

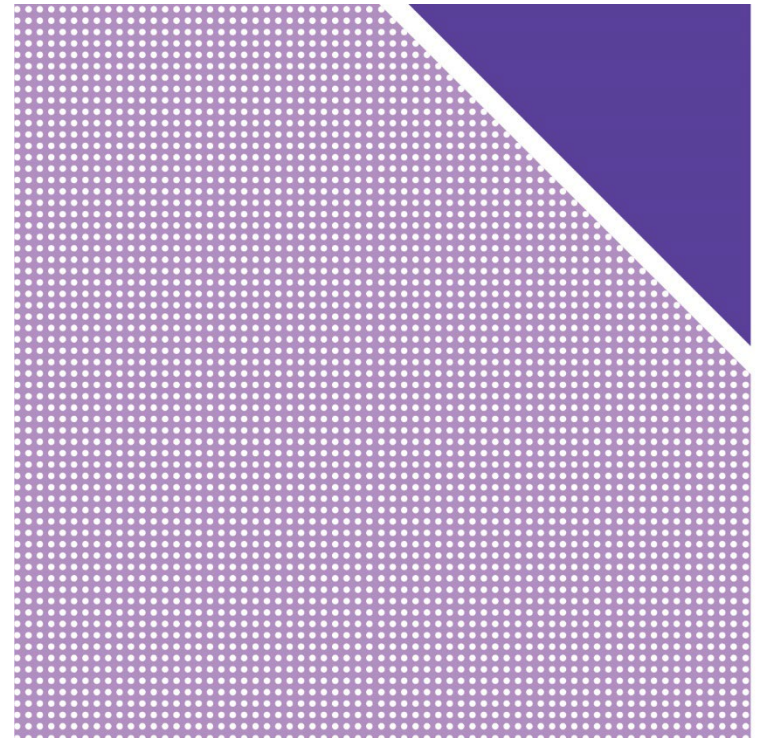
# TAX RISKS RELATED TO OPERATING IN MULTIPLE STATES

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A PRACTICAL APPROACH TO  
BALANCING TAX COMPLIANCE COSTS &  
RISKS

IBBY MICHALIK, CPA, SENIOR MANAGER  
DEREK WIGGINS, CPA, MANAGER

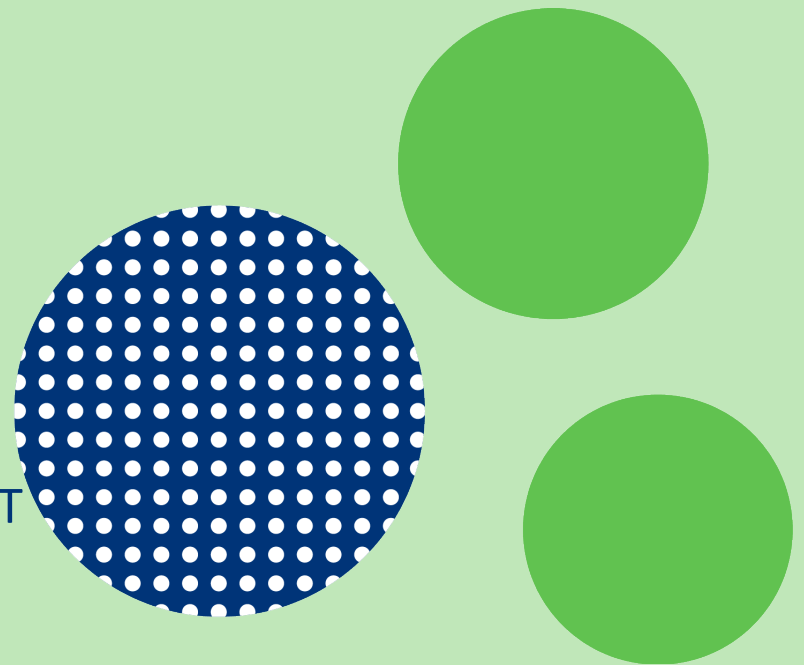
JUNE 28, 2022



# TAX RISKS RELATED TO OPERATING IN MULTIPLE STATES

## AGENDA:

- STATE AND LOCAL TAX BASICS
- NEXUS
- NEXUS LAW AND DEVELOPMENTS
- TAXABILITY OF SERVICES
- APPORTIONMENT
- SALES FOR APPORTIONMENT
- COST OF PERFORMANCE VS MARKET
- PAYROLL ISSUES
- STATE REGISTRATION ISSUES
- VOLUNTARY DISCLOSURE AGREEMENTS



# STATE AND LOCAL TAX BASICS

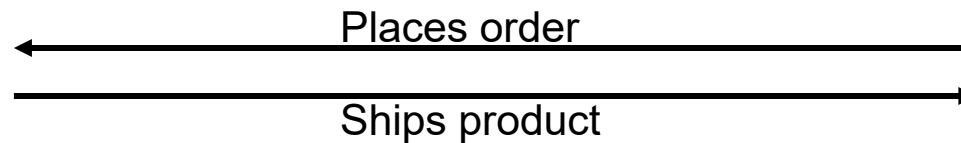
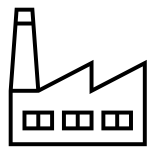
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- Broad topics
- Fact specific
- Definitions matter
- Jurisdictions matters
- Lost of recent changes



