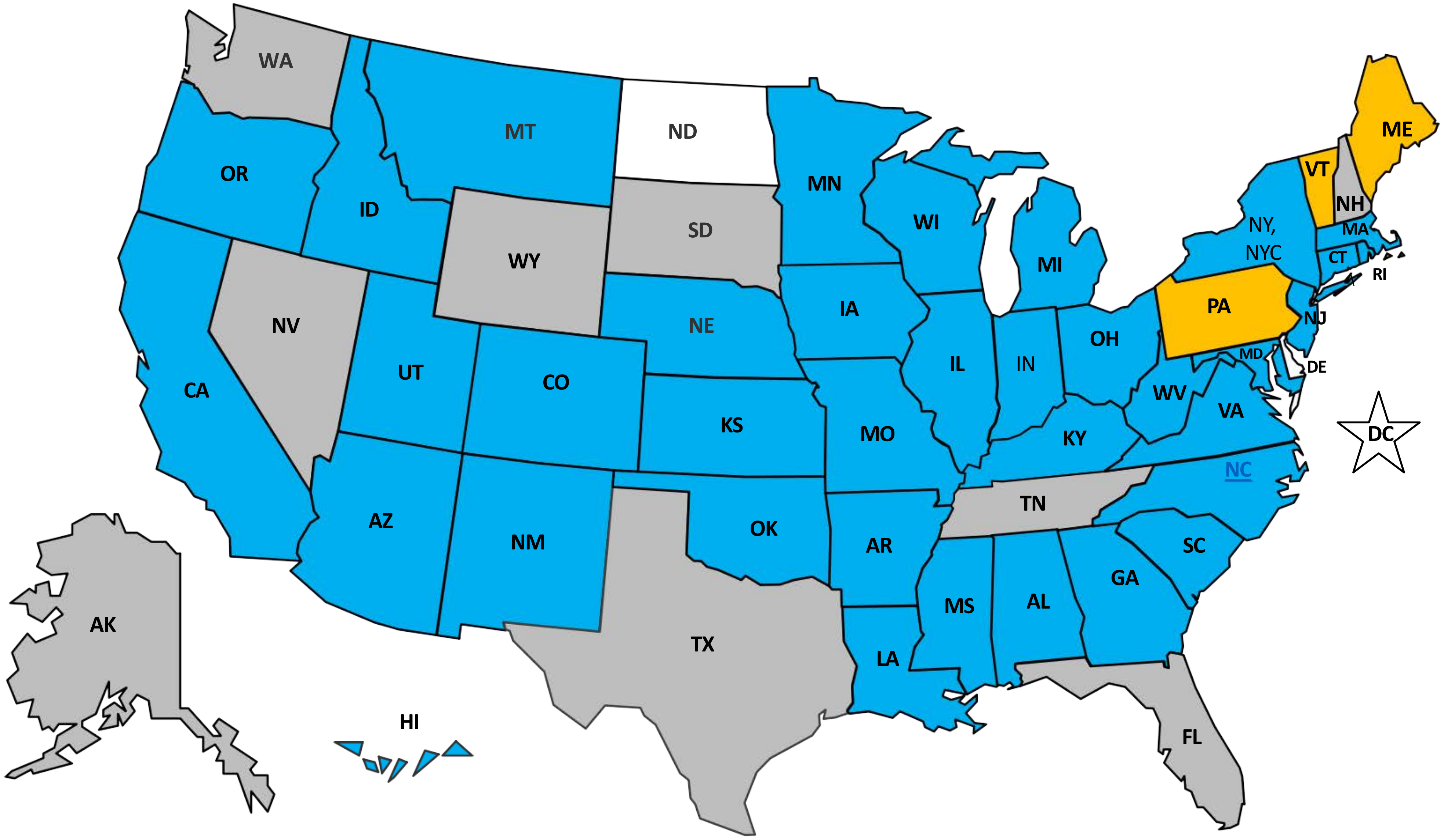
K-1 income generates individual income. Income taxed at state level and subject to $10K Fed SALT deduction limit. Thus a $30K SALT liability will result in a total SALT deduction $10K (additional $20K in SALT lost).

