

What Amazon FBA Sellers Need to Know about the Upcoming Sales Tax Amnesty

Who Is Peisner Johnson?



- Founded in 1992
- Accounting firm
- State & local taxes only
- Former state auditors & other professionals
- Consult in all states & Canada

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Michael Fleming



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- Director with Peisner Johnson going on eight years.
- Works with clients in all industries on all topics
- Recognized expert in nexus, taxability, drop shipping & eCommerce

Today's Agenda



- Introduce the program
- Discuss why you should care
- Discuss the participating states
- Discuss the states not participating
- Discuss how to move forward
- Discuss tax return filing options

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The MTC Amnesty



- Waiver of back tax, penalty & interest
- Currently 17 states participating
- Not all states are FBA states
- Not all FBA states are Participating
- Limitations on who can participate
- Not limited to FBA sellers
- Fantastic opportunity for many FBA sellers.

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VDA or Amnesty



- **Voluntary Disclosure Agreement**
 - Run through the MTC VDA program
 - Acts like a true amnesty
 - But all of the literature will say VDA
 - Be careful when applying- the program will follow general VDA rules
 - Suggest you work with someone who has experience with the MTC



Potential Pitfalls



- **Some States may require back taxes penalty or interest to be paid.**
- **State will generally include income/franchise taxes**
- **The application requires detailed info.**
- **States can audit the seller down the road and void the VDA if there are misrepresentations.**

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Sample Questions

State-Specific Questions

If the applicant is not disclosing for both sales/use and income/franchise tax obligations, why is one tax type excluded? (Examples: application of Public Law 86-272, or making only sales exempt from sales/use tax)

test

Provide your good-faith estimate of the amount of tax liability for the prior four tax years, broken out by tax type. National Nexus Program staff will not process an application when the good-faith estimate for all tax-types for the look-back period is less than \$500 in that state.

test

If this Application concerns sales/use tax, has the applicant ever collected but not remitted sales/use tax, registered, filed a return, paid interest or penalty, or paid any sales/use tax to this state (other than to a collecting vendor)? If yes, please describe in the response to the question below seeking any additional information.

No

If this Application concerns income/franchise tax, has the applicant ever collected but not remitted withholding tax, filed a return or requested an extension, paid any tax or made an estimated payment? If yes, please describe in the response to the question below seeking any additional information.

No

Why Should You Care?



We Are Living in a Different Era

The economy has changed. The Internet has changed the way we sell and shop.

States started losing revenue and are WAY more aggressive now.

Five or six years ago FBA sellers told me to point to one FBA seller who has been audited and they would comply. I could not. Even three years ago I could not, but two years ago I could name 10, last year 60 and now about 1-2 a day.

If a state finds you



- No statute of limitations
- Seven or more years of tax assessments
- Penalties and interest
 - Up to 60%

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PERSONALLY RESPONSIBLE?

In most states, the law is that owners and officers can be held PERSONALLY liable.

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States are currently finding and auditing FBA sellers. WA & CA are the most aggressive followed distantly by PA. We expect the trend to accelerate. Especially after the amnesty.



Real Life Results

WA Found

- \$20 million seller - assessment over \$500k - pay agrmnt
- \$1 million seller - assesment around \$50k - can't pay
- \$2-3million seller assesment over \$75k - can't pay till 4th 1/4

CA Found

- \$20 million seller- assessment over \$500k - pay agrmt
- \$300K seller - still working

States Don't Care That:

- You do not believe in nexus
- You did not know that Amazon FBA created nexus
- Your CPA, accountant or attorney advised you that you did not have nexus
- Your fellow sellers told you not to worry about sales tax
- You did not know that a failure to collect taxes becomes the seller's liability
- You did not know you could be personally liable for sales tax
- This will create a hardship for you
- The system is not fair

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Common Misconceptions

Only congress can tax interstate commerce - the states don't have the right.

Unless you have an office (physical presence) you don't have nexus

You have to have a substantial physical presence to create nexus

Quill says....

