



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
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Legal Disclaimer

The following research has been compiled for educational purposes only. This information does not constitute legal advice or form a client-attorney relationship. Nexus standards are an ever-changing area of law. This list is current as of January 26, 2017. To learn how individual state laws and standards affect your operation, consult your legal representative and/or tax advisor.

INTRODUCTION

This document provides research on the potential tax liabilities for Maryland companies doing business in or passing through states in the northeast United States. The key issue for whether states can tax an out of state business is whether there exists a nexus between the taxing state and the out-of-state business. This introductory section discusses the constitutional and statutory requirements for such a nexus. Then, the remaining sections go state-by-state, identifying how a taxing state defines nexus for purposes of that state

States differ in how they tax out-of-state companies doing business within their state. First, the company must have some type of physical or economic presence in order to be taxed in the taxing state. This required physical or economic presence is referred to as the nexus, or substantial nexus. The U.S. Constitution places limitations on a state's jurisdiction to tax, derived from two clauses: the Due Process Clause, in Amend. XIV, Section 1; and the Commerce Clause, in Art. 1, Section 8, cl. 3.

The Due Process Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." The Due Process Clause is satisfied when an out-of-state company has a minimal connection in the taxing state, generally through a physical presence in the state, although physical presence is not always necessary. Even without a physical presence, the Due Process Clause may be satisfied through an economic presence when an out-of-state company purposefully directs business efforts in the taxing state.

To avoid running afoul of the Commerce Clause of the U.S. Constitution, a tax must:

- 1) Be applied to an activity with a substantial nexus in the taxing state
- 2) Be fairly apportioned
- 3) Not discriminate against interstate commerce, and
- 4) Be fairly related to services provided by the state.

See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977). The Commerce Clause nexus requirement limits the reach of state taxing authority to ensure that state taxation does not burden interstate commerce.

Federal statutory law also places additional limits on a state's ability to tax income. Section 101 of Public Law 86-272, codified at 15 U.S.C. §§ 381-384, prohibits a state from taxing the income of a foreign corporation whose only business activities within the state consist of "solicitation of orders" for tangible personal property, provided that the orders are sent outside the state for approval or rejection and the tangible personal property is shipped or delivered from out of state by mail or common carrier.

Whether a business is subject to sales and/or income tax (some states also have additional taxes such as franchise tax) must be considered separately and defining what is a sufficient minimal connection or nexus is a continually evolving area of the law. Further, each state has different standards. Therefore, in order to discern if a company is subject to a tax, the company must review how the taxing state defines nexus and compare that definition or standard to its activities within that state.

In the area of transportation, states vary widely in how transporting goods into the taxing state affects taxation. Some states have adopted specific transportation nexus standards such as defining how many trips in and out of the state in a certain time period equal a nexus. By contrast, other states have left this area of taxation law largely undefined. Lastly, even if nexus exists, sales tax may not be owed if the products are exempt. For example, some states exempt agricultural products from sales tax, to discern if sales tax is owed a business must also verify that the products are not exempt.

Further, given advancements in technology, some states have also adopted affiliate nexus sometimes referred to as "click through nexus" or "Amazon laws." This type of sales tax nexus occurs when an out-of-state online retailer establishes nexus within a taxing state through an agreement with a taxing state resident to refer customers to the online retailer by a link on the resident's website for a commission, with the arrangement generating revenue.

The following is research summarizing the scope of the required nexus for income and sales and use taxes in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland and Virginia for Maryland companies transporting landscaping and greenhouse materials to those states.

Massachusetts

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Massachusetts Department of Revenue, Nexus Unit:
<https://www.mass.gov/dor/>
617-887-6725

1. When must a foreign corporation using Massachusetts roads to transport goods pay Massachusetts income tax?

- A foreign corporation which frequently uses Massachusetts roads to transport goods has nexus for corporate excise purposes and must file a Massachusetts corporate excise return and apportion income to Massachusetts. Such corporations include corporations which deliver goods for other businesses, such as motor carriers or corporations which use Massachusetts roads to deliver their own goods.
- A foreign corporation which uses Massachusetts roads to transport goods will have substantial nexus for corporate excise purposes and must file a Massachusetts corporate excise (income tax) return and apportion income to the state if, during the course of the tax year, it:
 - makes more than twelve pickups, deliveries, trips through Massachusetts without pickup or delivery, or any combination thereof totaling more than twelve, or is otherwise doing business in Massachusetts.
- A pickup and delivery of goods at the same time and location in Massachusetts is counted as one event. A trip through Massachusetts without pickup or delivery of goods is defined as any use of the state's roads which generally begins when a motor vehicle enters Massachusetts and ends when the vehicle leaves the state.

- Example: Mid-Atlantic Trucking, Inc. (Mid-Atlantic) is a motor carrier incorporated in Delaware. During a tax year, Mid-Atlantic's trucks made seven round trips from Baltimore to Albany. On six of the trips, Mid-Atlantic's truck traversed Massachusetts twice. On one trip, the truck traveled through Massachusetts on the way to Albany, but returned to Baltimore by a route outside of Massachusetts. Mid-Atlantic was not otherwise doing business in Massachusetts. Since Mid-Atlantic's trucks made a total of thirteen trips on Massachusetts roads, the corporation has substantial nexus and must file a Massachusetts corporate excise return for this tax year.
 - For more information, see Massachusetts Department of Revenue Directive 95-7: Foreign Corporations Using Massachusetts Roads to Transport Goods: What Constitutes Substantial Nexus?
http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/1990-1999-directives/directive-95-7-foreign-corporations-using.html#_ftn1

2. When must a foreign corporation using Massachusetts roads to transport goods pay Massachusetts Sales and Use tax?

- Massachusetts sales tax is imposed on a vendor's gross receipts from sales at retail in the state of tangible personal property and of certain services performed there. The use tax is imposed on the storage, use, or other consumption in the state of tangible personal property or certain services purchased from any vendor or manufactured, fabricated, or assembled from materials acquired either within or outside the state.
- A combination of federal and state restrictions determine whether an out-of-state seller must collect Massachusetts use tax on a sale. At the federal level, the determination revolves around whether a nexus between the sale and Massachusetts can be established. If there is sufficient nexus, it then must be determined whether the seller is engaged in business in Massachusetts.
- Sellers engaged in business in Massachusetts are required to collect tax. The Department of Revenue has stated that the definition of "engaged in business in the

commonwealth" will be enforced to the extent allowed under constitutional limitations. The definition of includes:

