

# Sales Tax Compliance Challenges in Today's eCommerce World

An ADP Webcast  
December 16, 2010



# Housekeeping Items

- **This is one of a number of complimentary webinars that ADP offers to tax and finance professionals each year.**
- **Today's webinar will last for 60 minutes, ending at 1pm Eastern time.**
- **The last 10 minutes of today's program have been reserved for Q&A.**
- **You can download a PDF copy of today's slides right now, in case you'd like to take notes.**
- **CPE certificates will be emailed to those who qualify within 30 days of today's broadcast.**
- **We will launch a brief survey at the conclusion of today's webinar.**

# About ADP

*Experts in automating corporate business processes*



*The view from New York's Times Square in December, 2008, when ADP debuted on the NASDAQ.*

- **Listed on NASDAQ: ADP**
- **Fortune 300 company**
- **Experts in automating business processes such as payroll, benefits administration, procure-to-pay, sales tax automation and tax credits so that organizations can stay focused on the core business**
- **60 years of experience**
- **Revenues of \$9 Billion**
- **Solid Financials: AAA credit rating from both Moody's and Standard & Poor's**

# CPE Credit

- Are you planning to apply for CPE credit for attending today's webinar?
- A. Yes
- B. No
- C. Not Applicable

**NASBA (National Association of State Boards of Accountancy) requirements for receiving CPE Credit:**

- Log in from same e-mail address that you used to register
- Stay for the full hour
- Answer 4 out of 6 polling questions





# Today's Panel



**Charles Collins**  
VP of Government Affairs  
ADP, Inc.



**Matthew Walsh**  
Director of Tax Research  
ADP, Inc.

# Agenda

- State and Local Environment
- Growth of eCommerce
- Current Taxation of eCommerce
- Trends in Taxation of eCommerce
- eCommerce Challenges for Compliance
- Compliance Solutions for eCommerce



# Polling Question #1

- What percentage of your sales are remote or eCommerce transactions?
- A. 0 - 25%
- B. 26% - 50%
- C. 51% - 75%
- D. 76% - 100%
- E. Don't Know

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# State and Local Environment

## ■ Budget Problems

- Shortfall for fiscal year beginning July 1, 2011 is \$72B
- Shortfall closed in FY 2010 \$173B
- Shortfall closed in FY 2011 \$89B

## ■ New State Policy Makers

- Twenty eight new governors
- Hundreds of new legislators
- Many new governors and legislators took a no new tax position promising to cut programs and improve government to make up the shortfall



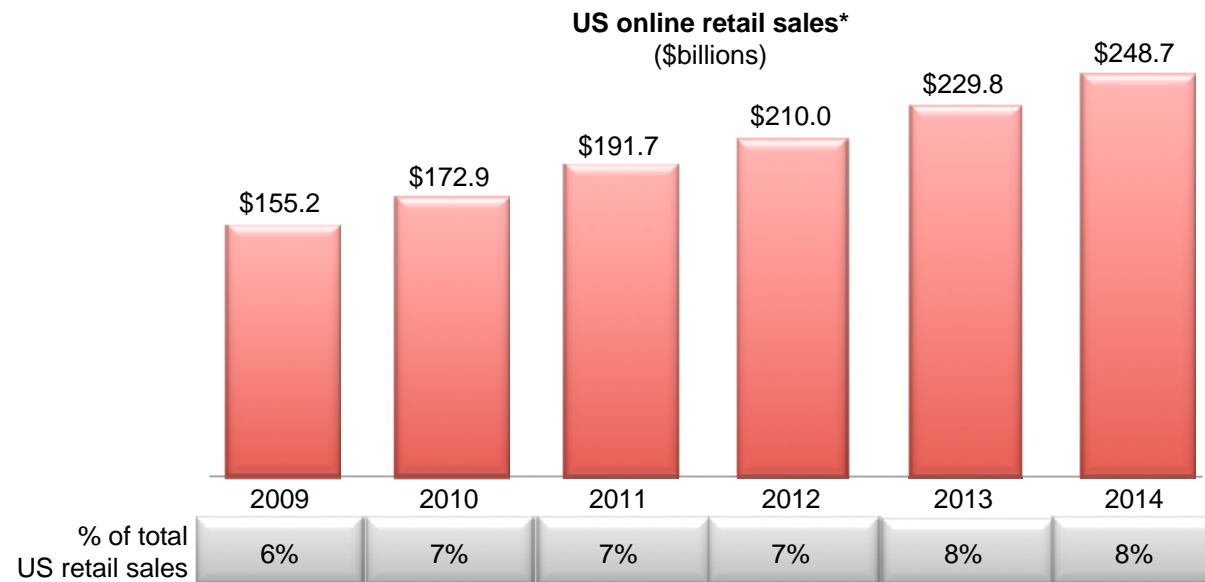


# Growth of e Commerce

**Figure 1** Forecast: US Online Retail Sales, 2009 To 2014

1-1

**US online retail sales will reach \$248.7 billion by 2014**



- Online sales growth expected at 10% per year through 2014
- Online sales expected to be \$250B by 2014
- Online sales up 11% in 2009 (2.5% for all sales)