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Not all Advice is Good



- Most CPAs & Attorneys are not versed in sales tax or at least multi-state tax issues.
- Unfortunately the most vocal FBA sellers are not either.



Let's Go to Court

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US Supreme Court Cases

Quill Corp. v. North Dakota, 504 US 298 (1992)

- More than the slightest physical presence
- Congress is better suited to address nexus
- Did not invalidate previous precedents

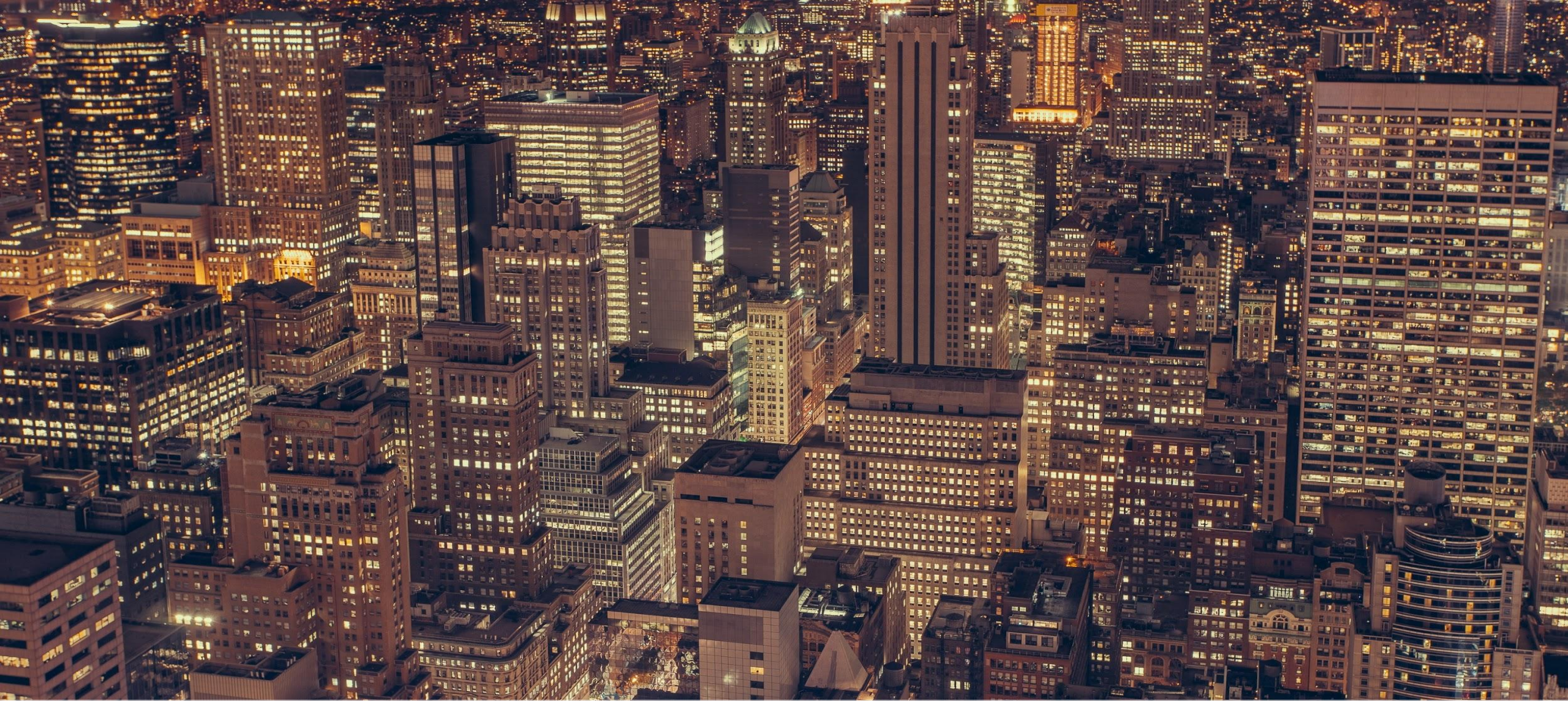
Scripto v. Carson, 362 US 207 (1960) & Tyler Pipe v. Wash. Dept. of Rev., 483 US 232 (1987)

- Third parties can create nexus if they help to establish and maintain a marketplace.

