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# Internet Sales Tax Reform Update

# A Note from PartnerCentric

Federal and state legislative activity regarding the internet sales tax reform remains to be a hot topic in the Performance Marketing Industry. We have worked in conjunction with our legal counsel to prepare this updated list of nexus legislation and activity in each state.

Most states' nexus is triggered by two events: a financial threshold and the activities of your in-state affiliates if you are an out-of-state retailer. Specifically, a nexus tax goes into effect after a specific revenue threshold is met, usually around \$10,000, and that sale happened through an affiliate "in-state," meaning based in that nexus law state.

To our knowledge as of August 2017, we are not aware of any companies that have been the subject of enforcement actions seeking to collect additional taxes. However, we are aware that certain states have signaled they will begin enforcing their nexus tax laws as many states have made clear that they feel their nexus laws are enforceable, though few spoke about concrete plans to enforce their laws. For example, the Washington Department of Revenue has formed a unit to enforce the state's tax on out-of-state wholesalers and online retailers with no physical presence in Washington state. Additionally, the Alabama Department of Revenue has indicated it will begin enforcing the state's tax on out-of-state sellers with more than \$250,000 in in-state sales.

While the Marketplace Fairness Act has been going through our federal system for years, there is no legislation at the federal level actively being reviewed that specifically addresses this issue.

PartnerCentric recommends an on-going audit of affiliate activities, not just in nexus tax states but even more broadly to cover FTC and marketing practices. It is recommended that this process, findings, and corrective actions are thoroughly documented.

We hope this guide provides clarity around the current web of nexus laws, and proves to be a useful reference as you implement and adjust your program strategies. Check back often for updates!

- The PartnerCentric Team

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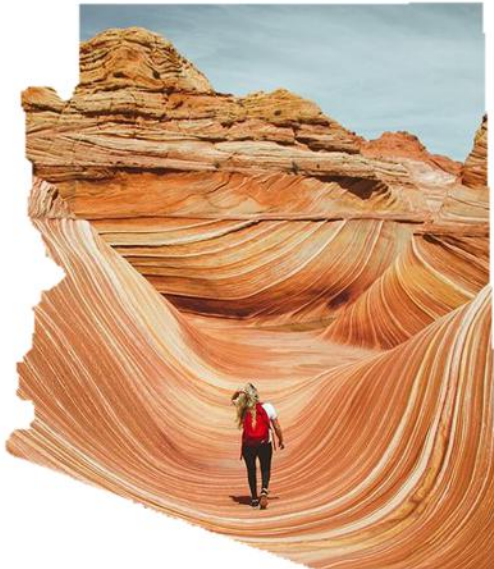


## ALABAMA

Effective January 1, 2016, the AL Dept of Revenue promulgated new rules that require out-of-state retailers engaged in certain activities and with sales to AL residents in excess of \$250,000 to collect sales tax.



**HB 116**



## ARIZONA

On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.

**More Info:** Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the instate resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



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## ARKANSAS

On April 1, 2011, Arkansas' governor signed a bill into a law enacting a provision that is aimed at requiring certain out-of-state retailers to collect local sales tax based upon their relationships with in-state parties. Arkansas does have a click through Nexus law. This law includes a rebuttal provision. In addition, Arkansas is considering in 2017 an economic nexus law that would replace the click-through nexus law.



### Non-Solicitation Agreement Workaround SB 738

**More Info:** May require out-of-state retailers with Arkansas affiliates who refer at least \$10,000 in sales from Arkansas purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.