- Having a business location in Massachusetts;
- Regularly or systematically soliciting orders for the sale of services performed within the Massachusetts or for the sale of tangible personal property for delivery to destinations in Massachusetts;
- Otherwise exploiting the retail sales market in Massachusetts through any means, including in-state salespersons, solicitors, or representatives; catalogs or other solicitation materials sent through the mails or otherwise; billboards; advertising or solicitations in newspapers, magazines, radio or television broadcasts, computer networks, or any other communications medium; and
- Regularly delivering property or the performance of services in Massachusetts.
 - For more information, see <http://www.mass.gov/dor/individuals/taxpayer-help-and-resources/tax-guides/salesuse-tax-guide.html>
- A person is considered to have a business location in Massachusetts if that person:
 - Owns or leases Massachusetts real property;
 - Has one or more employees located in Massachusetts (an employee is considered so located if the employee's service is performed entirely within the state or if the service is performed both in and out of the state, or the employee commences his or her activities at, and returns to, a place in the state);
 - Regularly maintains tangible personal property in Massachusetts for sale in the ordinary course of business (for this purpose, property on consignment held and offered for sale by a consignee on its own account is not considered stock maintained by the consignor); or
 - Regularly leases out tangible personal property for use in Massachusetts.

3. What are the responsibilities of Massachusetts' sales tax vendors?
 - Registering with Department of Revenue to collect sales/use tax;
 - Collecting the 6.25 % sales/use tax on taxable sales or rentals of tangible personal property or telecommunications services. **Please note:** The tax must be separately stated and separately charged on all invoices, bills, displays, or contracts; and
 - Remitting all sales/use taxes to Department of Revenue with the appropriate Massachusetts sales/use tax return on time. For a complete listing of forms, please see the [Online Forms Index](#).

4. What are the sources of Massachusetts' taxing authority?
 - Massachusetts Department of Revenue Directive 95-7: Foreign Corporations Using Massachusetts Roads to Transport Goods: What Constitute Substantial Nexus?
 - Income Tax: Massachusetts General Laws Ann. Ch. 63, § 2.
 - Sales Tax: Massachusetts General Laws Ann. Ch. 64H, §§ 1, 2.

Rhode Island

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Rhode Island Department of Revenue, Department of Taxation:

<http://www.tax.ri.gov>

(401) 574-8935 (for businesses)

1. When must a foreign corporation using Rhode Island's roads to transport goods pay Rhode Island's income tax?

- For an out- of-state or foreign corporation to owe Rhode Island corporate income tax, the foreign corporation must establish nexus - a physical or substantial economic presence in Rhode Island. A corporation will be subject to the business corporation tax if it is ". . . deriving any income from sources within this state or engaging in any activities or transactions within this state for the purpose of profit or gain, whether or not an office or place of business is maintained in this state, or whether or not such income, activities or transactions are connected with intrastate, interstate, or foreign commerce. . ."
- For more information on activities that establish nexus, see the Rhode Island Business Corporation Tax Regulation CT- 95-02
<http://www.tax.ri.gov/regulations/other/ct95-02.php>
- For information on apportionment of corporate tax income tax, see the Rhode Island Business Corporate Tax Regulation CT- 15-02
[http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Apportionment%20Regulation%20--%20Final%20--%2012-23-15.pdf](http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Appportionment%20Regulation%20--%20Final%20--%2012-23-15.pdf)
- Rhode Island does not have a specific transportation nexus standard for corporate income tax.

2. When must a foreign corporation using Rhode Island's roads to transport goods pay Rhode Island's sales tax?

- Retailers engaging in business in Rhode Island are required to collect sales tax.
- "Engaging in business in this state" means selling or delivering, or any activity related to selling or delivering tangible personal property or prewritten computer software

delivered electronically or by load and leave for storage, use, or other consumption in this state, as well as providing package tour and scenic and sightseeing transportation services.

- The term includes:
 - Maintaining, occupying, or using in this state permanently or temporarily, directly or indirectly or through a subsidiary, representative, or agent by whatever name called and whether or not qualified to do business in this state, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
 - Having any subsidiary, representative, agent, salesperson, canvasser, or solicitor permanently or temporarily, and whether or not said subsidiary, representative, or agent is qualified to do business in this state, operate in this state for the purpose of selling, delivering, or taking orders for any tangible personal property or taxable services;
 - Regular or systematic sales of tangible personal property or taxable services in this state by advertising in newspapers and other periodicals; billboards; brochures, catalogs, and similar advertising material mailed to or distributed within the state to its residents; telephone; computer assisted shopping networks; television, radio, or other electronic media intended for broadcast to the state's customers.
 - For more information on sales tax, see Sales and Use Tax- Regulation SU 11-20, <http://www.tax.ri.gov/regulations/salestax/11-20.pdf>
- Rhode Island has a click through nexus provision which means there is a presumption that every person making sales through an independent contractor or other representative is a retailer, if the seller enters into an agreement with a Rhode Island resident under which the resident, for a commission or other consideration, refers potential customers to the seller through an Internet website link or otherwise, and the seller's cumulative gross receipts from sales to Rhode Island customers referred by residents with such an agreement exceeding \$5,000 during the four preceding quarterly periods ending on the last day of March, June, September, and December. The presumption that such a person is a retailer can be rebutted by proof that the state

resident did not engage in any solicitation on behalf of the seller that would satisfy the nexus requirements of the U.S. Constitution during the four quarterly periods in question.

- Use taxes are also due to Rhode Island when taxable goods and services are purchased for use by a business in the state. The tax is paid by filing a Consumer's Use Tax Return. For more information refer to Rhode Island Sales and Use Tax Regulation 11-114, <http://www.tax.ri.gov/regulations/salestax/11-114.pdf>

3. What are the responsibilities of Rhode Island's sales tax vendors?

- Businesses that sell, rent or lease taxable tangible personal property at retail in Rhode Island must register with the state and collect sales tax. Providers of taxable services must also register with the state. The Rhode Island (RI) state sales tax rate is currently 7%.
- The following interstate sales are subject to sales tax: Goods coming into Rhode Island: When tangible personal property is purchased in interstate commerce for use or consumption in the state and (1) the seller is selling this personal property in the state for use or consumption and (2) delivery is made in the state, such sale is subject to the use tax. This is true regardless of the fact that the purchaser's order may specify the goods are to be manufactured or procured by the seller at a point outside the state and shipped directly to the purchaser from the point of origin., The seller is required to report all such transactions and collect and remit to this state the use tax on all taxable purchases. For more information, refer to the Rhode Island Sales and Use Tax Regulation SU 07-56, <http://www.tax.ri.gov/regulations/salestax/07-56.php>

4. What are the sources of Rhode Island's taxing authority?

- Sales and Use Tax Regulation SU 07-56
 - <http://www.tax.ri.gov/regulations/salestax/07-56.php>
- Sales and Use Tax Regulation SU 11-20
 - <http://www.tax.ri.gov/regulations/salestax/11-20.pdf>
- Sales and Use Tax Regulation SU 11-114
 - <http://www.tax.ri.gov/regulations/salestax/11-114.pdf>
- Business Corporation Tax Regulation CT- 95-02
 - <http://www.tax.ri.gov/regulations/other/ct95-02.php>

- Business Corporation Tax- Regulation CT 15-02
 - <http://www.tax.ri.gov/Tax%20Website/TAX/regulations/other/CT%2015-02%20Corporate%20Nexus.pdf>
- Income Tax- 44 Rhode Island General Laws § 44-11-2.
- Sales Tax- 44 Rhode Island General Laws § 44-18-18.

Connecticut

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Connecticut Department of Revenue:

<http://www.ct.gov/drs/site/default.asp>

860-297-5962

1. When must a foreign corporation using Connecticut's roads to transport goods pay Connecticut's income tax?

- For Connecticut corporate income tax purposes, nexus can be based either on the traditional "physical presence" tests or on "economic" nexus.
- A company has a physical presence in Connecticut if it engages in one or more of the following activities within the state, including:
 - Owning or leasing real property;
 - Maintaining an office, or compensating its employee for the use of one's home if such employee works from such home; if its property, including product samples, brochures, and advertising materials, and instructions on product usage, is stored in such home; and if the address or telephone number of such home is listed in its advertisements and public announcements;
 - Selling tangible personal property (as opposed to soliciting orders);
 - Performing or soliciting orders for services;
 - Selling or soliciting orders for real property;
 - Maintaining a stock of inventory in a public warehouse;
 - Having an employee, wherever based, engage in managerial or research activities; make collections on regular or delinquent accounts; offer technical assistance and training to customers or users of its product after the sale; repair or replace faulty or damaged goods; install or assemble its product; visit customers or users of its product to determine satisfaction; pick up returned merchandise from customers or users of its product; rectify or assist in any product, credit, shipping, or similar complaint arising from the purchase or use of its product; verify the destruction of

damaged merchandise; coordinate delivery of merchandise, whether or not special promotions are involved; distribute replacement parts; inspect installation of its product by customers or users of its product; or conduct credit investigations or arrange for credit and financing for customers or users of its product;

- Delivering merchandise inventory on consignment to its distributors or dealers;
- Owning or leasing personal property not related to solicitation of orders; and
- Participating in the approval of servicing distributors and dealers where customers or users of its product can have such product serviced or repaired.
- Connecticut does not have a specific transportation nexus standard.
- As for economic nexus, an out-of-state corporation shall be subject to income taxation in Connecticut if the out-of-state corporation directly, or indirectly as an owner of a limited liability company or a partnership, derives income from sources within Connecticut and has a “substantial economic presence” within Connecticut, as evidenced by a “purposeful direction of business toward this state.” The “purposeful direction of business” is determined by the frequency, quantity, and systematic nature of the contacts with Connecticut, without regard to physical presence (C.G.S. §12-216a). Accordingly, a corporation with no place of business or assets in Connecticut and not actually or technically conducting business in the state may nevertheless be subject to the corporation business tax law if it has “substantial economic presence” within Connecticut and derives income from Connecticut sources.
- Connecticut’s right to impose its net income tax on corporations incorporated outside of Connecticut is restricted by federal constitutional and statutory law (see e.g., Public Law 86-272). This restriction means a corporation with no place of business, or tangible assets in Connecticut, and no net income from Connecticut sources would pay no corporate business tax on sales of tangible personal property, except for the minimum tax of \$250 per year payable by all domestic

and foreign corporations registered to do business in Connecticut. Such corporations are taxed, not because they are carrying on business in Connecticut, but because by virtue of their registration, they have the right to do so. A tax credit allowed against the corporation business tax cannot reduce a company's tax to an amount less than the minimum tax of \$250 (C.G.S. §12-219(3)).

- A certificate of authority to transact business in Connecticut must be accompanied by a license fee of \$285 and a certificate of legal existence (or a certificate of good standing) from its state of incorporation. The \$285 license fee also must be paid annually thereafter along with the electronic filing of the corporation's annual report (C.G.S. §33-617(d)).
- A foreign corporation that fails to obtain a certificate of authority from the Secretary of the State within 90 days of commencing business in the state, or that transacts business in Connecticut without a valid certificate of authority, is liable to the state for: (i) all fees and taxes that would have been imposed on the corporation had it obtained a certificate of authority to transact business in a timely manner; (ii) all interest and penalties imposed by law for failure to pay such fees and taxes; and (iii) an additional penalty of \$300 per month for each month or part thereof during which the foreign corporation transacted business in the state without a valid certificate of authority (C.G.S. §33-921(d)).
- Participation in a trade show or shows at the Connecticut Convention Center in Hartford will not trigger nexus if: (i) the corporation's activity at such trade shows is limited to displaying goods or promoting services; (ii) no sales are made; (iii) any orders received are sent outside Connecticut for acceptance, rejection, or filling; and (iv) such participation is not more than 14 days in the aggregate during the corporation's federal income tax year (C.G.S. §12-213(a)(20)(C)).
- A corporation is deemed carrying on or doing business in Connecticut if it is a general partner in a partnership that does business, owns or leases property, or maintains an office in Connecticut. A corporation is also deemed to be carrying on or doing business in Connecticut if it is a limited partner of a limited partnership, other than an "investment partnership," that does business, owns or leases property, or maintains an office in Connecticut. A corporation not

otherwise carrying on or doing business in Connecticut will not be deemed so solely for being a limited partner in one or more “investment partnerships” (C.G.S. §12-214(a)(3)).

- For more information on income tax nexus, see http://www5.cbia.com/events/wp-content/uploads/2015/08/Taxbook_0715.pdf

2. When must a foreign corporation using Connecticut’s roads to transport goods pay Connecticut’s sales tax?

- The general rule is that the sale of tangible personal property in Connecticut is taxable unless a specific exemption applies. There are over 100 specific exemptions from the sales and use tax. For more information on the sales tax, see http://www5.cbia.com/events/wp-content/uploads/2015/08/Taxbook_0715.pdf
- An out of state retailer will be presumed to be soliciting business in Connecticut and, thus, will be required to collect and remit sales tax on its taxable sales to Connecticut if the retailer annually sells more than \$2,000 worth of taxable items or services in Connecticut through an independent contractor or other representative who is a resident of Connecticut, if the retailer enters into an agreement with the resident under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the retailer (C.G.S. §12-407(a) (12)).
- For specific guidance for the landscaping industry see this Connecticut Business Tax for Building Contractors publication- <http://www.ct.gov/drs/lib/drs/publications/pubsip/2006/ip06-35.pdf>

3. What are the responsibilities of Connecticut’s sales tax vendors?

- Collecting a sales tax of 6.35% on sales of tangible personal property and services. Anyone engaged in business in Connecticut, including selling tangible personal property for storage, use, or other consumption there, or selling taxable services, must register with the state of Connecticut for a Sales and Use Tax Permit, complete [Form REG-1](#), Business Taxes Registration Application.

4. What are the sources of Connecticut’s taxing authority?

- Income Tax: Connecticut General §12-740(a)
 - Regulation: http://www.sots.ct.gov/sots/lib/sots/regulations/title_12/740a.pdf
- Sales Tax: Connecticut General Stat. § 12-408.
- §12-214-1- Connecticut Tax
 - Regulation: <http://www.ct.gov/drs/cwp/view.asp?a=1512&q=269164>
- Connecticut General Statutes, § 12-213, § 12-214, §12-216, §12-216a, §12-407

New York

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the New York Department of Taxation and Finance

<https://www.tax.ny.gov>

518-485-2889 (for businesses)

1. When must a foreign corporation using New York's roads to transport goods pay New York's income tax?

- In New York, the corporate income tax is called a franchise tax. The state charges a franchise tax to businesses with a nexus (relationship) with the state. A franchise tax is not based on income; rather it is based on the net worth and value of the business in New York.
- The following types of foreign corporations owe New York franchise tax:
 - A foreign corporation (incorporated outside New York State) that does business, employs capital, owns or leases property, maintains an office, or derives receipts from activity, in New York State; or
 - A foreign corporation that is a general partner in a partnership that does business, employs capital, owns or leases property, maintains an office, or derives receipts from activity, in New York State; or
 - A foreign corporation that is a limited partner in a partnership that does business, employs capital, owns or leases property, maintains an office, or derives receipts from activity, in New York State and is engaged directly or indirectly, in the participation or in the domination or control of all or any portion of the business activities or affairs of the partnership. For more information, see <https://www.tax.ny.gov/bus/ct/article9a.htm>
- In addition, businesses which exercise a corporate franchise, do business, employ capital, own or lease property, or maintain an office in the Metropolitan Commuter Transportation District (MCTD), or derive receipts of \$1 million or more in a tax year

from activity in the MCTD are subject to the metropolitan transportation business tax. For more information, see <https://www.tax.ny.gov/bus/ct/article9a.htm>

2. When must a foreign corporation using New York's roads to transport goods pay state sales tax?

- If a foreign or out-of-state business has customers in New York State, and has sufficient connection with New York, it will be required to register for New York State and local sales tax purposes. For example, if the business is located outside New York State, makes sales of taxable products to persons within New York State, and regularly delivers products in its trucks to New York State customers (at least twelve times a year), it will have sufficient connection with New York State and must register for sales tax purposes and collect and remit sales tax. The out-of-state business must also register if it solicits sales of taxable products or services through employees, salespersons, independent agents, or service representatives located in, or who enter New York State. For more information see https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/do_i_need_to_register_for_sales_tax.htm.
- If the only connection a foreign corporation has with New York State is the delivery of its products into the state by the U.S. Postal Service or common carrier, it is not required to register or collect sales tax. Thus, some out-of-state businesses (including some mail order companies) may not have sufficient connection with New York State to be required to collect and remit sales tax.
- However, out-of-state sellers that make taxable sales of tangible personal property or services in New York are presumed sales tax vendors when they have agreements to compensate New York residents for referring potential customers.
- Sellers of tangible personal property or services located outside of New York but with an affiliate in the state may also be required to register to collect and remit sales tax. For example, an online retailer operating outside of New York may be considered a vendor for sales and use tax purposes if it has an agreement with a New York resident to refer customers to the online retailer through a link on the resident's website, for a

commission, and the arrangement generates over \$10,000 in annual sales. See N.Y. Tax Law, § 1101(b)(8)(vi).

- Although out-of-state businesses may not be required to collect sales tax from customers, the customers are still responsible for paying sales or use tax on their purchases. The use tax complements the sales tax. An example of when use tax applies is when a New York state resident purchases taxable products or services outside of the state and then brings them or has them brought into the state for use there. For more information, see Tax Bulletin Use Tax for Businesses (TB-ST-910), <https://www.tax.ny.gov/pdf/publications/sales/pub750.pdf>.
- New York exempts from sales tax tangible personal property used or consumed predominantly in the production for sale of tangible personal property by farming. N.Y. Tax Law § 1115(a)(6)(A). Farming “includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animal, ... and raising, growing and harvesting crops, livestock and livestock products, as defined by [Agriculture and Markets Law § 301(2)];” See N.Y. Tax Law § 1101(b)(19).

3. What are the responsibilities of New York sales tax vendors?

- The City Sales Tax rate is 4.5%, New York State Sales and Use Tax is 4%, and the Metropolitan Commuter Transportation District surcharge is 0.375%, for a total Sales and Use Tax of 8.875 %.
- For more information see <https://www1.nyc.gov/site/finance/taxes/business-nys-sales-tax.page> and <http://www.ny.gov/sites/ny.gov/files/atoms/files/FilingRequirementsForSalesUseTax.pdf>

4. What are the sources of New York’s taxing authority?

- Corporate Tax: NY Tax Law Chapter 60, Article 9-a.
- Sales Tax: NY Tax Law Chapter 60, Article 28, § 1101

Pennsylvania

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Pennsylvania Department of Revenue:

<http://www.revenue.pa.gov>

717-787-1064 (for businesses)

1. When must a foreign corporation using Pennsylvania's roads to transport goods pay Pennsylvania's income tax?

- Generally, out-of-state corporations (including business trusts, limited liability companies, and other entities taxed as corporations for federal income tax purposes) are subject to Pennsylvania corporate net income tax and foreign franchise tax if they do business, carry on activities, own property or employ capital or property in Pennsylvania. The foreign franchise tax is a tax on the privilege of doing business in Pennsylvania, rather than on property, and is imposed on the capital stock value attributable to Pennsylvania.
- Specifically, an out-of-state company operating in Pennsylvania has established nexus and is required to pay corporate net income tax and foreign franchise tax to Pennsylvania if its business activities during the taxable year exceed either of the following:
 - The company travels more than 50,000 loaded miles in Pennsylvania and makes at least one trip with pickups or deliveries in Pennsylvania; or
 - The company has a Pennsylvania apportionment fraction of more than five % and more than twelve trips with pick-ups or deliveries in Pennsylvania.
- Whether a taxpayer or entity is subject to tax is based upon the type of activities conducted in Pennsylvania. Common taxable activities include the following:
 - Installation
 - Making repairs or performing maintenance
 - Investigating or resolving complaints
 - Accepting or approving orders
 - Picking up or replacing damaged or returned property

- Maintaining an office or warehouse
- Collecting accounts
- Corporate tax reports need not be filed if the following activities are conducted no more than seven days per year in Pennsylvania, and if the activities produce total annual Pennsylvania sales from all sources of \$10,000 or less:
 - Installation
 - Repair
 - Maintenance and service
 - Technical assistance or service
 - Training incident to sales
 - Attendance at trade shows to exhibit and sell goods
- Solicitation activities conducted directly or through an agent or independent contractor subject a company to capital stock/foreign franchise tax. Such a company may also be subject to corporate net income tax if the activity goes beyond solicitation.
 - For more information on nexus: https://revenue-pa.custhelp.com/app/answers/detail/a_id/330/~/-/define-nexus-and-doing-business-based-on-corporation-tax-regulations.
 - For more information on corporate tax, see http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Tax%20Bulletins/CT/ct_bulletin_2004-01.pdf
- Any out-of-state business with employees working in Pennsylvania is required to register with the Department of Revenue and withhold Pennsylvania income tax on wages and salaries paid to employees for services performed in the state. Pennsylvania has reciprocal tax agreements with Indiana, Maryland, New Jersey, Ohio, Virginia, and West Virginia. Under these agreements, one state will not tax another state's residents on employee compensation subject to employer withholding.
 - For more information on tax obligations for out-of-state vendors: <http://www.revenue.pa.gov/FormsandPublications/otherforms/Documents/rev-778.pdf>

2. When must a foreign corporation using Pennsylvania roads to transport goods pay Pennsylvania's Sales and Use tax?

- A company with nexus in Pennsylvania needs to collect sales tax on Pennsylvania consumer purchases. Nexus is defined as physical connection; if the business conducts any of the following activities, it has established nexus:
 - Having or maintaining, either directly or through a subsidiary, an office, distribution house, sales house, warehouse, service enterprise or other place of business irrespective of whether the place of business is located permanently or temporarily or authorized to do business within this commonwealth.
 - Having or maintaining an agent of general or restrictive authority irrespective of whether the agent is located permanently or temporarily or authorized to do business within this commonwealth.
 - Maintaining a stock of goods.
 - Regularly soliciting orders through a solicitor, salesman, agent, or representative, whether or not the orders are accepted in this commonwealth, or performing promotional activities in this commonwealth.
 - Regularly delivering property in this commonwealth, other than by common carrier or U.S. mail, and soliciting business within this commonwealth, whether by means of U.S. mail, radio, television, newspaper, or otherwise.
 - Regularly engaging in an activity connected with leasing or servicing property located within this commonwealth.
- Pennsylvania has “click through” nexus which requires remote sellers who use e-commerce with a physical presence in Pennsylvania to collect sales tax.
 - For more information, see the Sales and Use Tax Bulletin 2011-01 http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Tax%20Bulletins/SUT/st_bulletin_2011-01.pdf
- Pennsylvania has a sales tax exemption for selling products to farmers. Generally, the purchase of items of tangible personal property to be used predominantly and directly in farming operations is not subject to sales tax. When purchasing tangible personal property or services considered tax exempt, the farmer must complete a ***Sales and Use Tax Exemption Certificate form*** (REV-1220) for the supplier. Farmers are not

required to obtain a sales tax license number or submit a sales tax license number to a supplier prior to receiving a sales tax exemption on purchases of exempt tangible personal property directly used in farming operations. One exemption certificate may cover several purchases.

3. What are the responsibilities of Pennsylvania's sales/use tax vendors?

- The Pennsylvania sales tax rate is 6%. By law, a 1% local tax is added to purchases made in Allegheny County, and 2% local tax is added to purchases made in Philadelphia
http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Sales-Use-and-Hotel-Occupancy-Tax.aspx#.V_r3XJMrKDU).
- Companies with nexus that fail to begin collecting sales tax as required by law may be pursued by a variety of “escalating enforcement options over time,” including audit, assessment, lien, and/or referral of the case to a collection agency or the office of Attorney General (<http://www.bookweb.org/news/pennsylvania-clarifies-sales-tax-nexus-laws>).
- Any business without a permanent physical location in Pennsylvania, but makes taxable sales in Pennsylvania on an irregular basis, is required to register for a transient vendor's license. These licenses are renewable on a yearly basis so long as the taxpayer timely files and remits all sales tax. All other out-of-state vendors making taxable sales in Pennsylvania are issued sales tax licenses, valid for five years and renewable so long as the taxpayer timely files and remits all state taxes. Sales and transient vendor licenses must be prominently displayed at all events
<http://www.revenue.pa.gov/FormsandPublications/otherforms/Documents/rev-778.pdf>).

4. What are the sources of Pennsylvania's taxing authority?

- Corporate Income Tax: 72 P.S. §7402.
- Sales Tax: 72 P.S. §7202.

New Jersey

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the New Jersey Department of Treasury, Division of Taxation:

<http://www.state.nj.us/treasury/taxation/>

609-292-6400 (Division of Taxation)

609-984-5749 (Nexus Audit Group)

1. When must a foreign corporation using New Jersey's roads to transport goods pay New Jersey's income tax?

- If a foreign corporation has nexus in New Jersey, it is subject to the Corporation Business Tax applicable to corporate income.
- New Jersey's Corporation Business Tax Act imposes a tax on a foreign corporation for the privilege of having or exercising its corporate charter in the state or doing business, employing or owning capital or property, maintaining an office, deriving receipts, or engaging in contracts in New Jersey.
- For more information on when nexus is established for New Jersey's Corporate Business Tax see New Jersey Tax Bulletin 79R-
<http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb79r.pdf>
- For more information on how the tax is calculated see
http://www.state.nj.us/treasury/taxation/corp_over.shtml
- According to the New Jersey Department of Treasury, the state does not have a specific transportation nexus standard and one delivery or drop off by a foreign corporation to a New Jersey resident in a company vehicle may be sufficient to trigger nexus.
- To specifically assess whether your operation has a nexus with New Jersey, review the following form used by the state of New Jersey to make the nexus decision.
http://www.state.nj.us/treasury/taxation/pdf/other_forms/misc/nexus_survey.pdf

2. When must a foreign corporation using New Jersey's roads to transport goods pay New Jersey's sales tax?

- Activities occurring in New Jersey that create nexus for sales tax purposes include:

- Selling, leasing, or renting tangible personal property, specified digital products, or services;
 - Maintaining an office, distribution house, showroom, warehouse, service enterprise (e.g., restaurant, entertainment center, business center, etc.), or other place of business;
 - Having employees, independent contractors, agents, or other representatives (including salespersons, consultants, customer representatives, service or repair technicians, instructors, delivery persons, and independent representatives or solicitors acting as agents of the business) working in the state;
 - Selling, storing, delivering, or transporting energy (natural gas or electricity) to users or customers;
 - Collecting initiation fees, membership fees, or dues for access to or use of health, fitness, athletic, sporting, or shopping club property or facilities;
 - Parking, storing, or garaging motor vehicles;
 - Delivering goods sold in seller's own vehicle.
- New Jersey has a sales tax exemption which is applicable to sales of tangible personal property or services used directly and primarily in agricultural or horticultural production. The exemption may only be used by businesses treated as "agricultural enterprises" as defined under New Jersey's Sales and Use Tax Act. To use the exemption and for more information see the exemption certificate, http://www.state.nj.us/treasury/taxation/pdf/other_forms/sales/st7.pdf
 - New Jersey has a click through nexus provision (N.J.S.A. 54:32B-2(i)(1)) which creates a rebuttable presumption that an out-of-state seller who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business and has nexus in New Jersey if that seller meets the following conditions:
 - The seller enters into an agreement with a New Jersey independent contractor or other representative for compensation in exchange for referring customers via a link on their website, or otherwise, to that out-of-state seller; and
 - The seller has sales from these referrals to customers in New Jersey in excess of \$10,000 for the prior four quarterly periods ending on the last day of March, June, September, and December.

- An out-of-state seller that meets both of these conditions is presumed to be soliciting business and has nexus with New Jersey. The out-of-state seller must register for sales tax purposes and collect and remit sales tax on all sales delivered to New Jersey.
- Because the law creates a rebuttable presumption, the out-of-state seller may provide proof that the independent contractor or representative did not engage in any solicitation on their behalf in New Jersey. The burden is on the seller to prove they are not required to collect and remit sales tax. For more information, on sales tax nexus see <http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb78r.pdf>.

3. What are the responsibilities of New Jersey's sales tax vendors?

- A seller that has nexus with New Jersey must register and collect and remit sales tax on all taxable sales that occur within this state. The Business Registration Application (Form NJREG) can be filed online through the Division of Revenue and Enterprise Services' Business Gateway Services website at <http://www.state.nj.us/treasury/revenue>.
- As of January 1, 2017 the New Jersey state sales tax rate will be 6.875% and will be reduced to 6.625% on January 1, 2018. However, there are exceptions to this statewide rate. In Urban Enterprise Zones, UEZ-impacted business districts, and in Salem County, sales tax may be charged at 3.5% (50% of the regular rate) on certain items. In addition, local sales taxes are imposed on sales of certain items sold in Atlantic City and Cape May County. For additional information, see <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/su4.pdf>.

4. What are the sources of New Jersey's taxing authority?

- TB – 79(R): Nexus for Business Corporation Tax
<http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb79r.pdf>
- TB-78(R): Nexus for Sales and Use Tax
<http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb78r.pdf>
- Income Tax: New Jersey Stat. Ann. § 54:10A-2.
- Sales Tax: New Jersey Stat. Ann. § 54:32B-3.

Delaware

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Delaware Department of Revenue:

<http://revenue.delaware.gov>

302.577.8205 (businesses)

1. When does a foreign corporation using Delaware roads to transport goods have to pay Delaware income tax?

- Every domestic or foreign corporation doing business in Delaware, not specifically exempt under Section 1902(b), Title 30, Delaware Code, is required to file a corporate income tax return (Form 1100 or Form 1100EZ) and pay a tax of 8.7% on its federal taxable income allocated and apportioned to Delaware. This tax is based on an equally weighted three-factor method of apportionment. The factors are property, wages and sales in Delaware as a ratio of property, wages and sales everywhere. For more information see http://revenue.delaware.gov/information/faqs_cit.shtml.
- Nexus in Delaware is established for a foreign corporation based on a number of factors, including but not limited to, selling goods and delivering goods in Delaware in company vehicles (as opposed to by common carrier). To determine if a company has nexus, Delaware uses a Nexus Questionnaire <http://revenue.delaware.gov/services/Nex.shtml>.
- Delaware does not have a specific transportation nexus standard.
- A company who wants to know whether or not their activities in Delaware amount to nexus for taxation purposes can submit the form to the Delaware Department of Revenue and receive a determination (within a few weeks). A company can also call the Delaware Department of Revenue (302-577-8205).
- If a company has nexus with Delaware, it should register for a Delaware business license. A foreign company who wishes to do business in Delaware should register as a foreign corporation with the Delaware Department of State at

<http://corp.delaware.gov/corpformsforcorp09.shtml>. For more information see <http://revenue.delaware.gov/services/Nex.shtml>.

2. When does a foreign corporation using Delaware roads to transport goods have to pay Delaware's sales tax?

- Delaware does not impose a state or local sales tax, but does impose a gross receipts tax on the seller of goods (tangible or otherwise) or provider of services in the state. Unless otherwise specified by statute, the term "gross receipts" comprises the total receipts of a business received from goods sold and services rendered in the State. There are no deductions for the cost of goods or property sold, labor costs, interest expense, discount paid, delivery costs, state or federal taxes, or any other expenses allowed. For more information see http://revenue.delaware.gov/services/Business_Tax/Step4.shtml.

3. What are the responsibilities of Delaware gross receipts tax vendors?

- Business and occupational gross receipts tax rates range from 0.1037% to 2.0736%, depending on the business activity. In instances where a taxpayer derives income from more than one type of activity, separate gross receipts tax reporting is required. The type of business activity additionally determines whether gross receipts tax is remitted monthly or quarterly. For more information, contact the Delaware Gross Receipts Department at (302) 577-8780 or grt@state.de.us.
- Delaware does not have a specific transportation nexus standard. The general nexus questionnaire should be used to determine whether or not nexus exists see <http://revenue.delaware.gov/services/Nex.shtml>.

4. What are the sources of Delaware's taxing authority?

- Income Tax: Delaware Code, Title 30 State Taxes, Chapter 19, §1902 Imposition of tax on corporations; exemptions.
- Gross Receipts Tax: Delaware Code, Title 30 State Taxes, Chapter 29 Retail and Wholesale Merchants' License Requirements and Taxes.

Maryland

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Maryland Comptroller's Office:

compliance@comp.state.md.us

410-767-1322

1. When does a foreign corporation using Maryland roads to transport goods have to pay Maryland income tax?

- The Maryland corporation income tax applies to every foreign corporation that has a nexus with Maryland. Nexus indicates a taxable connection between a corporation and a taxing authority. The following list includes some in-state activities which generally create nexus:

- Maintaining a business location in Maryland, including any kind of office.
- Ownership or use of property in Maryland, real or personal, whether the property is rented office space or equipment used in the manufacture and distribution of goods.
- Employees soliciting and accepting orders in Maryland.
- Installation or assembly of the corporation's product.
- Maintaining a stock of inventory in a public warehouse or placement of the corporation's inventory in the hands of a distributor or other non-employee representative.
- Sales persons making collections on regular or delinquent accounts.
- Technical assistance and training with Maryland offered by corporate personnel to purchasers or users of corporate products after the sale.
- Corporate personnel repairing or replacing faulty or damaged goods.
- Mobile stores in Maryland (such as trucks with driver-salesmen) from which direct sales are made.
- For more information-

http://taxes.marylandtaxes.com/Business_Taxes/Business_Tax_Types/Income_Tax/Tax_Information/Corporations/Nexus_Information.shtml

- Maryland doesn't have a specific transportation nexus standard.

2. When does a foreign corporation using Maryland roads to transport goods have to pay Maryland's sales tax?

- Under Maryland law, out-of-state vendors must register with the Maryland comptroller and file Maryland sales and use tax returns if the vendor shows a nexus connection by:
 - Permanently or temporarily maintaining, occupying, or using any office, sales or sample room, or distribution, storage, warehouse, or other place for the sale of tangible personal property or a taxable service directly or indirectly through an agent or subsidiary;
 - Having an agent, canvasser, representative, salesman, or solicitor operating in the state for the purpose of delivering, selling, or taking orders for tangible personal property or a taxable service; or
 - Entering the state on a regular basis to provide service or repair for tangible personal property.
- It is Maryland's position that the U.S. Constitution does not require an out-of-state vendor to have a substantial physical presence in the taxing state for the state to require that vendor to collect sales and use tax. All that is required is for the out-of-state vendor to demonstrate more than a "slightest presence" in the taxing state.
 - In general, entering the state to service or repair tangible personal property will be regarded as "regular" if a vendor, such as furniture or appliance dealers, provides such service or repair as a customary, usual or normal course of business.
 - The statute does not define the term "service...for tangible personal property." Therefore, the comptroller will apply the dictionary definition of "service." As used in Section 11-701(b)(2)(iii), service is defined as "installation, maintenance, or repairs provided or guaranteed by a dealer or manufacturer," by the American Heritage Dictionary, Second College Edition (1985).

- For more information on sales tax nexus see
http://taxes.marylandtaxes.com/Business_Taxes/Business_Tax_Types/Sales_and_Use_Tax/Tax_Information/Tax_Regulations/Nexus_Information.shtml

3. What are the responsibilities of Maryland sales tax vendors?

- Businesses in Maryland are required to collect Maryland's 6% sales and use tax. The sale of tangible personal property is generally taxable except as otherwise provided by law; the sale of a service is generally not taxable except for certain taxable services provided by law. State sales taxes apply to purchases made in Maryland while the use tax refers to the tax on goods purchased out of state. For more information on sales tax see

http://taxes.marylandtaxes.com/Business_Taxes/Business_Tax_Types/Sales_and_Use_Tax/

4. What are the sources of Maryland's taxing authority?

- Income Tax: Maryland Code, Tax General Article, § 10-402.
- Sales Tax: Maryland Code, Tax General Article, §§ 11-701, 11-702.

Virginia

This following is a summary and should not be relied upon as legal advice. To receive individual advice please contact the Virginia Department of Taxation:

<http://www.tax.virginia.gov>

(804) 367-8037 (for businesses)

1. When does a foreign corporation using Virginia's roads to transport goods have to pay Virginia's income tax?

- In Virginia corporate income tax is be imposed on every foreign corporation which has income from Virginia sources.
 - Code of Virginia § 58.1-302 defines "Income and deductions from Virginia sources" as:
 - a. The ownership of any interest in real or tangible personal property in Virginia; or
 - b. A business, trade, profession or occupation carried on in Virginia.
 - If the entire business of a corporation is transacted or conducted within Virginia, "Income from Virginia sources" means the entire Virginia taxable income of the corporation.
 - If the business of the corporation is conducted both within and without Virginia, taxable income would be determined by allocation and apportionment as provided in Code of Virginia §§ 58.1-407 through 58.1-420.
- A foreign corporation that has registered with the State Corporation Commission for the privilege of conducting business in Virginia must file a Virginia income tax return each year, even if the company has not conducted business in the Commonwealth or has no income to report. Other foreign corporations must file Virginia returns for taxable years in which they receive income from Virginia sources.

- The Virginia Department of Taxation relies on its own rulings and judicial opinions to determine when sufficient nexus exists. To access the rulings see <http://www.tax.virginia.gov/content/welcome-laws-rules-decisions>

2. When does a foreign corporation using Virginia's roads to transport goods have to pay Virginia's sales tax?

- A foreign corporation must pay sales tax if it has a sufficient nexus with the state of Virginia and qualifies as a "dealer" who must register and collect the sales and use tax. A dealer is generally defined as a person or business engaged in the business of selling at retail or distributing tangible personal property in Virginia.
- Any of the following conditions or activities in Virginia by an out-of-state or Virginia dealer will establish that the dealer has sufficient contact with the state to be required to register and collect the sales and use tax (based on rulings):
 - Delivering tangible personal property more than 12 times per year other than by common carrier;
 - Maintaining or having within Virginia, directly or through an agent or subsidiary, an office, warehouse, or place of business;
 - Soliciting business by employees, independent contractors, or representatives;
 - Advertising in newspapers or other periodicals printed and published in Virginia, on billboards or posters, or through materials distributed by means other than U.S. Mail;
 - Soliciting business on a continuous, regular, seasonal, or systematic basis through advertising that is broadcast or distributed from within the state;
 - Soliciting business by mail, if done on a continuous, regular, seasonal, or systematic basis and if the dealer benefits from any financial or marketing activities in the state or benefits from the presence of authorized installation, servicing, or repair facilities;
 - Being owned or controlled by the same interests that own or control a business in the state;
 - Having a franchisee (or, licensee) registered and operating under the same trade name in the state; or

- Owning tangible personal property that is rented, leased, or offered, on approval, to a Virginia consumer.
- The Virginia Department of Taxation’s public stance is that sellers who store inventory in a fulfillment center in Virginia, but don’t have any other type of “nexus” in Virginia, do not need to register for a Virginia sales tax permit or charge sales tax to Virginia customers. For more information see <http://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/15-194>
- Every agricultural commodity sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption ultimately for retail to another party is exempted from sales tax. “Agricultural commodity” means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping. (Virginia Code § 58.1-609.2).

3. What are the responsibilities of Virginia’s sales tax vendors?

- An out-of-state seller must register with the Department and collect the tax on sales to Virginia customer if the seller has sufficient nexus, or contact, with Virginia.
- The general sales tax rate for Virginia is 5.3% (4.3% state tax and 1% local tax). There is an additional 0.7% state tax imposed in the localities that make up Northern Virginia and Hampton Roads, making the rate in these areas 6% (5% state tax and 1% local tax).
- If the seller does not have nexus with Virginia, there is no requirement to collect the tax or register for a use tax account. For more information see <http://www.tax.virginia.gov/content/business-faq2>.
- If an out-of-state dealer has sufficient nexus with Virginia, (meaning a significant connection or link to Virginia according to Virginia law,) the dealer must register with Virginia to collect Virginia Use Tax on their Virginia sales. For further information on nexus criteria, refer to Code of Virginia §58.1-612.

- Any out-of-state dealer registered to collect Virginia Use Tax must remit the collected tax to Virginia on a monthly basis, unless a different filing frequency has been established by the Department.
- Businesses subject to the Virginia Use Tax must file Form ST-8, Out-of-State Dealers Use Tax return, by the 20th of the following month. A return must be filed for each period, even if there are no sales to report. Based on your tax liability, the Department may change your filing frequency from monthly to quarterly. If your filing frequency is changed, you will be notified prior to the effective date.

4. What are the sources of Virginia's taxing authority?

- Income Tax: Virginia Code §§ 58.1-400-420.
 - <http://www.lrd.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/13-6>
 - <http://dls.virginia.gov/GROUPS/ssf/meetings/093008/Performance.pdf>
- Sales Tax: Virginia Code § 58.1-603, § 58.1-609.2, §58.1-612.