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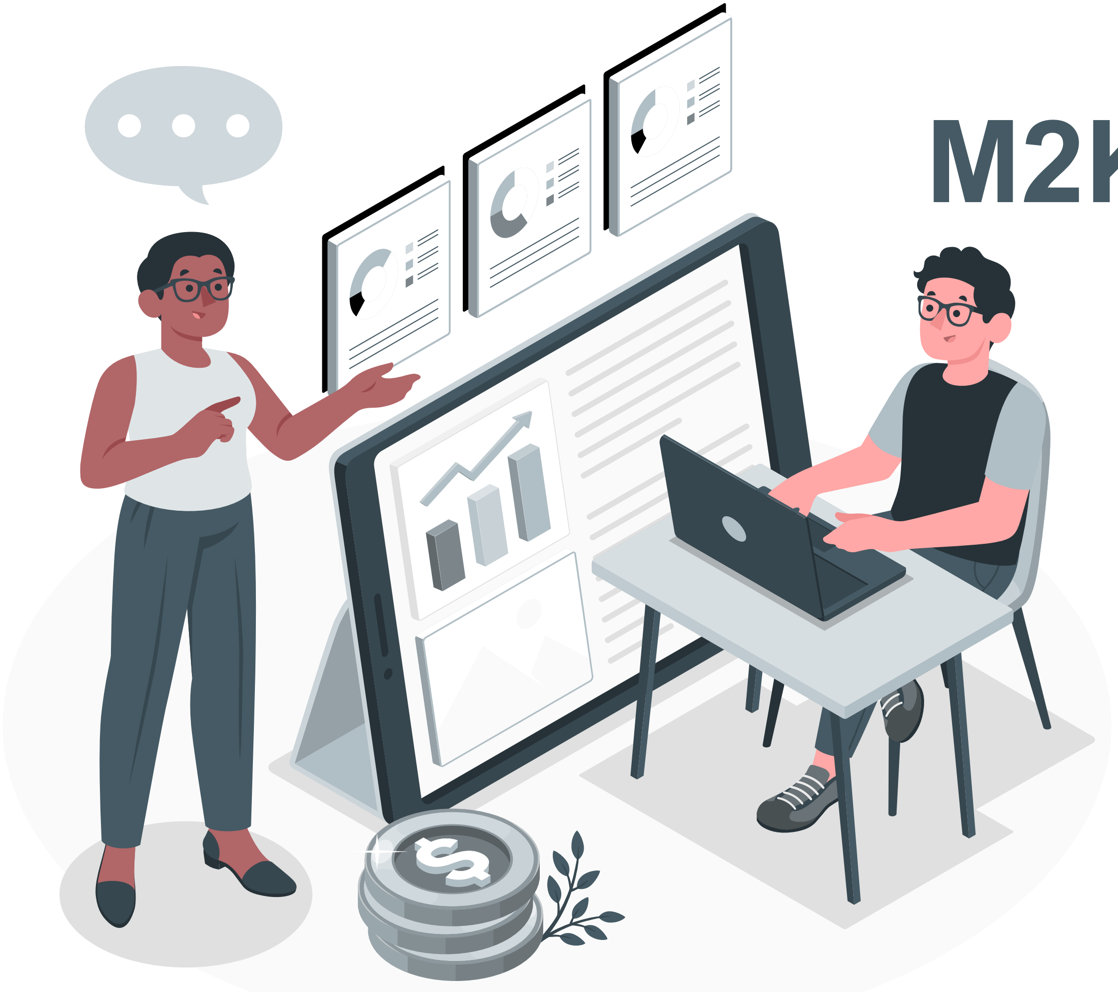


M2K - USA Sales Tax Series

Situs of sales

ALERT #2

Foreword

Sales and Use tax compliance is a major challenge for businesses operating in the United States. Unlike many countries with a single national sales tax, US sales tax being a local levy, there are **thousands of taxing jurisdictions**. This means businesses must navigate a maze of different tax rates, taxability rules, filing schedules, and exemption requirements just to sell the same product in different states.

