



**2024**

**Q2 outlook**

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Meet your presenters



## **Vanessa Frank**

Director, U.S. Indirect Tax

PwC

Vanessa M. Frank is a director in the San Francisco office of PwC. Vanessa has over 20 years of experience in U.S. indirect taxes. She is Co-Chair of the IPT San Francisco Local Luncheon Group. She is a frequent speaker for organizations such as Institute for Professionals in Taxation, Council on State Taxation, and Paul J Hartman SALT Forum.

Prior to joining PwC, Vanessa was a director in the eBay tax department, where she focused on implementation of marketplace facilitator collection requirements for the U.S., Mexico, and Canada.



## **Dorothy Lo**

Principal, Indirect Tax

PwC

Dorothy is a Partner in PwC's State and Local Tax (SALT) practice. She has been with PwC for over 18 years and has experience in state tax controversy, due diligence for M&A transactions, and is focused on indirect taxes. Based in the Bay Area, Dorothy is also PwC's expert and national resource for indirect taxes relevant to technology companies.

Prior to joining the San Francisco PwC SALT practice, Dorothy spent four years in PwC's National Tax Service office in Washington, D.C., where she rotated through the Tax Knowledge Management group and Federal M&A practice and earned her LLM at Georgetown Law.



## **Brian Smith**

Senior Government  
Relations Manager

Avalara

Brian Smith joined Avalara in 2019 and has dedicated the last four years to developing the Avalara Tax Research State Tax Portal. Brian actively collaborates with State Departments of Revenue to design unique Avalara solutions tailored to meet state-specific needs and legislative requirements.

Before joining Avalara, Brian played a pivotal role in the incubation of a startup that eventually evolved into DIRECTV. During his 33-year journey, he led a team that saw tax remittances grow from \$15K to an astounding \$1.5 billion, serving 22 million subscribers. His responsibilities included managing the taxability of products, overseeing four billing engines, and handling audits, hearings, and litigation



# Agenda

- Trends in digital goods/services taxation
- Simplifying economic nexus thresholds
- Marketplace definition updates
- Retail delivery fees
- Taxability of services
- Q&A





# Taxation of digital goods/services

# States seeking to expand tax base to digital goods/services

- A current **Virginia proposal** would expand the state sales and use tax base to cover digital personal property and taxable services, including streaming and software application services.
  - Would go into effect on January 1, 2025, if enacted
- **West Virginia's** taxation of entertainment streaming services was questioned by the Streamlined Sales Tax and whether it complied with the tax pact's rules.



## DATA TAX PROPOSALS

# Taxing collection of consumer data



### ILLINOIS

[SB 2307](#) would impose a tax per month based on the number of in-state consumers from whom a “commercial data collector” collects data.

### NEW YORK

[SB 2012](#) and AB 3959 would impose a tax per month based on the number of in-state consumers from whom a “commercial data collector” collects data.

### MASSACHUSETTS

[SB 1892](#) would impose a monthly tax at graduated rates on the collection of consumer data by commercial data collectors.

# Streamlined Sales Tax examines digital taxes

- › **New tax treatment for digital codes:** Proposal that would address the collection of tax on sales of digital codes that represent software, in-app purchases, and non-fungible tokens at the time the code is sold.
- › **Liability relief in digital goods plan:** States would not be required to provide liability relief to digital goods sellers that collect the wrong amount of sales tax unless the seller requested a buyer's complete street address.

**The Streamlined Sales Tax Governing Board** is a cooperative group of "States and businesses working together to create simpler, more uniform sales and use tax systems."

# State-specific actions in digital advertising taxes

- **Tennessee** has pending legislation to impose a data transaction privilege tax on annual gross revenues derived from data transactions from digital advertising services in Tennessee.
- **California** is exploring digital services and advertising taxes, examining Maryland's digital advertising tax and Tennessee's pending data transaction privilege tax.
- First Amendment claims against **Maryland's digital advertising tax** may move forward, per a new ruling from a federal appeals court.
- Effective December 2023, **New Mexico's gross receipts tax rules** extends to digital advertising on platforms like search engines and banner ads.





# Economic nexus & marketplace facilitator updates

# 5 years later, economic nexus is still evolving

States are updating their threshold limits:

## Indiana

[SB 228](#) removed its 200-transaction threshold, retroactive to January 1, 2024. This leaves just a \$100,000 sales threshold.

