



Nexus, What Is It?

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“Nexus” is a term used to describe what level of contacts a company must have with a state in order for that state to be able to impose taxes and/or sales/use tax collection and remittance responsibility.

“Nexus” for state income tax purposes is different from nexus for state sales/use tax collect and remit responsibility purposes (although the United States Supreme Court has never answered this question definitively).

The United States Supreme Court answered in *Quill* what level of contacts a company had to have with a state in order for the state to impose sales/use tax collect and remit responsibilities on an out of state company. In general, this is “physical presence.” From the opinion:

In sum, although in our cases subsequent to Bellas Hess and concerning other types of taxes we have not adopted a similar bright-line, physical presence requirement, our reasoning in those cases does not compel that we now reject the rule that Bellas Hess established in the area of sales and use taxes. To the contrary, the continuing value of a bright-line rule in this area and the doctrine and principles of stare decisis indicate that the Bellas Hess rule remains good law. For [504 U.S. 298, 318] these reasons, we disagree with the North Dakota Supreme Court’s conclusion that the time has come to renounce the bright-line test of Bellas Hess.

The level of contacts must help you establish or maintain a market for your goods or services. Thus, physical presence by itself is not a sufficient level of contacts unless it is coupled with efforts to sell your goods or services in that state. Thus, making a flight connection in Seattle on a business trip from San Francisco to Anchorage may be physical presence but that presence does nothing to help you establish or maintain a Washington market.

How do startups and other companies get in trouble with these rules? Do you hire a local third-party to install property or make warranty repairs for a customer? You have nexus, because in most states the third-party is considered your physical presence in the state and the services they provide help you establish or maintain a market for your goods or services. Do you send employee or independent contractor sales personnel into various states on a regular or irregular basis? You have nexus, because in most states the frequency of the physical presence makes no difference. Further, it is irrelevant whether or not the person is a state resident; the only question is whether the person was in the state and helped you establish or maintain a market for your goods or services. Do you send company representatives to attend trade conferences or conventions in a particular state? You may have nexus, because in some states this activity is enough to establish a physical presence intended to help you establish or maintain a market for your goods and services. Do you affiliate with other web pages to refer sales to you? In a growing number of states, you may have neuxs because that affiliate is considered your agent in the states in which the affiliate is located.



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Remember that the burden is often placed on the taxpayer to prove an absence of nexus. Proving a negative is not easy. Consequently, keeping track of your visits and the purpose of your trips can be helpful. In the example above, let's say that you flew from San Francisco to Seattle but the next flight to Anchorage was the next morning, requiring that you get a hotel room between flights. An auditor might see the hotel receipt and assert that the purpose for the Washington stop was to market your goods and services to a Washington customer. A record that documented that the purpose of the trip was to call on oil companies on the North Slope would be helpful, making the stop in Seattle irrelevant.

As your business grows and reaches out into other jurisdictions, be sure to consult with your tax advisors to make sure you do not inadvertently create tax filing and other obligations that you are not aware of.