# TRADITIONAL SALES

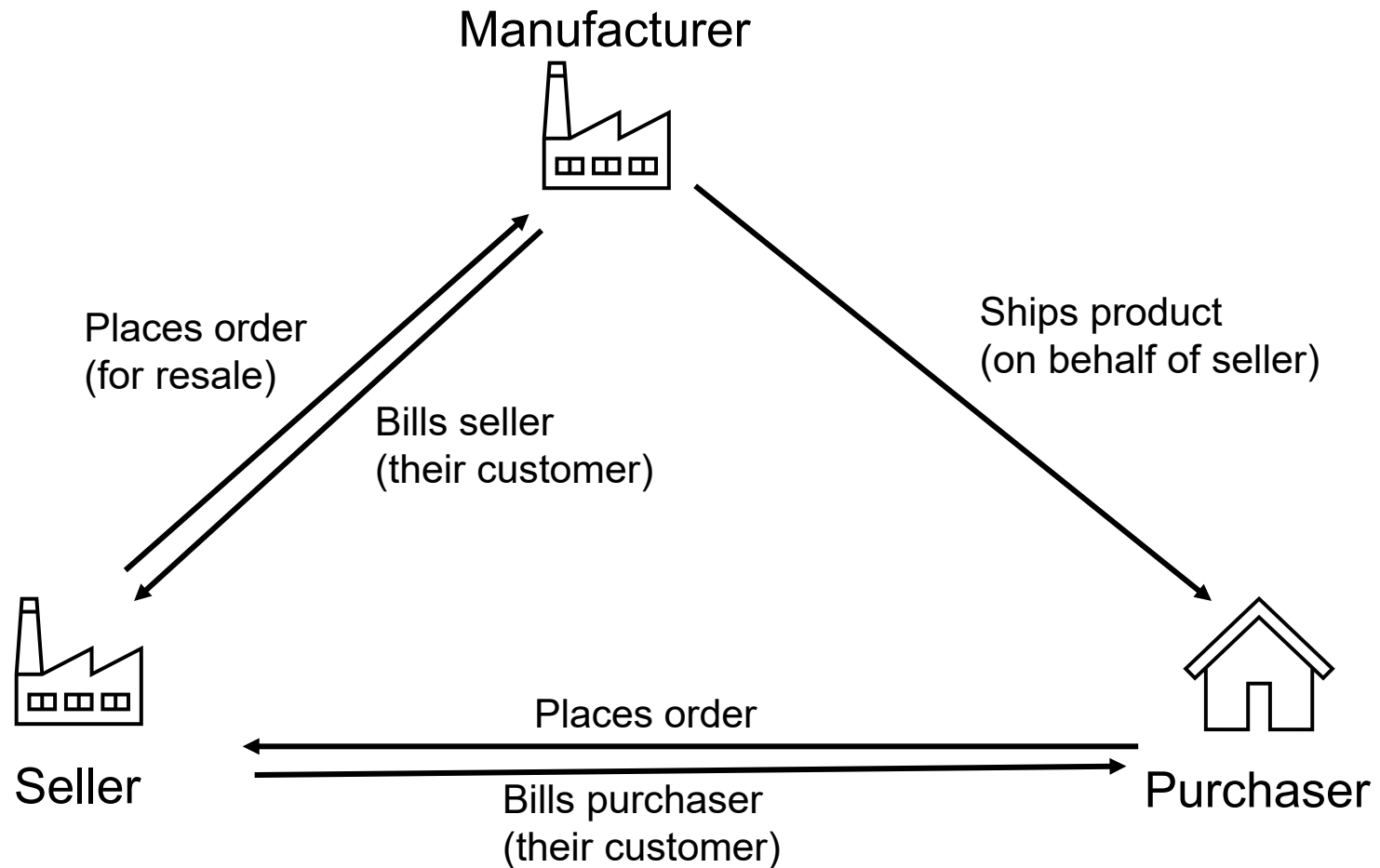
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