Alternatively, elect a PTE level tax, $30K SALT paid at entity level as a business expense. K-1 reduces income by amount of SALT and benefit equals ~SALT x Fed Tax Rate

SALT PTE Election Planning

CSH Insight: Evaluate multistate footprint for potential states with PTE option for 2023/2024

States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax (as of August 10, 2023)



36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:

AL, AR[1], AZ[1], CA, CO[3], CT[4], HI[2], GA[1], IA[1], ID, IL, IN[1], KS[1], KY[1] (& KY) ,LA, MA, MI, MD, MN, MO[1], MS[1], MT[2], NC[1], NE[3], NJ, NM[1], NY, OH[1], OK, OR[1], RI, SC, UT[1], VA, WI, WV[1], and NYC[1]

[1] Effective in 2022

[2] Effective in 2023 or later

[3] Retroactive to 2018

[4] Mandatory 2018-2023, elective starting 2024

3 states with proposed PTE tax bills:

ME - LD 1891 introduced (session ended)

PA – SB 659 and HB 1584 introduced

VT – SB45 passed Senate, in House (session ended)

9 states with no owner-level personal income tax on PTE income:
AK, FL, NH, NV, SD, TN, TX, WA, WY

3 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
DC, DE, and ND

AICPA

PTE Election Planning

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PTE Considerations

- PTE is an “election” and must be evaluated by the taxpayer for the benefit vs. cost of compliance
- May result in “new” tax filings that can outweigh benefits
- May require a temporary “double payment” if estimated payments at individual level have already been made and election is made at entity level
- Not all states will allow transfer of estimated payments from individual to business
- Benefits likely higher in states with higher tax rates
- Consideration should be given to number of states, number of shareholders, crediting of taxes paid to other states, types of entities and shareholders
- Future changes to SALT deduction cap at individual level may change PTE benefit in 2025 and beyond

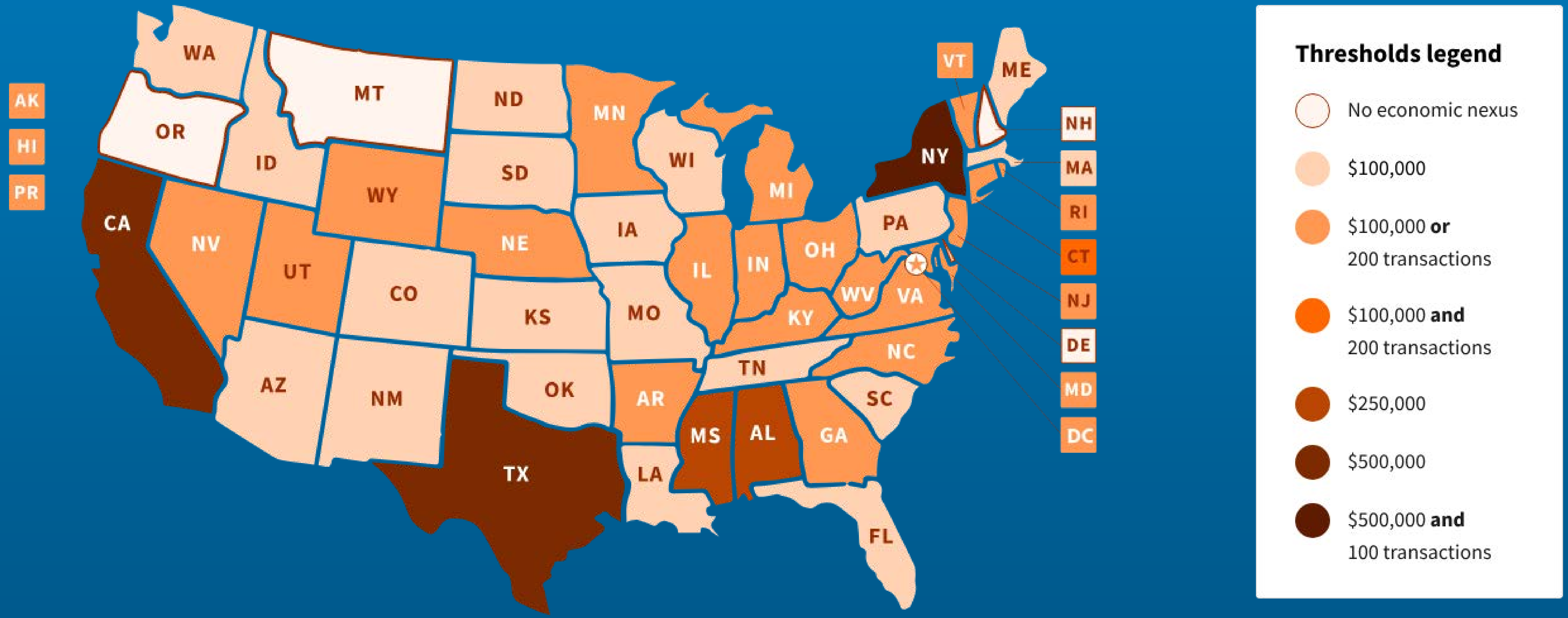
CSH Insight:
Careful analysis of PTE for 2023 should be completed, significant complexity and variability in state tax rules related to PTE exist and a benefit in election is not a “guarantee.”

Nexus Overview

- Nexus in tax world means "connection" – for a state to impose its income taxes on an out-of-state business, there must be a requisite level of connection between the state and the business.
- The U.S. Constitution requires there be "some definite link, some minimum connection between a state and the person, property, or transaction it seeks to tax."
- Regardless of whether you are determining income, franchise, gross receipts tax, or sales/use tax nexus, the analysis starts with physical presence
  - Physical nexus can include:
    - Employees
    - Property (e.g., fixed assets, inventory (Amazon warehouses), or rent)
    - Use of independent contractors (in some states)
    - Taxing agency registrations (e.g., payroll or sales tax)/authorization to do business
    - Company activities (e.g., delivery in company trucks, attends trade shows, or performs services)

Sales Tax Nexus Thresholds

CSH Insight: Be aware of number of transactions that can trip sales tax nexus in addition to $ thresholds



Economic Nexus

Economic Nexus only enters the analysis when the vendor has no physical presence in a state.

- For example, if a business has a salesperson who regularly enters state X, that business will have nexus in state X even if its sales are below state X's thresholds (e.g., sales into state X amount to only $30K)
- However, in an example where a salesperson does not enter state X, but sales have exceeded a statutory threshold, state X may assert Economic or Factor Nexus

Economic/Factor Based Nexus (based on state rules)

- Certain threshold of sales sourced to a state
  - California (>$690,144 for 2022)
  - Texas (>$500,000 Texas sourced gross receipts as of period ending in 2019)
  - Michigan (>$350,000 Michigan sourced gross receipts)

Nexus Remediation

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What to do if we have an issue and are not appropriately filing in the correct states?

- If no notice has been sent by the state, a business may have an option for a VDA or Voluntary Disclosure Agreement – thus allowing the business to "come clean" and minimize both interest payments and the total lookback period.
- If notice has been sent by a state, consider what other states might have a similar fact pattern that should be filed.

CSH Insight:
VDAs are available for both income tax and sales/use taxes.

Consideration should be given to both when evaluating potential liability.

Other Considerations

- **Now is the time for 2024 Planning**
  - State taxes at all time high and growing
  - Business models shifting requiring new investment, locations, and technologies
  - Macroeconomic uncertainty
- **2024 Capital Agenda Planning Considerations**
  - Hard Capital – Building/M&E
  - Human Capital – Hiring/Relocation/Training
  - R&D Capital – Investments in innovation
  - Tech Capital – Investments in technology
- End-of-year planning is the time to share a 2024 Capital Agenda plan with advisors to help minimize total tax exposure.
  - Many states/local jurisdictions have cash available to help support growth of your business.

CSH Insight:
Evaluate how your business can leverage its activities and goals to drive further tax savings in 2023/2024.

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Thank you!