



# Indirect Taxes NEWS

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A photograph of a hand in a blue checkered shirt pointing towards a sign that says 'OPPORTUNITY'. The background is a dark wood-grain surface.

**OPPORTUNITY**

Amnesty: US  
Multistate Tax  
Commission  
Offers Remote  
Sellers an  
Opportunity  
and more  
current information

# Amnesty: US Multistate Tax Commission Offers Remote Sellers an Opportunity

By Pablo Garciga

Owning property in a state generally establishes tax nexus. This is true even if a Treaty between the US and a foreign country creates the legal fiction that the limited activities of the foreign vendor are not deemed to create a Permanent Establishment in the US for federal income tax purposes. Since the number of online vendors have increased, the situation often arises whereby an out-of-state vendor owns inventory held by an online marketer (e.g. Amazon) at the marketer's warehouse. This situation has the potential of creating nexus for the out-of-state vendor in many states.

The Multistate Tax Commission (an intergovernmental state tax agency) is offering a very favourable Voluntary

Disclosure Agreement ("VDA") programme for online marketplace sellers. The application period began on 17 August 2017 and runs through to 17 October 2017. Participating states include: Alabama, Arkansas, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Nebraska, New Jersey, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin.

In order to be eligible for the programme, taxpayers must not be registered with the state, nor have filed returns or made payments to the state for the taxes for which the taxpayer is attempting to procure the VDA. This VDA is intended for taxpayers who have no connections to the participating state, other than inventory stored in a third party warehouse or at a fulfilment centre of the marketplace provider/facilitator.

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This VDA programme has several unique and advantageous aspects. States' VDA agreements seldom abate interest (indeed, in many states, interest on underpayments is statutorily mandated). This VDA abates past tax liabilities and related interest and penalties. States' VDA programs generally contain lookback periods (states agree to limit the liability to a certain number of past years, e.g. the most recent three years) and abate whatever liabilities might exist for earlier years. This VDA does not generally contain a lookback period.

This VDA program applies to several taxes, including sales and use taxes, and a good faith estimate of back tax liability to the state for the prior four years is a required disclosure. Taxpayers are permitted to choose which states and which tax type for which to seek relief.

In consideration for the abatement of these liabilities and related interest and penalties, taxpayers are required to register by 1 December 2017 with the respective states and begin to collect and remit the appropriate sales tax on taxable transactions to customers in the state.

The 19 states participating in this VDA program have some flexibility on how to structure certain aspects of the programme (e.g. Wisconsin will require payment of back sales tax liability and interest for a lookback period of 1 January 2015 to present.)

Before choosing to participate, taxpayers must consider additional

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**J. Pablo Garciga** specialises in state and local taxes (SALT), with an emphasis on multi-state corporate income/franchise taxes and

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aspects of the program (e.g., possible sharing of taxpayer information among states). The participating states have agreed that they will not share taxpayer information regarding this VDA programme except as re-

quired by law, pursuant to court order, or in response to an inter-government exchange of information where the taxpayer's name and identification number are included in the request (i.e., blanket requests for information

will not be honoured).

This special VDA programme does not cover sales taxes collected but not remitted to the states (taxpayers must remit the taxes collected and pay interest and penalties on these liabilities).



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