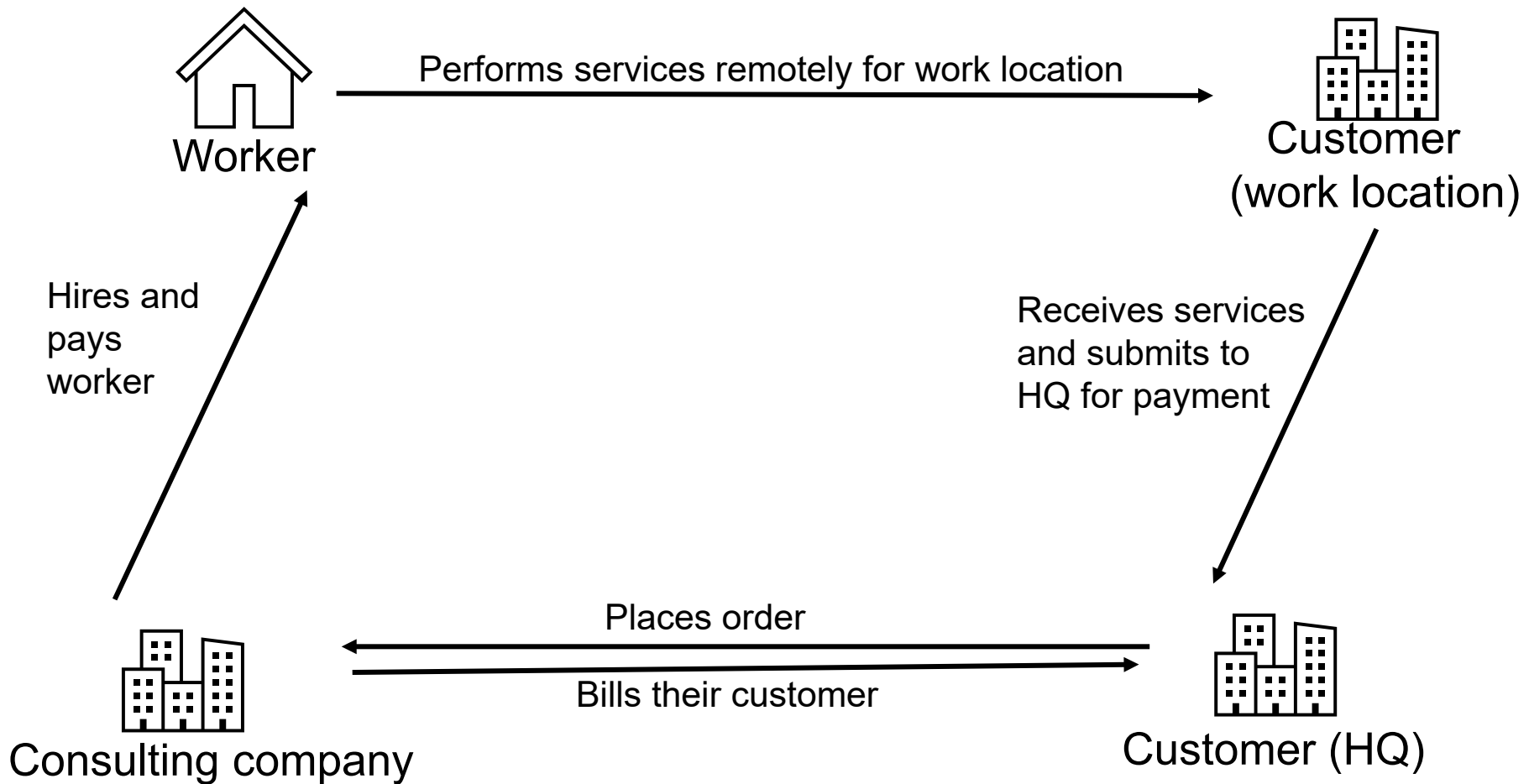
**Seller/Manufacturer**  
- Employees here  
- Equipment here

**Purchaser**  
- Sale here

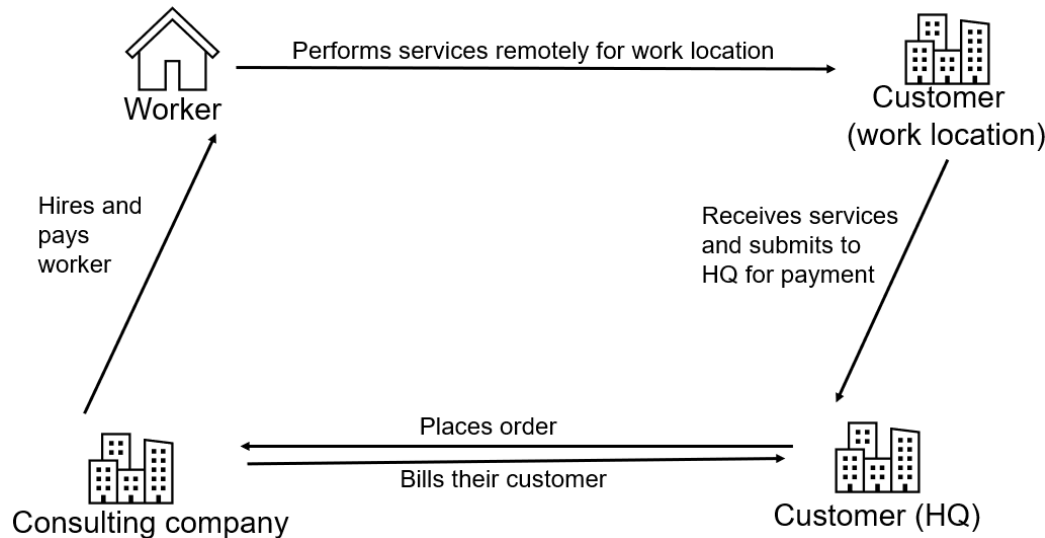
# TRADITIONAL SALES – DROP SHIPMENT



# CONSULTING SALES

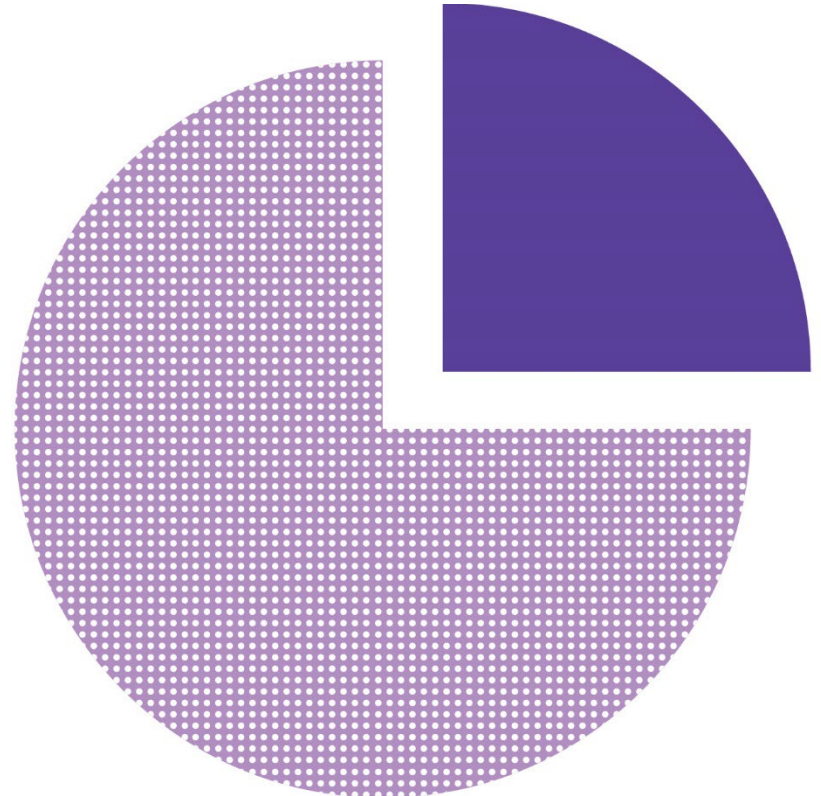


# WHAT DO WE DO NOW?



- Where do we have nexus? AKA where do we have an obligation to file and pay?
- Is the answer the same for sales tax, payroll taxes, and income and other taxes?

- What is nexus?
- Types of nexus
  - Income and other taxes
  - Sales and use tax
  - Payroll taxes

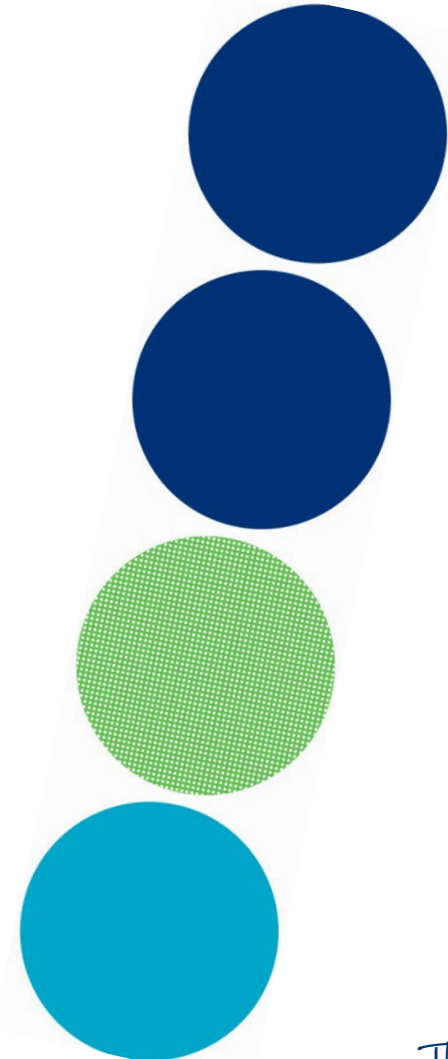




# NEXUS LAW AND DEVELOPMENTS

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- Income taxes
  - Tax Cuts and Jobs Act of 2017
- Sales and use taxes
  - South Dakota v. Wayfair (2018)
- Payroll taxes
  - COVID



# TAXABILITY OF SERVICES

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- Not all states tax services
- Important to know what you're providing
  - Temporary or permanent staffing
  - Computer services
    - Hardware
    - Software (what kind)
  - Security services
  - Services or property?



*The Next Level  
of Service*

# APPORTIONMENT

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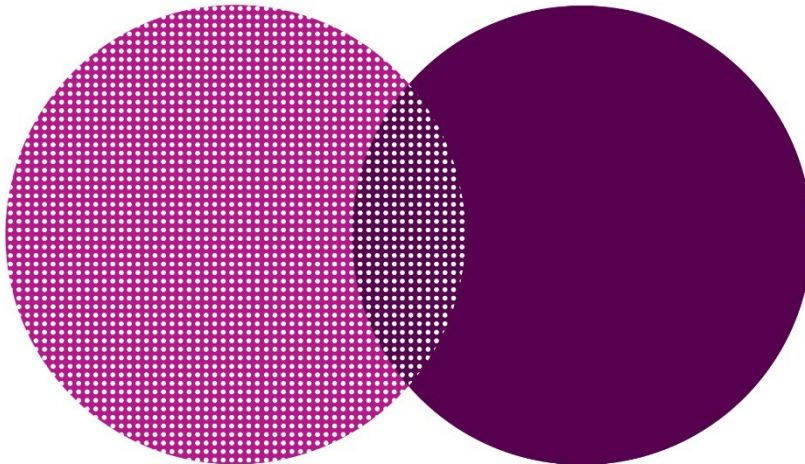
- Factors used in Apportionment
  - Property
  - Payroll
  - Sales



# SALES FACTOR APPORTIONMENT

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- Cost of Performance
  - Sourcing of receipts
  - Income producing property
  - What costs are taken into consideration
- Market
  - Sourcing of receipts
    - Where is the benefit received
    - Where is the service received
    - Where is the service delivered
    - Where is the customer located



# COST OF PERFORMANCE VS. MARKET

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- Other factors to consider
  - Double taxation
  - No taxation
  - Nowhere sales
  - Throwback sales



# PAYROLL ISSUES

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- Where to withhold
- Work from home issues
- Reciprocity



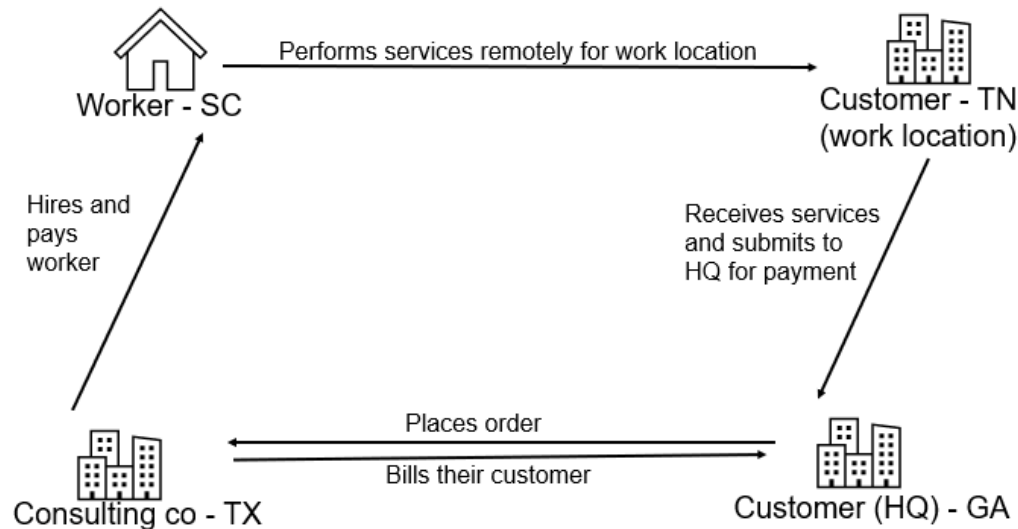
# STATE REGISTRATION ISSUES

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- Multiple agencies to register with
- Considerations when registering
  - Cost (current and ongoing)
  - Exposure (future and possibly past)
  - Over registering
  - Ongoing business in jurisdiction