Complete Auto Transit, Inc. v. Brady, 430 US 274 (1977)

- A state can tax interstate commerce if it meets a four prong test.

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Where you live/conduct business

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Inventory

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A white Amazon delivery van is shown in motion, driving on a road towards the right. The background features a bright sunset or sunrise with a warm orange and yellow glow. The van is a large, boxy model with a prominent black grille and a large windshield. The overall scene conveys a sense of speed and delivery service.

Deliveries by Amazon or by Flex

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Make \$18-\$25/hour

Be your own boss, set your own schedule, and have more time to pursue your goals and dreams. Join us and put the power of Amazon behind you.

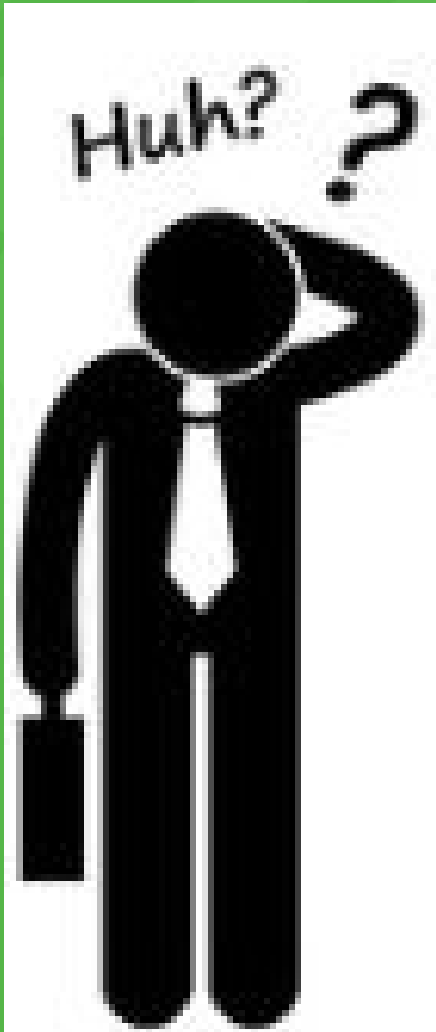


GET STARTED

[Learn more](#)

**Meet people delivering
with Amazon Flex**

Michigan



- A seller is presumed to be engaged in business in Michigan if it or any other person... other than a common carrier, engages in the following activities:
 - delivers... for the seller's customers in Michigan;
 - facilitates the seller's delivery of property... by allowing the seller's customers ... to pick up ... property sold by the seller at storage place, or similar place of business ...

(Sec. 205.95a, MCL, *Revenue Administrative Bulletin 2015-22, Michigan Department of Treasury, November 3, 2015.*