Source: Forrester Research

# Initiatives Impacting Sales Tax Compliance (eCommerce)

- **Efforts to improve overall compliance**
  - More auditors and collectors – greater penalties
- **Elimination of exemptions**
- **Taxation of selected products and services**
- **Efforts to increase tax collections on remote sales (eCommerce)**
  - Laws ascertaining nexus on remote sellers (Amazon legislation)
  - Laws requiring reporting requirements
  - Streamlined Sales Tax Initiative



# Current Laws/Nexus

- **Quill and the Physical Presence Standard**
- **What is Nexus?**
  - Physical presence in a jurisdiction
  - Sufficient to give rise to an obligation to collect and remit tax – Quill
  - Without nexus a vendor can not be compelled to collect and remit transaction taxes to a jurisdiction



# Current Laws/Nexus

## ■ Rules Vary by Jurisdiction...

### Nexus can be:

- Physical location in jurisdiction
- Property in a jurisdiction
- Sales presence in the jurisdiction
- Trade shows
- Providing services in a jurisdiction
- Deliveries in company owned vehicles
- Affiliated nexus
  - Agents



# Current Laws/Nexus

- **State Level Nexus vs. Local Level Nexus**
- **Voluntary Nexus**
- **Complexities**
  - Agents
  - Services
  - Mergers/Acquisitions
  - Related Parties

— Borders/Barnes and Noble.com





## Polling Question #2

- Do you use a third party compliance system for your sales tax compliance?
- A. Yes
- B. No
- C. Don't know

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# eCommerce Compliance Trends

## ■ New York Amazon Law

- Remote seller is deemed a vendor if:
  - Has an agreement with a NY resident for consideration;
  - The NY resident link's to the E-Comm vendor's webpage; and
  - The cumulative gross receipts from sales through the links to customers in NY exceeds \$10,000.



# eCommerce Compliance Trends

## ■ Other states followed suit:

- North Carolina:
  - A retailer is presumed to be soliciting or transacting business;
  - Has an agreement with a resident of this state under which the resident, for a commission or other consideration,
  - Directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the retailer.
  - Cumulative gross receipts from sales is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods.
- Rhode Island:
  - Substantially the same as NC but the cumulative gross receipts is in excess of five thousand dollars (\$5,000)

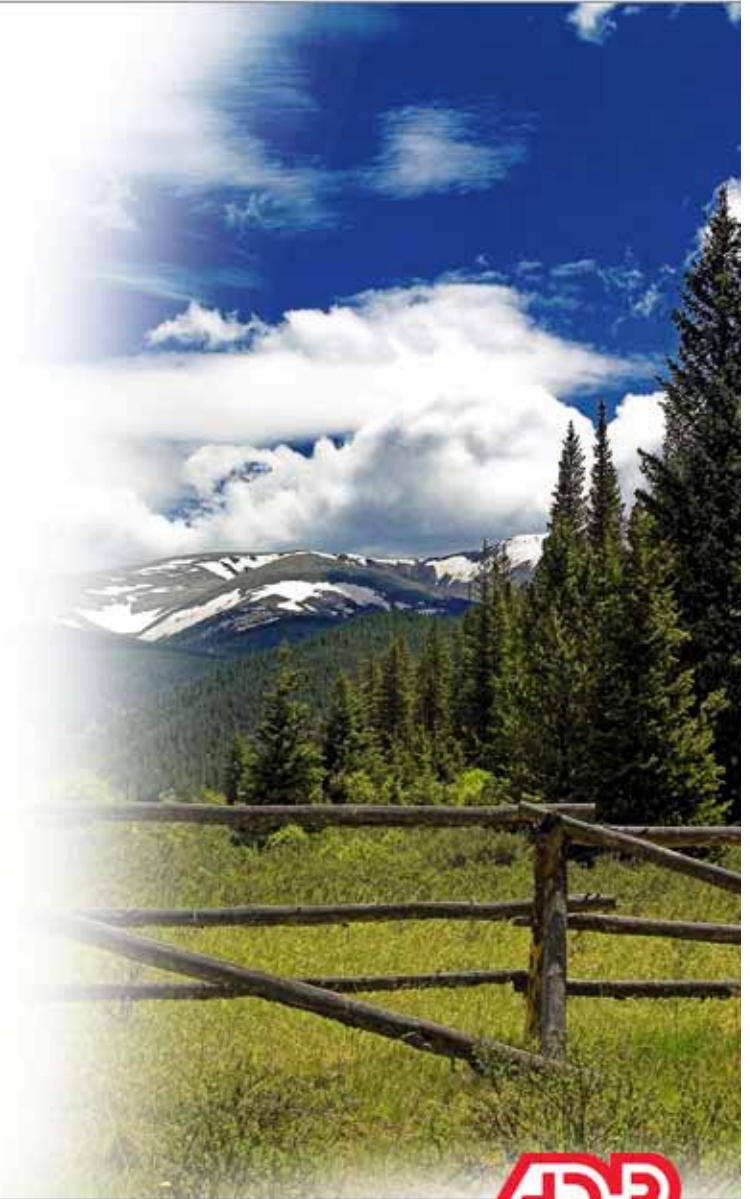
## ■ Also considered in many others:

