



# You Don't Know What You Don't Know

## Blissfully Unaware

Peisner Johnson & Company was approached by an officer of a technology company with a nexus situation. Initially, all of the company's sales were in one state. During the next twenty years, the company experienced tremendous success and growth, expanding into all 50 states, Puerto Rico, and Canada. The company had only one location, and all employees worked at this location. All sales were done over the phone, and the product was delivered by common carrier. Life was good until a neighboring state asserted they had nexus and wanted the last seven years of back sales taxes, penalty, and interest. The company protested -- all their sales were done remotely by telephone. But the state's position was that while auditing one of the company's customers, auditors reviewed an invoice from them that included training and installation in a lump-sum charge. The state asserted that having employees or third-parties travel into the state to perform training and installations were nexus-creating activities. The company officer inferred from the state representative that they probably had the same issue in a number of states.

The company's management was shocked. They panicked. They were worried that if the states began talking to each other, they would soon be

facing demands for back taxes, penalties, and interest from everyone. One state demanding seven years had hurt them badly enough, but if all the states audited them at once, our client would be out of business. They also began to worry about criminal penalties and personal liability for the owners, officers, and directors. In addition, they realized that if they were forced to book these potential liabilities they might have issues with covenants on their lines of credit and loans with their bank.

When the officer of the company approached us, he let us know they had not intentionally avoided paying tax to the other states, but rather had been relying on the advice of their long-time CPA, who appeared to have been doing a good job for them. The company assumed their CPA was competent in the multi-state tax issues, also.

## Reviewing Their Exposure

After reviewing the company's activities, we broke the news that not only did they have nexus for sales and use tax in just about every state across the country, but for income and franchise

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taxes also. The company knew that they could not financially handle becoming compliant in all states at once, so we put together a plan that could be implemented in stages. In the first stage we would look at their overall exposure and then project what we believed their post mitigation exposure would be. Then we met with the company's bank to assure them that we had a viable plan, and that the company could continue operating and meeting its financial obligations.

## Solving in Stages

Once the bank was reassured, we prioritized the first ten states where the company had the most exposure. We filed voluntary disclosure agreements (VDA), in which we approach the state on a no-name basis and work out an agreement for client to come forward with a waiver or reduction in the penalties and interest assessed, and a limit on how far back the state will assess taxes. We also began contacting their customers to see who may have already paid the tax or might be exempt.

Next we contacted a number of states in order to clarify taxability issues, further reducing the company's exposure. We used a combination of VDAs, the Streamlined Sales Tax Project (SSTP) amnesty program, and individual state amnesty programs in the ensuing stages, tackling the jurisdictions ranked by the amount of potential exposure all the way down to the local jurisdictions. During this project we helped keep the company operating as a going concern and reduced their exposure from more than \$5 million to less than \$1 million.

## About Us

Peisner Johnson & Company is a CPA firm with a clear mission: Solve clients' state tax problems. Because we focus exclusively on state and local taxes, we have developed a deep understanding of state tax issues. Our staff includes former state tax auditors and tax professionals from across the country, and our clients benefit from our extensive knowledge and experience and our client-first mentality. We have consulted with thousands of companies doing business across the United States and Canada in virtually every industry.

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