ANDREA LUEHMANN, LTD.
ACCOUNTING & TAX SERVICES

Sales and Use Tax

What is Sales Tax?

Sales Tax is a tax that is charged for the privilege of doing business in a particular state and is added to the purchase price of goods and/or services. Unlike Germany and many other European countries, the U.S. does not have a value-added tax but instead has Sales Tax, which differs from state to state and county to county.

Who charges Sales Tax?

45 out of 50 states impose Sales Tax on the sale of tangible personal property and certain services – excluded states are Alaska, Delaware, Montana, Oregon, and New Hampshire. Some of these states do however impose local taxes.

The jurisdiction imposing the tax is generally determined by the state where title passes to the customer or where the customer benefits from a service. States are prohibited from charging sales tax absent any nexus. Every state has its own rules for what establishes nexus and those state rules need to be carefully reviewed by the seller and buyer before transacting business. Factors establishing nexus include but are not limited to payroll, rental locations, property, warehouse, representatives, independent contractors, commissions, etc. and can vary greatly from state to state. Nexus is defined as what connects a seller to a specific state resulting in that seller having to collect sales or use tax from its customer.

How is Sales Tax administered?

Upon a sale that is subject to sales tax, the seller is required to charge and collect sales tax and remit the tax payment to the applicable jurisdiction according to the timing requirement of the jurisdiction imposing the tax. Most states require sales tax payments to be submitted with a sales tax return but some states have special filing requirements depending on the size of the taxpayer. Timing of when payment needs to be remitted to the jurisdiction and when the sales tax return needs to be submitted varies from state to state, depends on the size of the taxpayer, and is either monthly, quarterly, or annually.

Some states require tax prepayments for large taxpayers and have different rules regarding estimating the tax to be prepaid. While some states require taxpayers to estimate their tax liability prepayment based on a percentage of current period tax liabilities, other states assess specific prepayment amounts.

What are potential exemptions?

All sales should be considered taxable for sales tax purposes unless proven otherwise. A sale to a customer could potentially be exempt from sales tax if:

1. the transaction is exempt (i.e. the customer is a reseller and the product will be resold; parts sold to be used in a manufacturing process),
2. the customer is exempt (i.e. certain not for profit organizations), or
3. the product is exempt (i.e. some states exempt food)

Exemption certificates need to be properly prepared and executed timely in order to take effect and exempt a seller from charging sales tax. Documentation requirements vary from state to state with some states having exempt certificates that are all-encompassing, while other states have different exemption certificates to be used for different reasons.

Some states offer exemptions for certain industries in an effort to attract business in their jurisdiction and include industries such as manufacturing, farming, or warehouses to name just a few. Therefore companies are not only at risk of underpaying tax liabilities but also potentially overpay taxes if exemptions are available.

Each taxing jurisdiction has its own audit department assigned to assure compliance with sales and use tax rules in the given state.

How does Sales Tax differ from Use Tax?

A company's purchases could be subject to use tax if the seller did not charge sales tax, which is often the case when out-of-state sellers transact business with a purchaser in another state. If a seller does not have nexus in a given state, the buyer becomes responsible for remitting the tax to the applicable jurisdiction in the form of use tax.

Common occurrences where a company will pay sales taxes (or use tax, if no sales tax was charged) are for office supplies, office furniture, computers, etc. Sales taxes that were paid by a company for items purchased or services received are deductible costs on the income statement or are being capitalized if they pertain to depreciable property.

Sales and use tax typically do not benefit from international tax treaties and credits cannot be applied.

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Andrea Luehmann, Ltd. is a boutique style accounting, audit, and tax consulting firm in Chicago which has been providing professional services to foreign-owned companies and foreign nationals in the U.S. for over 30 years.

At Andrea Luehmann, Ltd. we have serviced and nurtured many of our clients from inception. By providing the "back" office support for the firm's business ventures, management can concentrate on what is most important to the growth of their business, marketing, selling, and servicing their products in the U.S.

Our team of auditors and tax accountants are licensed in both Germany and the U.S., and we offer all of our services in both English and German.

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