- Including California, Colorado, Florida, Illinois, Maryland, Minnesota, Texas, Virginia and Wisconsin.

# eCommerce Compliance Trends

## **Affiliate Nexus:**

- **Trend to expand the definition of “doing business” in a jurisdiction to affiliates:**
- **Colorado:**
  - Retailers that do not collect Colorado sales tax and are part of a controlled group of corporations, a member of which is a retailer with physical presence in the state



# eCommerce Compliance Trends

## ■ Oklahoma:

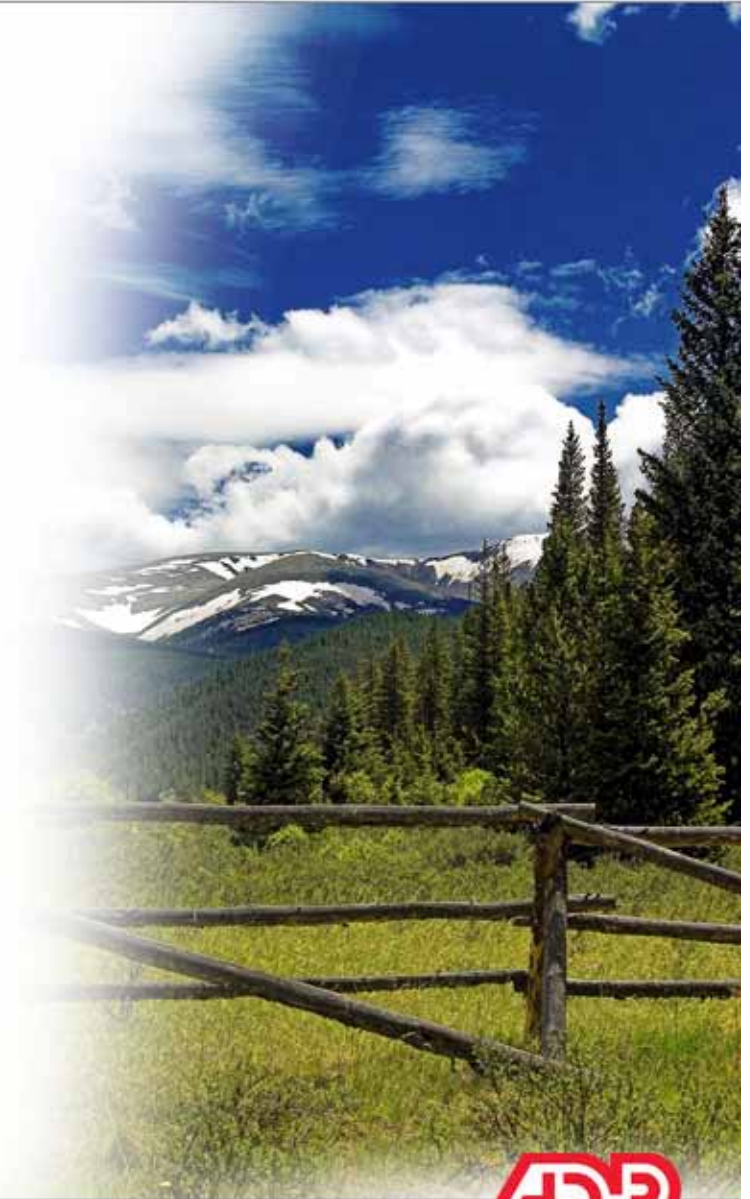
- If the retailer holds a substantial ownership interest and the retailer sells the same or a substantially similar line of products... under the same or a substantially similar business name, or
- The Oklahoma facilities or Oklahoma employees of the related Oklahoma retailer are used to advertise, promote, or facilitate sales by the retailer; or
- The retailer holds a substantial ownership interest in a business that maintains a distribution house, sales house, warehouse, or similar place of business in Oklahoma that delivers property sold by the retailer to consumers.
- Part of a "controlled group of corporations" having a "component member" that is a retailer engaged in business in Oklahoma.