## CALIFORNIA

CA's law includes \$10,000 in sales into CA during previous 12 months due to referrals from CA affiliates; and more than \$1,000,000 in cumulative sales into California during previous 12 months (regardless of referrals). California does have a click through Nexus law. This law includes a rebuttal provision. California does have a template for Annual Certification that essentially allows internet retailers to work with Affiliates in California if they agree not to partake in specific activities. Those include things such as sending emails to CA residents, targeting CA residents specifically with flyers, coupons, paid search campaigns, etc. Retailers should refer to the Annual Certification from the State of California Board of Equalization which can be found here: <http://www.boe.ca.gov/pdf/boe232.pdf>





## COLORADO

CO passed legislation in 2014 that creates a presumption of a nexus for companies doing business with CO individuals, unless cumulative gross receipts from sales in the prior year are less than \$50,000. Contact your tax/legal expert for more info.



## CONNECTICUT

Connecticut added affiliate nexus language to its budget bill, SB 1239, which was passed by the legislature and signed by the Governor on May 4, 2011. SB 1239 may require out-of-state retailers who have Connecticut affiliates that refer at least \$2,000 in sales from Connecticut purchasers to collect and remit sales tax. SB 1239 has an effective date of July 1, 2011.



**SB 1239**

**More Info:** May require out-of-state retailers who have Connecticut affiliates that refer at least \$2,000 in sales from Connecticut purchasers to collect and remit sales tax effective as of July 1, 2011. Contact your tax/legal expert for more info.



## GEORGIA

Georgia added affiliate nexus language to an omnibus tax bill, HB 386. It was passed by the governor of Georgia April 25, 2012



### Non-Solicitation Agreement Workaround HB 386

**More Info:** May require out-of-state retailers who have Georgia affiliates that refer at least \$50,000 in sales from Georgia purchasers to collect and remit sales tax. Contact your tax/legal expert for more info.



## HAWAII

The Hawaii House of Representatives has approved a bill that would require retailers to collect taxes on Internet sales transactions. The Hawaii Senate must pass the bill before it becomes law. This state has attempted multiple times to create a nexus law but has been unsuccessful in doing so.



### HB 1257

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## IDAHO

On March 18, 2016, the Idaho legislature was considering H.B. 581, which would establish Click Through Nexus tax legislation but it didn't pass. This state has attempted multiple times to create a nexus law but has been unsuccessful in doing so. They are attempting again in 2017.



**HB 581**



## ILLINOIS

In 2015, Illinois enacted a new law (35 ILC 105/2(1.1)) that requires an out-of-state retailer to collect sales tax if it has a click-through-arrangement and made cumulative gross sales of \$10,000 during the preceding four quarterly periods to Illinois customers.



**Section 6203 of Revenue and Taxation Code**





## IOWA

On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.

**More Info:** Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the instate resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



## KANSAS

On April 16, 2013, the state legislature passed affiliate nexus tax legislation introduced earlier this year. Effective on or around July 1, 2013, out-of-state sellers with Kansas affiliates referring at least \$10,000 in annual sales to purchasers in Kansas, will be required to collect and remit sales tax to the state.



**HB 1257**

**More Info:** Effective July 1, 2013, out-of-state sellers with Kansas affiliates referring at least \$10,000 in annual sales to purchasers in Kansas will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info. Contact your tax/legal expert for more info.



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## LOUISIANA

The original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012.



### Section 6203 of Revenue and Taxation Code

**More Info:** As of March 2016, LA has a threshold of \$50,000 in sales during the previous year.



## MAINE

The state legislature passed an affiliate nexus tax bill, and the governor signed it into law. Effective on July 1, 2013, out-of-state sellers with Maine affiliates referring exceeding \$10,000 in annual sales to purchasers in Maine, will be required to collect and remit sales tax to the state.



### HP 228 and HP 251

**More Info:** Effective July 1, 2013, out-of-state sellers with Maine affiliates referring \$10,000 in annual sales to purchasers in Maine, will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## MARYLAND

In February of 2015, the Maryland state legislature was considering HB 726, which would establish Click-Through nexus tax legislation. If it had been passed, an obligation to collect and remit sales and use tax is created if a retailer enters into a referral agreement with a Maryland resident whose referrals generate more than \$10,000 during the preceding four quarterly periods. As of 2017, there is no nexus click-through tax in MD.