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25 FBA Sales Tax States

Arizona

California

Colorado

Connecticut

Florida

Georgia

Illinois

Indiana

Kansas

Kentucky

Maryland

Massachusetts

Michigan

Minnesota

Nevada

New Jersey

North Carolina

Ohio

Pennsylvania

South Carolina

Tennessee

Texas

Virginia

Washington

Wisconsin

More States of Interest

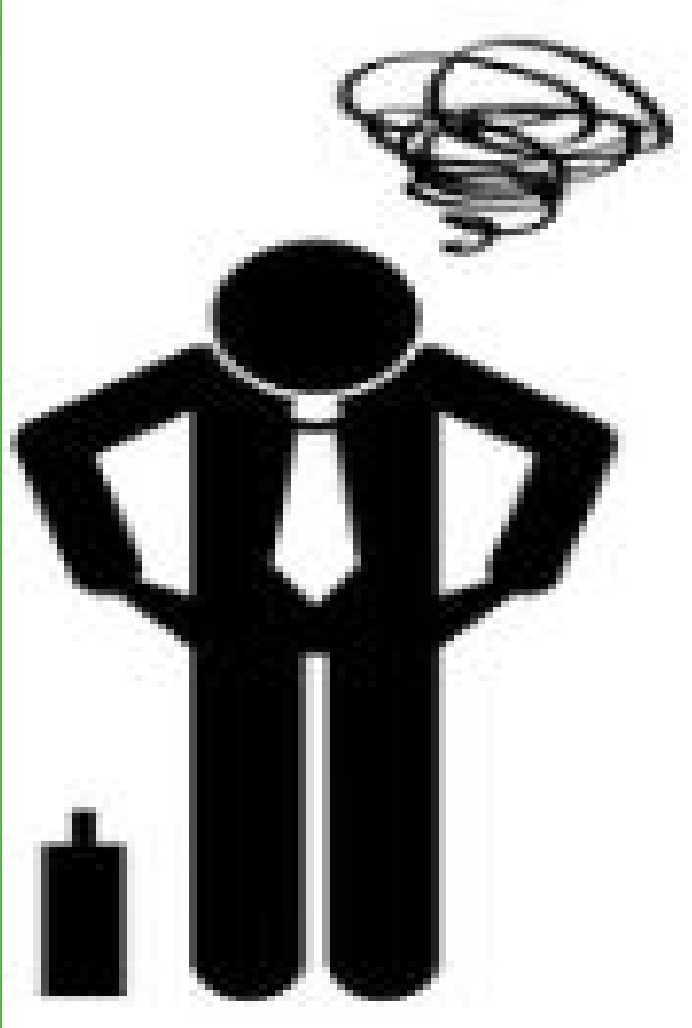
Alabama - \$250k Eco

Utah - New FC

Vermont - \$100k N&R

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Who Can Participate in the Amnesty



- **Participation is limited to those that:**
 - **Are not currently registered**
 - **Have not been previously contacted by the state**
 - **Do not have any nexus except that created by a market place.**

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What states are Participating

Eight FBA States Included

Alabama

Louisiana

Arkansas

Nebraska

Colorado

New Jersey

Florida

Oklahoma

Connecticut

Texas

Idaho

Utah

Iowa

Vermont

Kansas

Wisconsin

Kentucky

Colorado

Connecticut

Florida

Kansas

Kentucky

New Jersey

Texas

Wisconsin

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**What should
I do now?**



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Define the Problem



- What states am I registered in now, if any?
- Which of the 25 FBA states am I not registered in?
- Do I only sell on Amazon or on multiple platforms?
- Do I have employees or offices in other states?
- What do I sell? Is it taxable everywhere?

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Amazon Tax Code

General Clothing (A_CLTH_GEN)

What is this code used for? This code is intended to be used for articles of clothing or footwear suitable for general use and intended to be worn on or about the human body.

What kinds of products are typically included? Items typically included within this tax product code include: pants, shirts, dresses, coats and jackets, boots and shoes, socks and stockings, undergarments, neckties, belts, and scarves.

What kinds of products are typically excluded? Items typically excluded from this tax product code are included in other clothing product tax codes and are generally described as any of the above items unless intended for use as follows:

- Non-clothing accessories incidentally worn on or about the human body (e.g., jewelry and watches, sunglasses, umbrellas, tie clasps) for these items use the generally taxable product category.
- Solely for athletic (rather than adaptable for general) use
- The chief value is based upon the use of fur
- Costumes
- Clothing components or accessories (i.e., shoe inserts, dress shields, shoulder pads, handkerchiefs, buckles sold without belts)
- Handbags, wallets or tote bags
- Formal day or evening apparel
- Bathing suits

Product Taxability Rules

Juris.	State	County	City	District	Juris.	State	County	City	District
AK	T	T	T	T	MT	T	T	T	T
AL	T	T	T	T	NC	T	T	T	T
STH ¹	E/W ²	E/W ²	E/W ²	E/W ²	ND	T	T	T	T
AR	T	T	T	T	NE	T	T	T	T
STH ¹⁰	E/W ⁹	E/W ⁹	E/W ