Insights: Publications

5 Key Takeaways | State Sales Tax in 2024: What Every Retailer Needs to Know

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Kilpatrick's David Hughes and Kylan Memminger recently led a session at the firm's Retail & Consumer Goods Summit. The presentation, “State Sales Tax in 2024: What Every Retailer Needs to Know,” highlighted current sales tax issues and topics impacting retailers and consumer goods manufacturers and suppliers in the marketplace. The session provided an overview of multistate sales tax considerations and issues in the retailer space, ranging from exempt sales and selling on a marketplace to qui tam and class action lawsuits. The discussion also covered additional taxes to be aware of, including locally imposed taxes and fees specific to retailers.

David and Kylan offer the following key takeaways from their presentation:

1. Retailers, especially remote retailers, should be cognizant of the requirement to collect and remit any locally imposed sales and use taxes when making a sale into a state. Various states permit localities to separately enact and administer sales and use taxes, including, but not limited to, Alabama, Alaska, Arizona, Colorado, Idaho, Illinois and Louisiana.

2. Sales tax exemptions are widely available based on the item being sold or a characteristic of the purchaser. The requirements to validate and document exempt sales using exemption certificates differ by state. Many states require sellers to verify a purchaser's exempt-status before selling a product tax-free.

3. Many retailers who sell on a marketplace want proof that a marketplace facilitator is collecting and remitting tax on their sales. States are beginning to develop certificates that act as a certification that the marketplace facilitator collected tax on behalf of the marketplace seller, so the seller can later prove that they do not owe tax on marketplace sales.

4. Retailer Catch 22: Qui Tam and Class Actions. Either the under-collection or over-collection of sales tax could potentially result in the threat of litigation or civil liability for the retailer.

5. States are recently abandoning economic nexus transaction thresholds and only requiring sellers that make above a specified dollar amount of sales into a state to collect and remit tax in that state. A technical reading of economic nexus guidance is imperative as some states measure the annual value of “gross” sales into the state, while others are concerned with “retail” or “taxable” sales.

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