**HB 726**



## MICHIGAN

On January 15, 2015, the Michigan legislature passed S.B. 658, establishing ClickThrough nexus tax legislation. Effective October 1, 2015, an obligation to collect and remit sales and use tax is created if a seller enters into a referral agreement with a Michigan resident whose referrals generate more than \$10,000 and the seller's total cumulative gross receipts from the sales to purchasers in-state exceed \$50,000 during the preceding twelve months.



**HB 658**

**More Info:** Out-of-state sellers with Michigan affiliates referring at least \$10,000 in annual sales to purchasers in Michigan will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## MINNESOTA

On May 23, 2013, the state legislature passed an affiliate nexus tax bill, and the governor signed it into law. Effective on July 1, 2013, out-of-state sellers with



**SF 8**

**More Info:** Effective July 1, 2013, out-of-state sellers with Minnesota affiliates referring at least \$10,000 in annual sales to purchasers in Minnesota will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## MISSISSIPPI

On January 12, 2017, MS' chief tax collector filed to require any company doing more than \$250,000 of sales in Mississippi each year to collect the state's sales tax.



**HB 480**



## MISSOURI

7/5/13 The state legislature passed affiliate nexus tax legislation that was signed into law by the Governor on July 5, 2013. Effective on August 18, 2013, out-of-state sellers with Missouri affiliates referring at least \$10,000 in annual sales to purchasers in Missouri, will be required to collect and remit sales tax to the state.



SB 174

**More Info:** Out-of-state sellers with Missouri affiliates referring at least \$10,000 in annual sales to purchasers in Missouri will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## NEBRASKA

In April of 2016, Nebraska legislature was considering L.B. 1087, which would establish Click Through Nexus tax legislation. It was not passed but if it were, an obligation to collect and remit sales tax would be created if sellers enter into referral agreements with in-state affiliates whose referrals generate more than \$10,000 during the preceding twelve months.



LB 1087



## NEVADA

On May 27, 2015, Nevada passed affiliate nexus tax legislation. Effective October 1, 2015, an obligation to collect a sales and use tax is created if retailers enter into referral agreements with Nevada residents whose referrals generate more than \$10,000 during the preceding four quarterly periods.



**AB 380**

**More Info:** Out of state sellers with Nevada affiliates referring at least \$10,000 in annual sales to purchasers in Nevada will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## NEW JERSEY

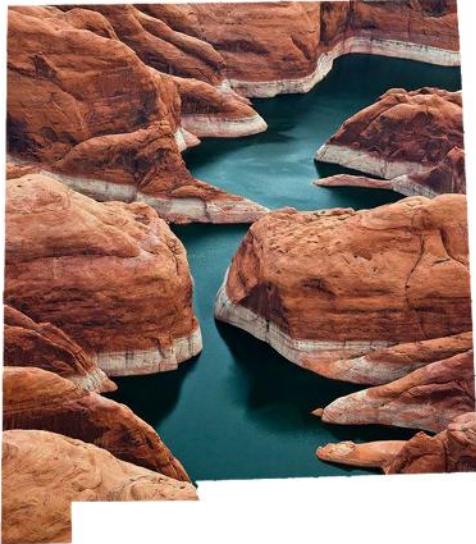
On July 3, 2014, the New Jersey passed a sales nexus tax law requiring out-of-state online retailers making sales to New Jersey consumers to collect sales tax, if cumulative sales through those contractors exceed \$10,000 for the prior four calendar quarters.



**AB 3486**

**More Info:** Out-of-state sellers with New Jersey affiliates referring at least \$10,000 in annual sales to purchasers in New Jersey will be required to collect and remit sales tax to the state.

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## NEW MEXICO

11/5/15 The state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.

**More Info:** Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the instate resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.