# eCommerce Compliance Trends

## ■ Colorado:

- Related Party Affiliate Nexus
- Information Reporting
  - Remote vendors are not required to collect the sales tax but must comply with information reporting requirements
    - Customer Transactional Notice:
      - » Notice that the purchase is not exempt from sales tax merely the seller is not collecting it;
      - » Colorado requires purchasers to file a sales and use tax return at the end of the year and pay all taxes on those purchases.



# eCommerce Compliance Trends

- Annual Purchase Summary (\$500 or more of purchases in a year)
  - Summary of purchases including descriptions and prices
  - State that Colorado requires purchasers to pay tax on all purchases where the vendor didn't
  - Indicate the retailer is required to provide Colorado a list of all purchases in Colorado where no tax was collected
- Customer information report provided to Colorado DOR
  - Name of all Colorado purchasers
  - Billing address
  - Shipping address
  - Total dollar value of purchases

## ■ Penalties

- \$5.00 on each sale in to Colorado that does not include transaction notice
- \$10.00 for each annual purchase summary not provided
- \$10.00 to each customer that is not included on the customer info report

# eCommerce Compliance Trends

## ■ Oklahoma:

- Related Party Affiliate Nexus
- Information Reporting
  - Seller's with \$100,000 in sales into Oklahoma must provide notice on their retail Internet websites, in their retail catalogs, and on their invoices provided to customers, the notice must state:
    - The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;
    - The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;
    - The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. Referencing the actual forms;
    - The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, [www.tax.ok.gov](http://www.tax.ok.gov).
  - No retailer shall advertise that there is no tax due on purchases made from the retailer for use in Oklahoma.
  - No penalty provisions provided.

## Polling Question #3

- Has your company been following the affiliate Nexus and special reporting requirements for remote sales in Colorado and Oklahoma?
- A. Yes
- B. No
- C. Don't know

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## Polling Question #4

- Have you had to make any adjustments in your system or processing to account for the reporting requirements?
- A. Yes
- B. No
- C. Don't know

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# eCommerce Compliance Trends: SST

## Streamlined Sales Tax (SST)

- Nationwide, multi-state effort to improve sales and use tax compliance
- Objectives: uniform definitions, rate simplifications & technology standards
- Encourage voluntary collection of tax and pave way for Congressional action
- Establish certification standards and authorize providers (CSP & CAS) for tax compliance

# eCommerce Compliance Trends: SST

## ■ **Certified Service Providers (CSP)**

- Tax compliance outsourced solution (hosted)
- Service includes product mapping, taxability, rates, calculation, returns & payments. Also audits for transactions processed
- Original CSP contracts signed in 2007
- States compensate CSP for providing service in states where seller is a volunteer collector (CSP receives fee from seller in other states)
- ADP has been a CSP since 2007 (six providers offer CSP service)

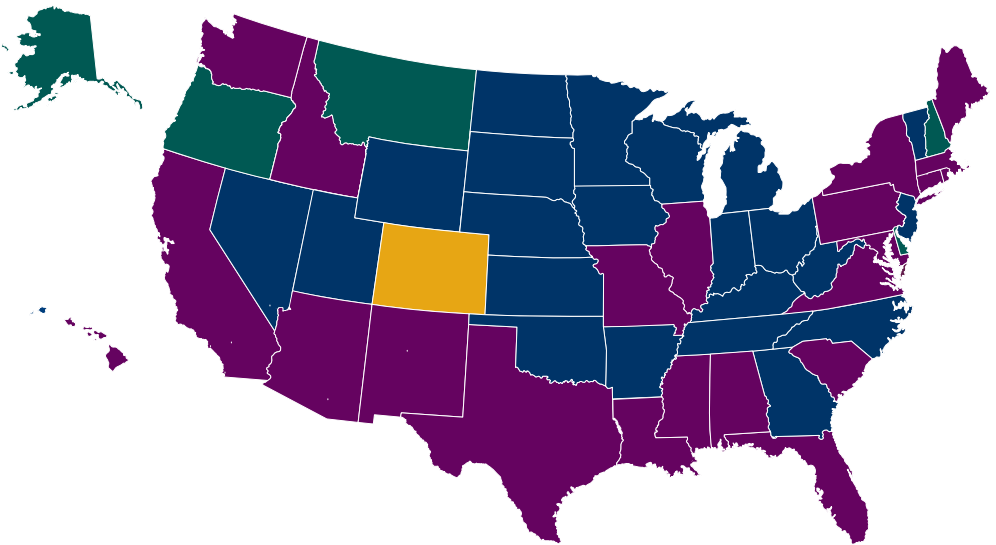
## ■ **Certified Automated System (CAS)**