The complexity doesn't stop there. The **2018 Supreme Court Wayfair decision** changed the game by requiring businesses to collect and remit sales tax even if they have no physical presence in the state. Now, simply exceeding a certain number of sales or revenue in a state can trigger a tax obligation, making it even harder for remote sellers and online businesses to keep up. States have moved quickly to enforce these "economic nexus" rules, and the risk of audits and penalties for non-compliance is higher than ever. Further, certain states levy sales tax on enumerated services, which is unknown to many businesses operating in the United States.

M2K's US Sales Tax Series is designed to educate the readers/ businesses & simplify the complexities. In the series, we will explain how sales and use taxes work, when should you get registration, what are the compliances that would apply, etc.

What is situs and why should it be identified?

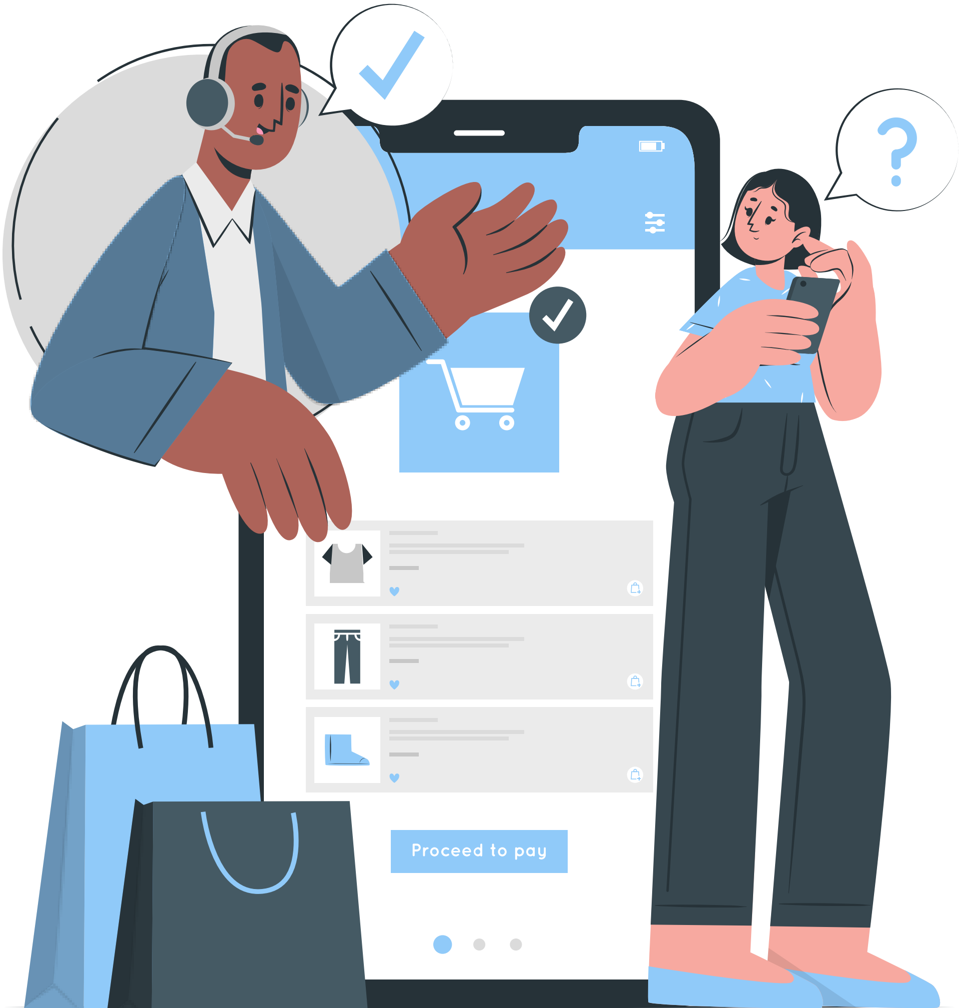
A Situs refers to the location where sale of goods or supply of services is deemed to occur.