## NEW YORK

On March 28, 2013, New York’s highest court, the NY Court of Appeals, ruled in favor of the state’s affiliate nexus law, which requires out-of-state retailers with sales to New York purchasers in excess of \$10,000 to collect and remit sales tax to the state. If the ruling is challenged, the US Supreme Court will decide whether the state affiliate nexustax laws are ripe for resolution by the Court and if so, consider whether affiliate nexus tax laws are constitutional.

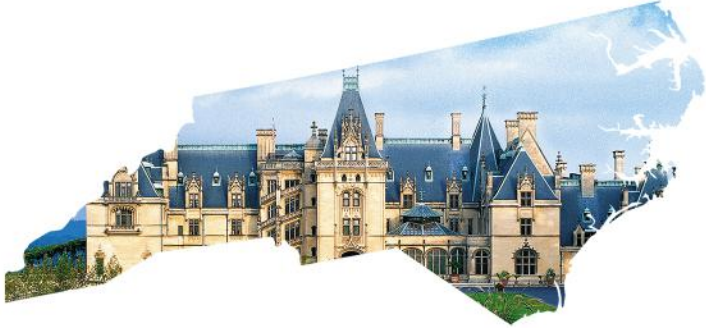


### Non-Solicitation Agreement Workaround

1101 (b)

**More Info:** Out-of-state sellers with New York affiliates referring at least \$10,000 in annual sales to purchasers in New York will be required to collect and remit sales tax to the state.





## NORTH CAROLINA

On September 15, 2012, the original affiliate nexus bill passed into law on June 27, 2011, effective September 23, 2011. The law did not become operative until September 15, 2012, because Federal law authorizing the states to require a seller to collect taxes on sales of goods to in-state purchasers without regard to the location of the seller, was not enacted on or before July 31, 2012. Section 6203 of the Revenue and Taxation Code can be found at the following link on the State Board of Equalization website.



### 6203 of Revenue and Taxation Code

**More Info:** Out-of-state sellers with North Carolina affiliates referring at least \$10,000 in annual sales to purchasers in North Carolina will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## NORTH DAKOTA

On November 5, 2015, the state has a Click-Through nexus tax policy that may affect you but no enacted legislation. Check with your tax or legal expert in the state for the current requirements to ensure compliance.

**More Info:** Click-through nexus tax legislation typically requires that a remote seller meets a minimum sales threshold in the state in question resulting from activities of an in-state referral agent (“Click-Through Nexus Tax”). The seller must be making commission payments to the in-state resident for any orders that come about as a result of the click-through referral from the resident’s website. Contact your tax/legal expert for more info.



## OHIO

The legislation being considered passed. Effective July 1, 2015, a seller is presumed to have a substantial nexus in OH if cumulative gross receipts from sales to customers in OH who are referred to the seller exceed \$10,000 during the preceding 12 months.



**HB 232**



## OKLAHOMA

On May 17, 2016, Oklahoma passed Click-Through nexus tax legislation. Effective November 1, 2016, the legislation requires out-of-state retailers using in-state affiliates to collect and remit tax for Oklahoma. Out-of-state sellers with Oklahoma affiliates referring at least \$100,000 in annual sales are required to notify Oklahoma purchasers of their personal obligations to pay state use tax at the point of checkout or payment. Contact your tax/legal expert for more info.



**HB 2359**



## PENNSYLVANIA

The Pennsylvania Department of Revenue issued a press release and a sales and use tax bulletin on December 1, 2011, which provides guidance concerning which activities establish nexus in Pennsylvania and therefore may obligate remote sellers to collect and remit sales tax to the state. The Pennsylvania Department of Revenue is basing this guidance on their interpretation of existing tax law and the United States Constitution.