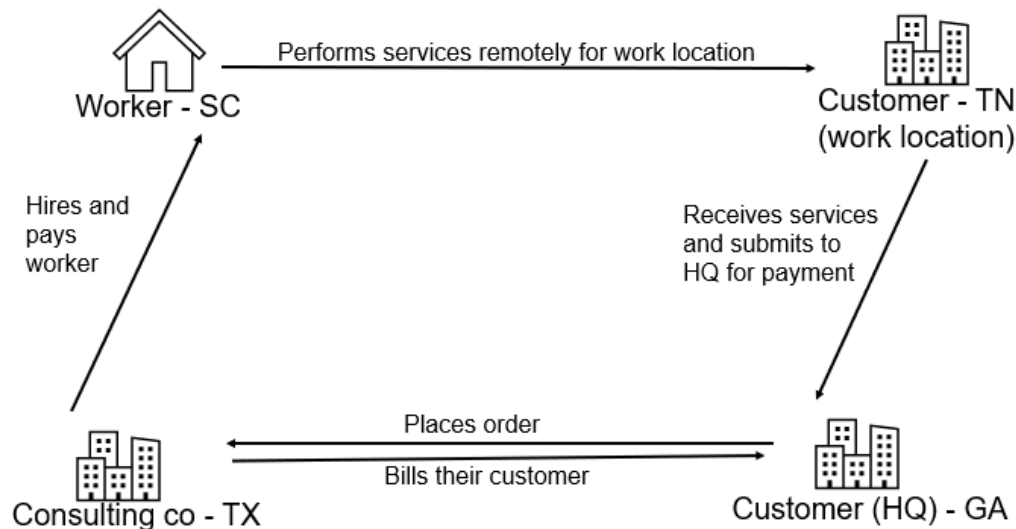
# WHAT DO WE DO NOW – SALES TAX



- SC is a cost of performance state.
- TN is a market/benefit received state.
- Sale is subject to sales tax in BOTH states, but NEITHER state taxes our services.



# WHAT DO WE DO NOW – PAYROLL TAX



- Typically based on where employee is, however, there are exceptions.
- Employee is in SC and we would have a filing obligation there.

# WHAT DO WE DO NOW – INCOME TAX

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- Where do we have nexus?
  - TX (our home state), TN, SC – not GA.
- Where do we have income?
  - SC – Apportionment rules are different from sales tax law, say based on where “income producing activity is performed”.
  - TN – Market based
- Where to file?
  - TX – Our home state
  - SC – One time transaction, de minimis, pass
  - TN – Over threshold and been growing for years

# VOLUNTARY DISCLOSURE AGREEMENTS (VDA)

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- What is a Voluntary Disclosure Agreement
- Pros of a Voluntary Disclosure Agreement
  - Limited exposure, tax liabilities, and penalties
  - VDA negotiation is often anonymous
  - Have the opportunity to come clean with the state



# VOLUNTARY DISCLOSURE AGREEMENTS (VDA)

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- Cons of a Voluntary Disclosure Agreement
  - Any missing details can void the VDA or result in ineligibility
  - States have varying requirements for VDAs
  - Additional tax liabilities may be uncovered



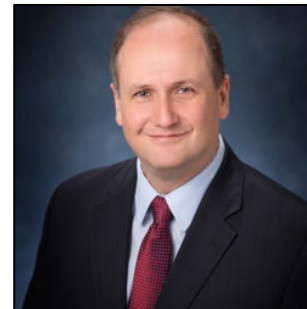
# Who has the first question?

# THANK YOU

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