B Determining the situs is essential to identify which state or jurisdiction has the authority to impose sales or use tax on a transaction.

C Understanding situs helps businesses to:

- Apply the correct state and local tax rate
- Determine if sales or use tax is applicable
- Determine if nexus is triggered and whether registration is required

Situs in case of sale of goods



- For sale of physical goods, the situs is generally based on where the title or possession is transferred to the buyer.

- In case of over-the-counter sales, tax applies at the location of the store where the sale takes place.

  Example - A customer physically shops at a hardware store located in Indiana. They purchase a tool while in the shop. Since the customer took receipt of the tool within the store, the sale is sourced to Indiana.

- In case of sales where the goods are shipped to the customer location, tax applies at the location of the customer.

  Example - A customer located in Kentucky purchases a tool online from the website of a hardware store located in Indiana. The tool is shipped to the customer in Kentucky. Since the customer took receipt of the tool in Kentucky, the sale is sourced to Kentucky.

- A marketplace facilitator must collect tax on sales through its marketplace based on the address where the tangible personal property is shipped.

Situs in case of supply of services

- For supply of services, the sourcing rules establish where a service is deemed to be "performed" or "delivered" for tax purposes.

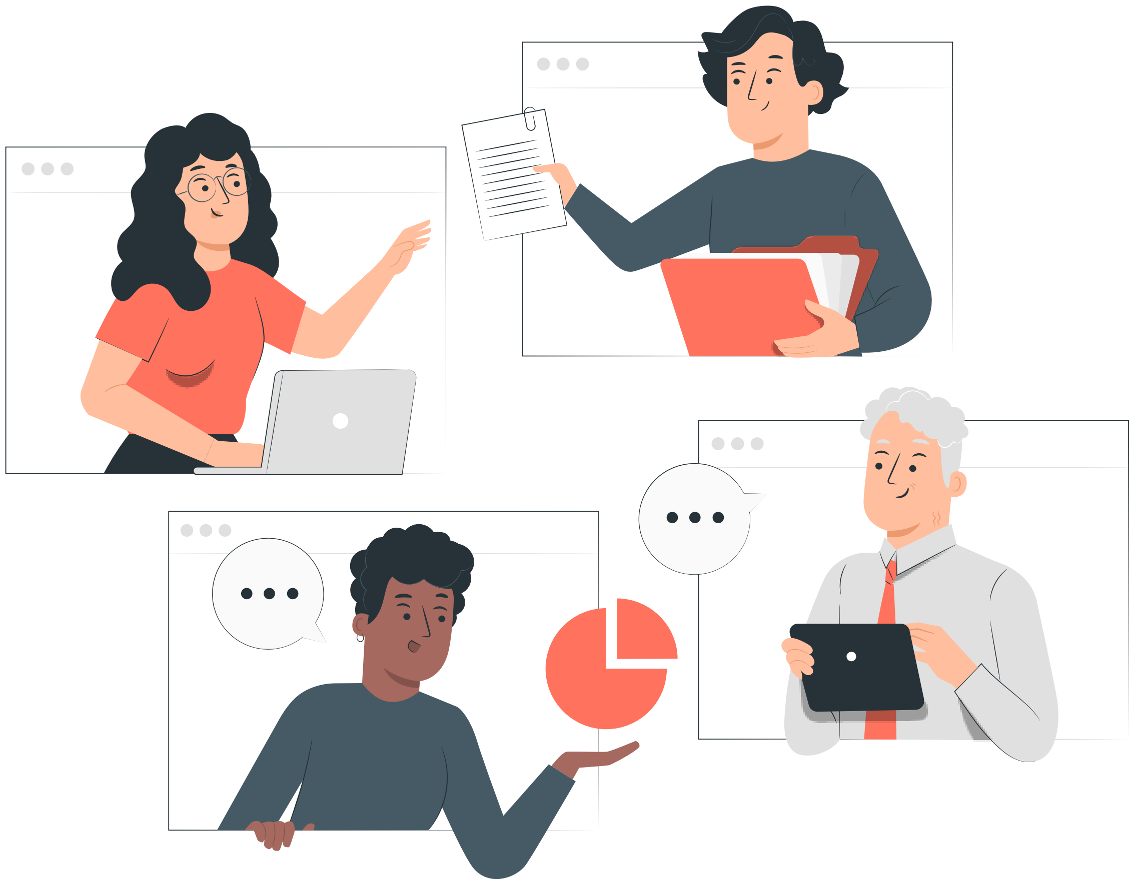
- In-person services / personal services such as repair work, grooming, etc. are generally sourced to the site where the service is performed.

  Example - A Texas-based electrician performs repairs at a client's business in Louisiana. In such a case, the sale is sourced to Louisiana.

- Digital services or services delivered electronically such as media streaming, online training, etc, pose challenges in identifying where the services are consumed since there is no physical location. Such services are typically sourced to the customer's billing location.

  Example - A California-based company offers online training classes to a subscriber in Oregon. Oregon sales tax applies based on the subscriber's billing address.

- Challenges may arise if there are differences between the billing address and the actual location of the user in case of digital services / SAAS. Therefore, the seller may be required to understand where the services are actually consumed.

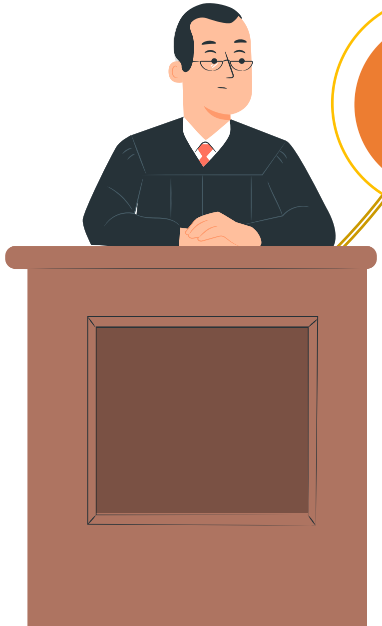


Relevance of origin-based taxation post Wayfair ruling

The Supreme court ruling in **South Dakota v. Wayfair, Inc. (2018)** enabled states to require remote sellers to collect sales tax based on the destination of the sale (destination-based), even without a physical presence. As a result, most states with sales taxes (except few) adopted destination-based sourcing for interstate sales.

For sales within an origin-based state, the Wayfair ruling does not directly alter tax collection. Sellers will continue to apply the tax rate at their location, as they did pre-Wayfair.

However, if a seller in an origin-based state makes sales to out-of-state buyers, the seller may trigger economic nexus in the destination-based states and thus must collect destination-based tax rate.



Stay tuned for more updates on Sales & Use Tax

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Please find below the list of alerts proposed to be released in the series (every Tuesday & Thursday).

General overview

1. **Introduction to sales & use tax**
2. Situs of sale
3. Sales tax exemptions
4. Determining nexus
5. Registration & compliances
6. Voluntary disclosure agreement
7. Sales tax on software & SAAS

State wise overview

1. Delaware
2. New Jersey
3. California
4. Alabama
5. Alaska
6. Arizona
7. Arkansas
8. Colorado
9. Connecticut
10. Columbia
11. Florida
12. Georgia
13. Hawaii
14. Idaho
15. Illinois
16. Indiana
17. Iowa
18. Kansas
19. Kentucky
20. Louisiana
21. Maine
22. Maryland
23. Massachusetts
24. Michigan
25. Minnesota
26. Mississippi
27. Missouri
28. Montana
29. Nebraska
30. Nevada
31. New Hampshire
32. New Mexico
33. New York
34. North Carolina
35. North Dakota
36. Ohio
37. Oklahoma
38. Oregon
39. Pennsylvania
40. Rhode Island
41. South Carolina
42. South Dakota
43. Tennessee
44. Texas
45. Utah
46. Vermont
47. Virginia
48. Washington
49. West Virginia
50. Wisconsin
51. Wyoming

Thank You

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