### Sales and Use Tax Bulletin

**More Info:** The Pennsylvania statute does not have a revenue threshold. Out-of-state sellers with Pennsylvania affiliates referring sales to purchasers in Pennsylvania will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## RHODE ISLAND

On February 7, 2011, Rhode Island has introduced HB 5115. This legislation proposes to repeal the affiliate nexus tax which was passed in 2009. HB 5115 may become effective upon passage.



### Non-Solicitation Agreement Workaround HB 1537

**More Info:** Out-of-state sellers with Rhode Island affiliates referring at least \$5,000 in annual sales to purchasers in Rhode Island will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.







## SOUTH CAROLINA

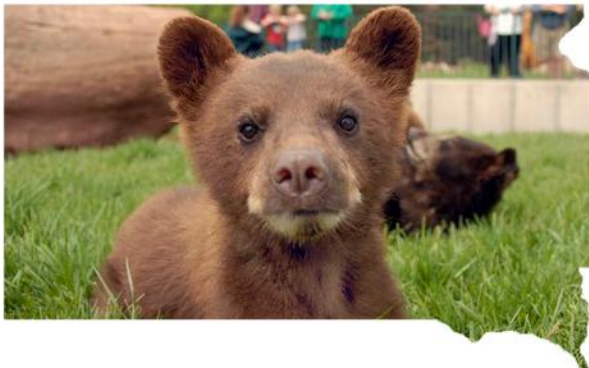
On May 12, 2015, South Carolina Senate passed click-through-nexus provision to the sales and use tax laws, effective Jan 1, 2016. The legislation provides that a retailer is presumed to be liable for the collection of sales and use in tax in South Carolina if the seller enters into an agreement with a state resident under which the resident refers customers by a link on an Internet website or otherwise, to the retailer. The presumption requires that the gross proceeds from sales by the retailer be greater than \$10,000 during the preceding 12 months.



### **Non-Solicitation Agreement Workaround**

**SB 170**

**More Info:** Out-of-state sellers with South Carolina affiliates referring at least \$10,000 in annual sales to purchasers in South Carolina will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## SOUTH DAKOTA

On March 29, 2016, South Dakota's governor signed SB 106 into law, becoming effective on May 1, 2016. Out-of-state sellers with either sales exceeding \$100,000 or at least 200 transactions with South Dakota residents are required to charge and remit sales tax. Please contact your tax/legal expert for more information.



**SB 106**



## TENNESSEE

On May 5, 2015, the Tennessee Governor signed Click-Through nexus tax legislation. Effective July 1, 2015, an obligation to collect and remit sales and use tax is created if retailers enter into referral agreements with Tennessee resident's whose referrals generate more than \$10,000 during the preceding twelve months.



**HB 1573**

**More Info:** Out-of-state sellers with Tennessee affiliates referring at least \$10,000 in annual sales to purchasers in Tennessee will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## VERMONT

As of October 13 2015, at least 15 states adopted the click-through-nexus laws, triggering the 15-state threshold for Vermont law. The click-through nexus tax legislation came into effect Dec. 1, 2015.



**32 VSA Section 9701**

**More Info:** Out-of-state sellers with Vermont affiliates referring at least \$10,000 in annual sales to purchasers in Vermont will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.

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## WASHINGTON

On July 1, 2015, Washington passed click-through nexus tax legislation, effective Sept. 1, 2015. The provision provides that out-of-state retailers who have a physical nexus with Washington and 1.) pay a commission or other consideration for referrals and 2.) gross more than 10,000 in sales into Washington State during the prior year is responsible for the collection of sales tax.



**ESSB 6138**

**More Info:** Out-of-state sellers with Washington affiliates referring at least \$10,000 in annual sales to purchasers in Washington will be required to collect and remit sales tax to the state. Contact your tax/legal expert for more info.



## WEST VIRGINIA

On April 30, 2013, West Virginia passed the Click-Through Nexus Tax legislation, effective July 12, 2013. The legislation provides tax collection on the out-of-state retailers using West Virginia affiliates to collect and remit sales tax.



**HB 2754**





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