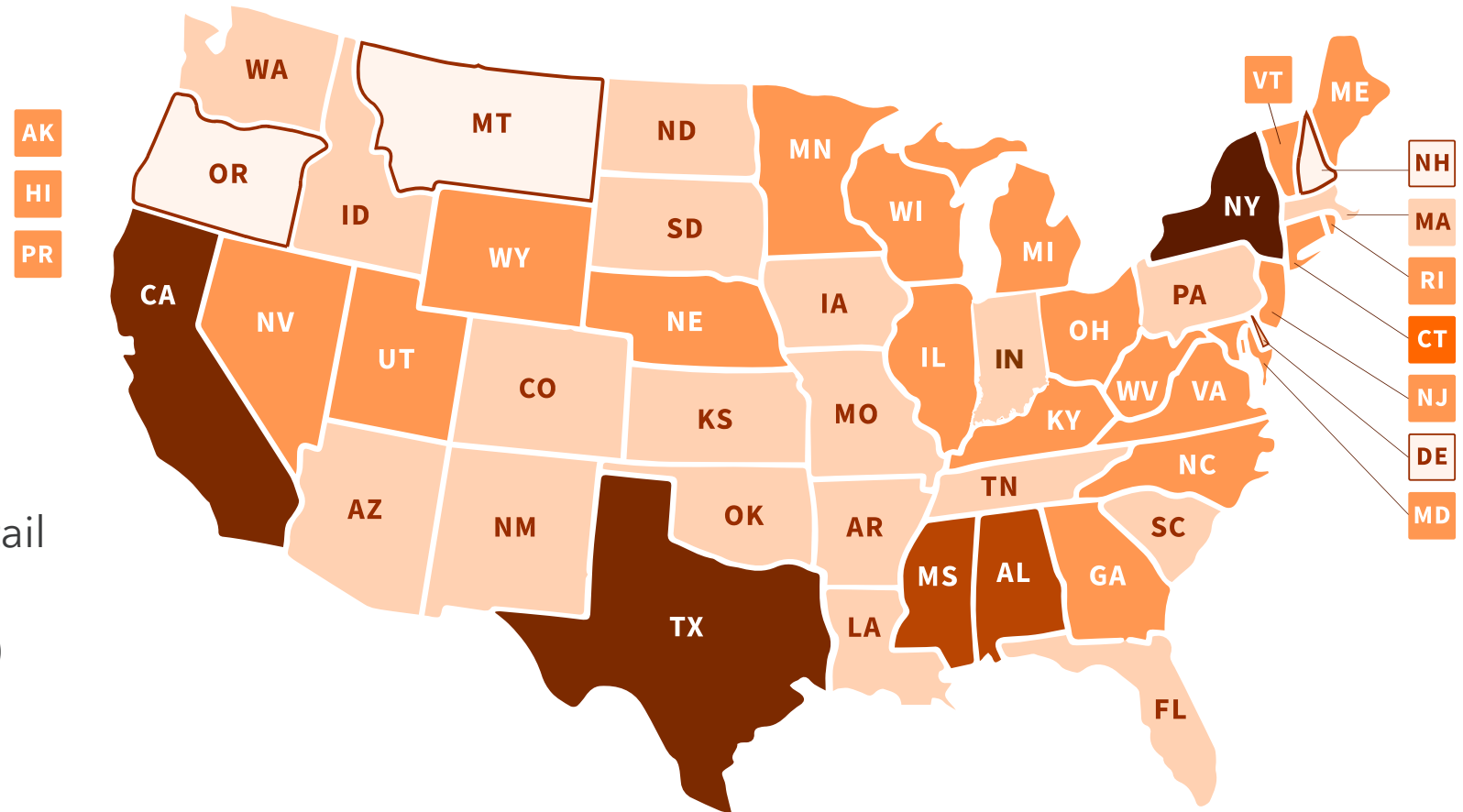
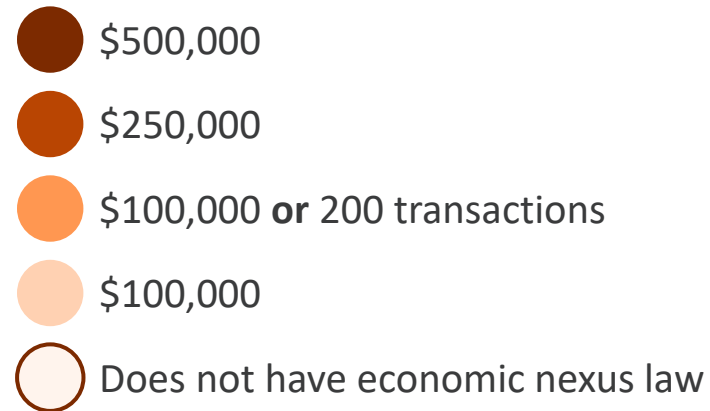
## Wyoming

[HB 197](#) removed its 200-transaction threshold, effective July 1, 2024. This leaves just a \$100,000 sales threshold.

## Utah

did not drop its transaction threshold, citing revenue loss concerns. Threshold remains \$100,000 or 200 transactions.

