

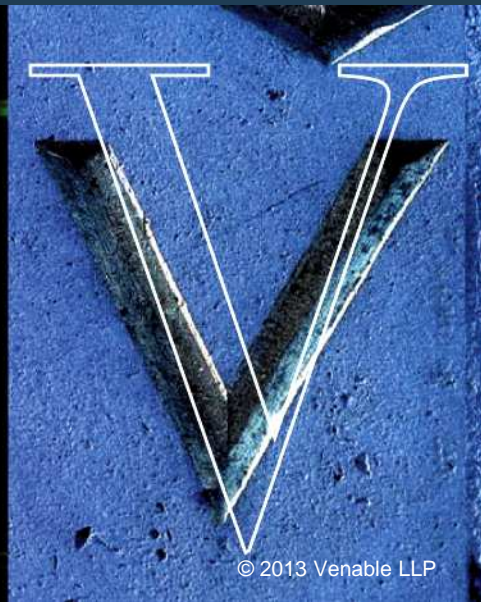
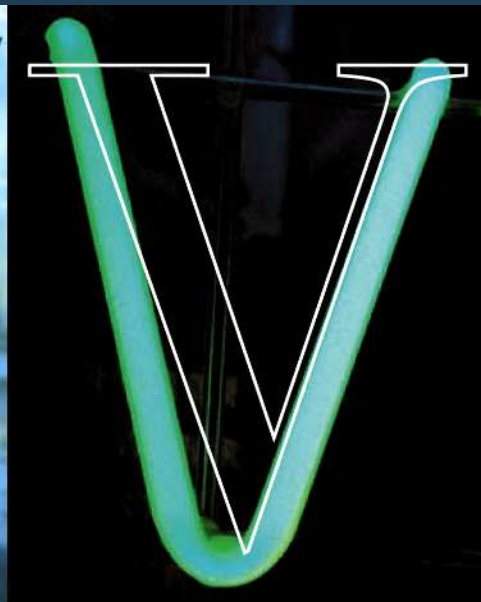
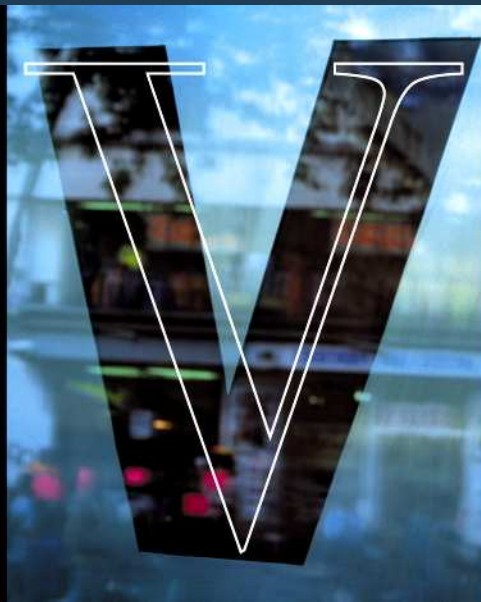
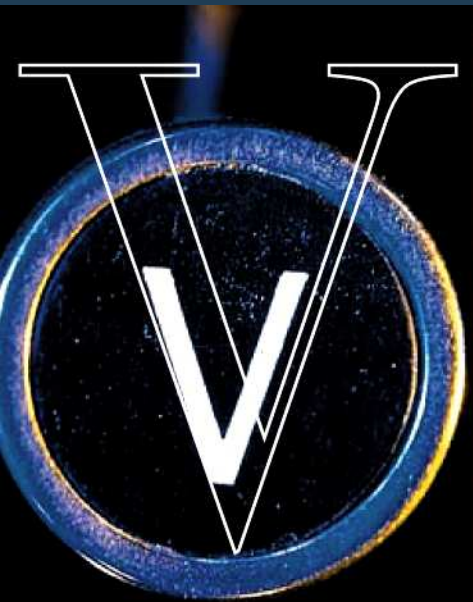
# Nonprofit Organizations Committee Legal Quick Hit: Sales and Use Tax for Nonprofits: Updates & Expectations for 2013

**MODERATOR:** JEFFREY S. TENENBAUM, ESQ.

**PRESENTERS:** WALTER R. CALVERT, ESQ.  
TAMMARA F. LANGLIEB, ESQ.

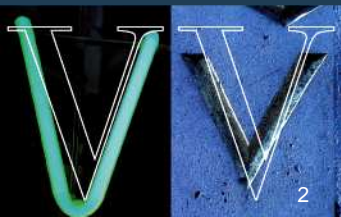
TUESDAY, JANUARY 8, 2013

3:00 p.m. EST



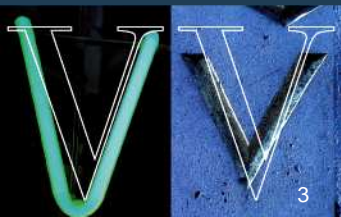
# Agenda

- Internet Selling
- Internet Buying
- Nexus
- Sales and Use Tax Audits
- Conference Hosting



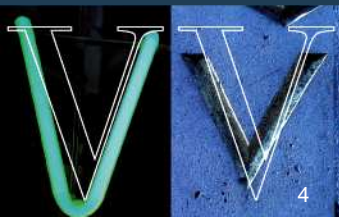
# Internet Selling: Vendor Obligations When Selling Online

- Exempt organization overview:
  - Typically no generally applicable exemption for sales.
- Retailer obligations:
  - Retailer with “physical presence” in the state of product delivery needs to collect and remit sales tax on behalf of purchaser.
  - Certificates required to verify purchaser claims for exemption.



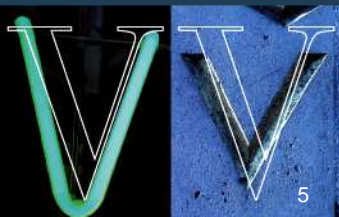
# Internet Selling: Vendor Obligations When Selling Online

- Retailer obligations:
  - States cannot compel out-of-state Internet vendors—without “presence” in the buyer’s state—to collect the sale/use tax owed by state residents.
    - Based on 1967 Supreme Court ruling.
    - Would create an undue burden on interstate commerce.



# Internet Selling: Vendor Obligations When Selling Online

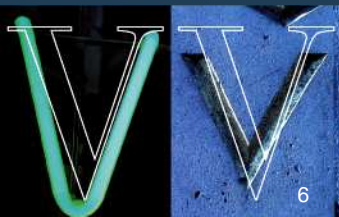
- Sales and use tax is generally imposed on retail purchaser.
  - But vendor has an obligation to collect and remit the tax to the taxing jurisdiction.
  - And a vendor will have liability for failure to do so.
  - Location of buyer's will typically impose the taxes.
- Sales tax is a collection burden imposed on retail vendor to collect on behalf of purchaser.
  - Difficult to “chase” purchasers after sale.
  - Easier to “chase” retailers.
  - Challenges arise with drop shipments.



# Internet Selling: Vendor Obligations When Selling Online

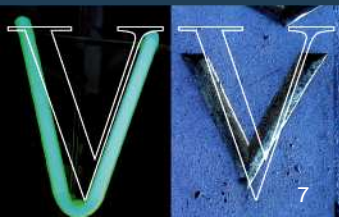
- Difficulty in Compliance:
  - Not all states have sales tax.
  - State sales tax laws are not uniform (exemptions vary widely).
  - Different locality rates.
  - Some (but not all) states collect on behalf of localities.
- Magnitude of Problem:
  - Sales and use taxes generate almost 1/3 of a typical state's total revenue.
  - Revenue loss projections of approximately \$10.1 billion in 2011.

(Source: CRS Report for Congress. "State Taxation of Internet Transactions."  
June 7, 2011)



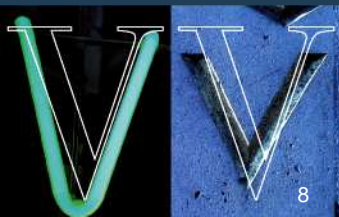
# Internet Selling: Vendor Obligations When Selling Online

- Proposed Solution:
  - SSUTA (Simplified Sales and Use Tax Agreement).
  - Simplifies administration with:
    - Uniform tax definitions and exemptions, rate simplification, and state-level administration.
  - Encourages "remote sellers" selling over the Internet and by mail order to collect tax on sales to customers living in the streamlined states.



# Internet Buying: Obligations and Exemptions for Online Purchases

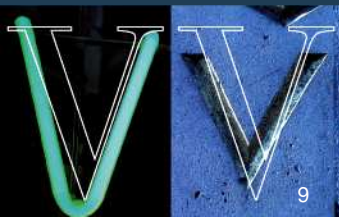
- Purchaser's Obligation:
  - Use tax – how it works.
  - Self-report if retailer does not collect sales tax.
    - Not widely followed.
    - Difficult to audit.





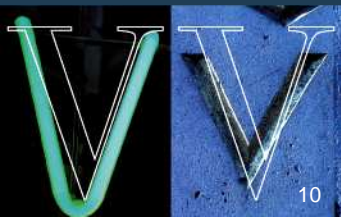
# Internet Buying: Obligations and Exemptions for Online Purchases

- Exemption:
  - Sale for use in exempt purpose.
    - Many IRC § 501(c)(3) and § 501(c)(4) organizations are exempt from sales tax.
    - Exemption statutes vary widely.
    - Typically, the organization must provide proof of exemption and certificate of exemption from the state.
  - Sale for resale exemption.



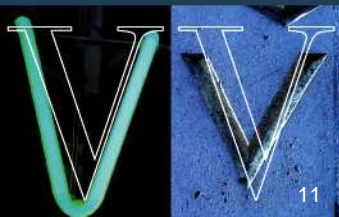
# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- The basics of nexus:
  - Due Process clause of Constitution requires some “definite link” between a state and the person/property/transaction it seeks to tax.
  - Some physical presence is required:
    - Building (office or warehouse).
    - Employee (teleworkers).
    - Employees attending a conference.



# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

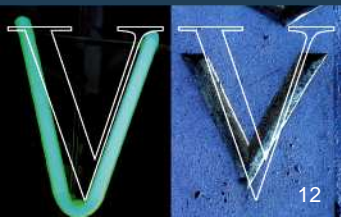
- Nexus through others:
  - Agency nexus:
    - Retailer has no physical presence.
    - Nexus is created by “agent” or “representative” in the state acting on its behalf.
    - Typical case is Scholastic book club cases.



# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

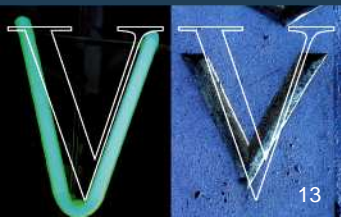
## – Affiliate Nexus:

- Typical case is where a retailer has no physical presence with state.
- However, affiliated company—parent, subsidiary, or brother/sister corporation—has presence in the state.
- File as “unitary group” for state income tax purposes.
- Retailer sends mail-order sales to state where affiliated company has presence.



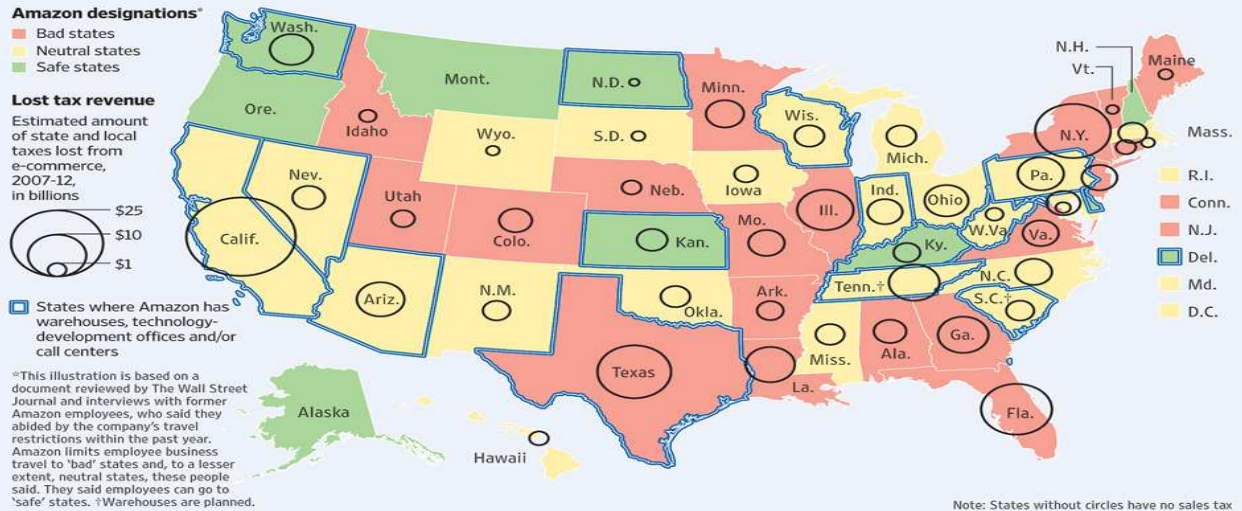
# Nexus – Where Has Amazon Taken Us and Where Are We Headed

- Amazon or "click-through" nexus:
  - A new subclass of affiliate nexus.
  - Retailer has no physical presence.
  - Nexus is created by a rebuttable presumption:
    - Retailer has nexus based on its agreement with a third party (who has physical presence in taxing state), who directly or indirectly refers customers to retailer and receives compensation for the referral.
  - Target of legislation is Amazon.



# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

Mapping the Web | Amazon seeks to minimize sales-tax collection across the U.S.



## State sales tax rates



## 'Amazon laws'

At least 10 states have passed 'Amazon laws' designed to make the company and other online retailers collect sales taxes. The laws vary by state.

**Arkansas, Connecticut, Illinois, Vermont**\*\* (enacted 2011); **North Carolina, Rhode Island** (2009); **New York** (2008): Online retailers must collect sales taxes if they have online affiliates, or advertising partners, based in the state.

**California** (2011): Online retailers must collect sales taxes if they have online-advertising partners based in the state, or if they have a subsidiary that develops products for their retail operations.

**Colorado** (2010): Online retailers would have been required to either collect sales taxes or give state officials information about the purchases Colorado residents made. A federal judge stopped the enactment of this law in January 2011.

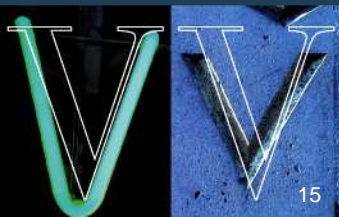
**Texas** (2011): Online retailers must collect sales taxes if they own at least 50% of a subsidiary that supports retail operations. Amazon has a Dallas-area warehouse, but has said it will close it because of the state's 'unfavorable regulatory climate.'

\*\*This part of the Vermont law goes into effect only if 15 other states adopt this online-affiliate legislation.

Sources: Amazon; University of Tennessee report; Federation of Tax Administrators; WSJ research

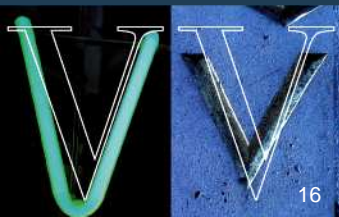
## Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- “Amazon” legislation often has dollar referral limits.
  - Don’t want to tax small retailers.
  - Typical rule is retailer needs to have gross receipts of more than \$10,000 based on sales to in-state residents resulting from in-state referrals.
- Some states pass legislation.
- Other states enter into settlement agreement with Amazon.



# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

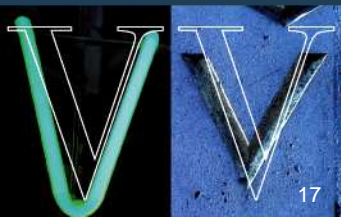
- Future predictions:
  - Need to level the playing field.
    - Borders Group tried to set up mail-order affiliate to avoid paying sales tax.
    - California court rejected this argument.
    - Borders is now facing bankruptcy liquidation.
  - States need revenue.
  - Some states try to educate on self-reporting.
    - Colorado legislation (but declared illegal).





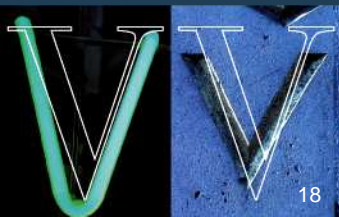
# Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- Proposed federal legislation:
  - Marketplace Fairness Act (S.1832).
    - Sponsor: Sen. Mike Enzi (R-WY).
      - Applicable to states that are members of SSUTA and to states that adopt minimum simplification requirements.
      - State is authorized to require all sellers making remote sales to its residents to collect and remit sales and use taxes.
      - Small business exception.



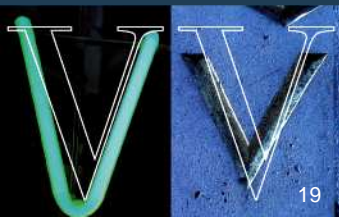
## Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- Main Street Fairness Act (H.R. 2701/S. 1452).
  - Sponsors: Rep. John Conyers (D-MI-14)/Sen. Richard Durbin (D-IL).
    - Applicable to states that are members of SSUTA .
    - Sellers must collect sales and use tax for remote sales sourced to member states.
    - Small business exception.



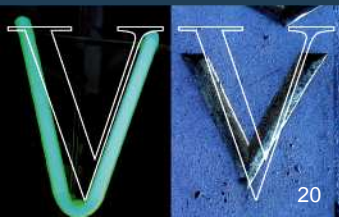
## Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- Marketplace Equity Act (H.R. 3179).
  - Sponsors: Rep. Steve Womack (R-AR).
    - Applicable to states that adopt simplification sales tax system.
    - State is authorized to require all sellers making remote sales to its residents to collect and remit sales and use taxes.
    - Small business exception.



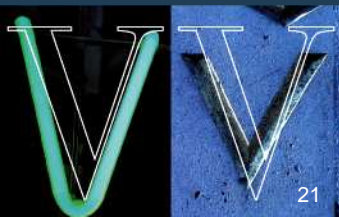
## Nexus – Where Has Amazon Taken Us and Where Are We Headed?

- Digital Goods and Services Tax Fairness Act (H.R. 1860/S. 971).
  - Sponsors: Rep. Lamar Smith (R-TX) and Sen. Ron Wyden (D-OR).
    - Prohibits state and local governments from imposing higher taxes on certain sales of digital goods and services than are imposed on tangible goods.



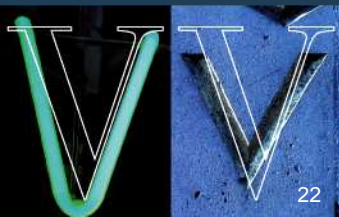
# Sales and Use Tax Audits – Nexus Questionnaires

- Many states issue nexus questionnaires to determine whether a company is doing business in the state.
- Typical questions focus on activities that indicate nexus, such as whether the company:
  - Owns or leases real property.
  - Maintains inventory.
  - Actively solicits orders for retail sales through “agents.”
  - Sends employees to the state to attend trade shows or conduct seminars.



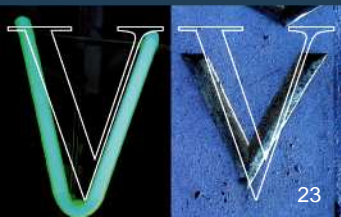
# Sales and Use Tax Audits – Nexus Questionnaires

- Answers to questions could trigger sales tax audit.
- Important to take questionnaires seriously and evaluate activities annually.
- Consult advisor before sending in questionnaire.
- Risks of not responding.
- Alternative means of responding.



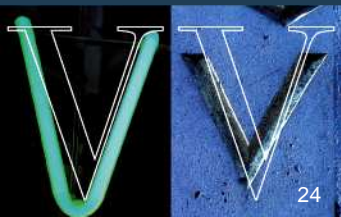
## Conference Hosting – When You Are “the Fellow behind the Tree”

- Retail sales at conference or convention:
  - Generally, need to collect and remit sales tax.
  - Some states (such as California) have exemption if conference is shorter than a certain number of days.
- Presence at conference could create nexus for future sales to in-state residents.
  - How long does “nexus” last?



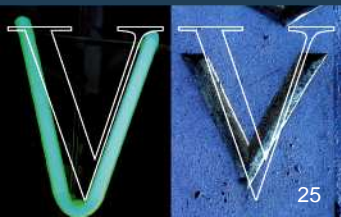
# Conference Hosting – When You Are “the Fellow behind the Tree”

- Sales tax on “registration” tickets:
  - No uniform laws.
    - Often local county or city tax with less guidance than at state level.
  - Laws are often unclear.
  - Even if tax does not apply to registration fee, it may apply to other events.
- Additional promoter’s responsibilities:
  - Inform trade show providers of sales tax obligations.
  - Inform state of name of trade show providers.





# Questions



# Contact Information

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