- Certified onsite software solution (premises based)
- Original contracts signed in 2007
- ADP has offered a CAS since 2007 (two providers offer a CAS)

## ■ **Streamlined provisions are included in an Agreement which member states must enact**

## Streamlined Sales Tax Status

- Twenty four states in compliance with SST and are full or associate members (GA effective date is 1-1-2011)
- Twenty other states participate in effort (Colorado does not participate)
- Additional states to consider SST legislation in 2011
- Other countries considering similar solutions
- [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)



**Blue** states are in compliance with SST

**Purple** states participate at some level. (Idaho & New Mexico have participated to some degree.)

**Orange** states do not participate. (Colorado)

**Green** states have no sales taxes. (Alaska only local sales tax, no tax at state level.)

# eCommerce Legislation Considered by Congress

## ■ **Main Street Fairness Act (HR 5660)**

- Grants collection authority to states for remote transactions
- Authority would not require physical presence
- Simplification and uniform sales tax laws would be required
- Simplifications are contained in the Streamlined Sales Tax Agreement
- Requires collection allowance for all sellers
- Introduced in 2010 and is expected to be reintroduced



# Complexity in Sales Tax Compliance

## ■ Managing Rates

- Over 7,500 jurisdictions
- Over 12,000 rate combinations
- Constantly changing
  - 2009 – 1200 + Rate Changes
  - 2010 – 900 + Rate Changes

## ■ Product Taxability:

- Varying product taxability rules
- Varying product definitions
- Changing tax rules

## ■ Customer Taxability

- Exempt entity rules
- Certificate/records requirements





# Complexity in Sales Tax Compliance

- **Current System with Limited Scope or Limited Jurisdictions**
- **Existing System Issues**
  - Tax calculations
  - Product maintenance
  - Expanding Nexus/growth
  - Exemption certificate handling



# System Setup Issues

## ■ **New Systems/New Ventures:**

- What type of system?
- Who will maintain?
- How often is it updated?
- Hosted or premise based?
- Domestic or global?



# eCommerce Compliance Solutions

- **Hosted Tax Compliance Solutions**

- ADP Sales Tax Service

- **Premises Tax Compliance Solutions**

- ADP Taxware Enterprise Solution

- **Returns and Payment Service Only**

- **Certified Service Providers (CSP)**

- Tax compliance outsourced solution (hosted)
- States compensate CSP in states where seller is a volunteer collector (CSP receives fee from seller in other states)

- **Certified Automated System (CAS)**

- Certified onsite software solution (premises based)

## eCommerce Compliance Readiness

- **Review nexus obligations**
- **Determine affect of reporting requirements and federal legislation**
- **Determine consequences of collecting/not collecting in states with no nexus or questionable nexus**
- **Consider compliance options for e commerce transactions (third party option)**
- **Consider benefits from SST (amnesty in new states, state paid fees, relief from audits, etc)**

## Polling Question #5

- Have you considered using a hosted sales tax compliance solution for your e commerce transactions?
- A. Yes
- B. No
- C. Don't know

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## Polling Question #6

- Do you use one of the following third party shopping cart systems for e commerce transactions?
  - A. Demandware
  - B. 1Shopping Cart
  - C. X Cart
  - D. Kona Kart
  - E. Do not know

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# Questions & Answers



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# NRF (National Retail Federation)



**What:** ADP will be exhibiting at NRF (National Retail Federation) showcasing Sales and Use Tax Solutions for POS

**When:** January 10<sup>th</sup> and 11<sup>th</sup>, 2011

**Where:** New York's Jacob Javits Center @ Booth #3103

**Question:** Twix® .....is it candy or is it food?

**Answer:** Stop by ADP's booth to pick up a Twix bar and check out the answer!

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