# A current look at economic nexus thresholds by state



- > Connecticut's threshold is gross receipts of \$100,000 **and** 200 retail transactions
- > New York's threshold is \$500,000 **and** 100 transactions
- > Certain states exclude resale, services, digital, SaaS, and more.





## MARKETPLACE FACILITATOR LAWS

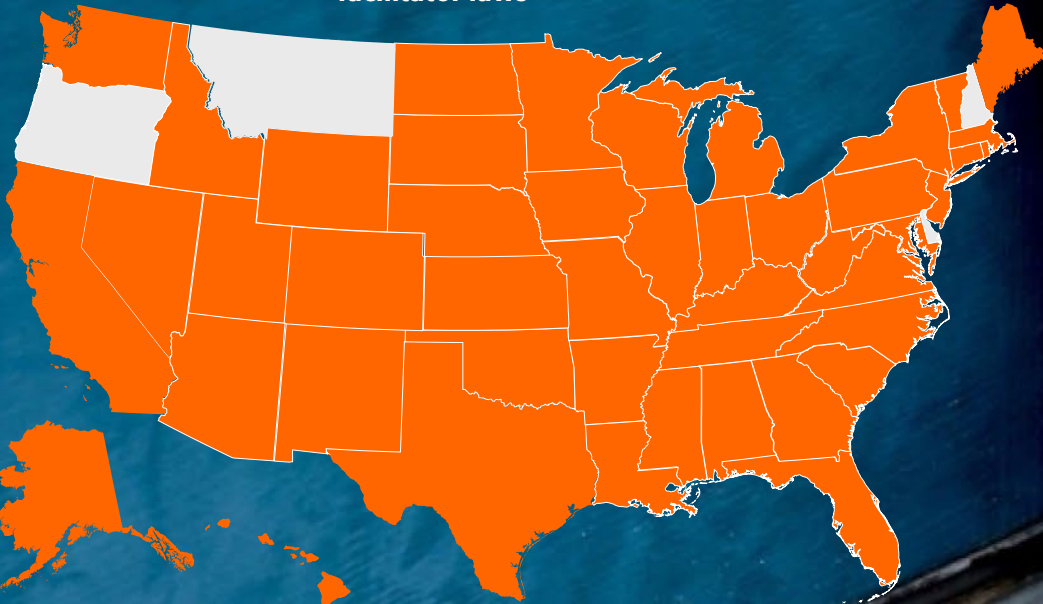
The responsibility to collect and remit sales tax lies with facilitators

**45 states**, plus Washington, D.C., Puerto Rico, and some localities in Alaska have adopted marketplace facilitator laws.

States are revisiting their definitions of what constitutes a marketplace facilitator. Application varies state-by-state.

Multistate Tax Commission (MTC) and National Conference of State Legislatures (NCSL) have both provided guidance for states to determine their definitions.

● States with marketplace facilitator laws





# California's marketplace clarification

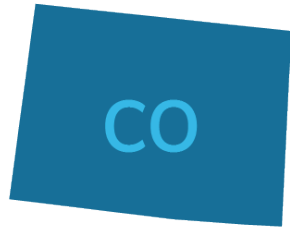
In 2023, California approved the adoption of Regulation 1684.5, Marketplace Sales

- "Facilitating" includes when "the person agrees to do anything directly or indirectly...that makes it possible or easier for the marketplace seller to sell its products through the marketplace."
- These activities include "listing products for sale, communicating the offer or acceptance between the buyer and seller, taking orders for merchandise, or providing **payment processing or fulfillment services.**"



# Retail delivery fees

# Retail delivery fees



**Colorado's** retail delivery fee applies to all deliveries made by motor vehicle in the state that contain at least one item of tangible personal property.

- › Effective May 4, 2023, qualifying new businesses and businesses with less than \$500,000 in sales during previous year are exempt.
- › Effective July 1, 2023, the fee jumped from 27 cents to 28 cents.
- › Marketplaces are required to collect and remit Colorado's retail delivery fee on behalf of their sellers.



**Minnesota** will impose a similar, but different, 50-cent fee on retail deliveries of orders totaling \$100 or more, effective July 1, 2024.

- › Will apply to delivery of clothing, even though clothing isn't taxable in Minnesota.
- › Retailers with less than \$1 million in Minnesota retail sales and marketplaces with less than \$100,000 in Minnesota retail sales will be exempt from the fee.





# Taxability of services



# States considering taxing services

- › **Maryland's HB 1515** would expand the state sales tax base to include all services, except those specifically exempted in exchange for a rate reduction.
  - Council on State Taxation urging amendments for B2B transactions
- › **Nebraska's EPIC Option** bill seeks to eliminate all income, property, and inheritance taxes and replace them with a statewide consumption tax. This would include services, many of which are currently exempt, and digital advertising. Other service tax bills are under consideration also.



Q&A