Presenters

**Tony Switajewski**
Blum, Shapiro & Co, P.C.
West Hartford, CT
(860) 561-6810
tswitajewski@blumshapiro.com

**Steve Kralik**
KPMG LLP
Hartford, CT
(860) 297-5431
skralik@kpmg.com
Agenda

- Nexus
- Implications
- Hot State Tax Topics
- Practical Responses
Nexus

- What is Nexus?
- Nexus Landscape
  - Income Taxation
  - Sales Tax Collection Obligation
  - Employee Withholding Tax Obligation
Nexus

- Types of Nexus
  - Physical Presence Nexus
    - Telecommuter (Home Office) Nexus
    - Traveling Employee Nexus
  - Affiliation Nexus
    - Independent Contractors
    - Related Entities
  - Economic Nexus
Nexus

- Nexus Distinguished
  - Income Tax Nexus
    - Physical Presence Nexus
    - Affiliation Nexus
    - Economic Nexus
    - P.L. 86-272 Protection
  - Sales Tax Collection Nexus
    - Physical Presence Nexus
    - No P.L. 86-272 Protection
Implications to Nexus

• Income Tax Return Filing Obligation
  • Corporation
    • Separate or Unitary (consolidated)
  • Pass-through Entity
    • S Corporation and Its Shareholders
      • Some states impose tax at the entity level
      • Shareholder level taxation and withholding requirement
    • Partnerships and Its Partners
      • Certain states impose tax at the entity level
      • Partner level taxation and withholding requirement
Implications to Nexus

- **Sales Tax Collection Obligation**
  - Charging, Collecting and Remitting Tax
    - On the particular product or service
    - On the “sales price,” as defined

- **Review Contracts and Invoicing**
  - Collecting Back Taxes
    - State Limitations on Retroactive Collection

- **Tax Compliance**
  - Filing Tax Returns
  - Charging Appropriate State and Local Sales Tax Rate

- **Obtain Proper Documentation**
  - Exemption Certificates
  - Resale Certificates
    - Registration Required to Issue Resale Certificate
Hot Topics

- Income Taxation
  - Economic Nexus
  - Market Based Sourcing of Receipts
  - Single Sales Factor
  - Unitary Taxation

- Sales Taxation
  - “Amazon.com” Legislation
  - Reporting or Notification Requirements
Hot Topics

- Economic Nexus
  - Supreme Court Refusal to Review State Decisions
  - Statutory “Doing Business” Definitions
  - Bright Line Thresholds
  - Timeline of Recent Activity
Nexus - Post *Lanco* and *MBNA*

- Massachusetts ATB issues economic nexus ruling in *Capital One*
- Significant economic presence test adopted in New Hampshire
- Massachusetts ATB issues *Geoffrey* ruling
- New York adopts economic nexus for credit card banks
- U.S. Supreme Court denies cert in *Lanco* and *MBNA*
- Economic nexus included in Michigan Business Tax Act
- Economic nexus rule proposed in Oregon
- Louisiana Court of Appeal issues *Geoffrey* decision
- Business Activity Tax Simplification Act of 2007 introduced
- Main economic nexus position
- Economic nexus included in *Capital One*
- Significant economic presence test adopted in New Hampshire
- Massachusetts ATB issues *Geoffrey* ruling
- New York adopts economic nexus for credit card banks
- U.S. Supreme Court denies cert in *Lanco* and *MBNA*
Nexus - Post *Lanco* and *MBNA*

- **Sept. 2008**: Virginia legislators urge governor to support BATSA
- **Oct. 7, 2008**: Factor presence economic nexus rule considered in Colorado (not adopted)
- **Oct. 20, 2008**: New Jersey appellate court issues taxpayer favorable decision in *Praxair*
- **Dec. 15, 2008**: Massachusetts Supreme Judicial Court affirms decisions in *Capital One* and *Geoffrey*
- **Jan. 8, 2009**: New Jersey appellate court affirms *Praxair*
- **Feb. 19, 2009**: Factor presence nexus statute adopted in California
- **Feb. 20, 2009**: Wisconsin expands “doing business” statute
- **June 5, 2009**: U.S. Supreme Court denies cert in *Capital One* and *Geoffrey*
- **June 22, 2009**: Iowa district court affirms *KFC* decision
- **Sept. 9, 2009**: Connecticut adopts “substantial economic presence” nexus statute
Practical Responses

- Handling Nexus Questionnaires
- Investigate Nexus
  - Proactive
  - Reactive
- Look for Amnesty Programs
- Enter into Voluntary Disclosure Agreements
- Consider Financial Statement Impact
  - FIN 48
  - FAS 5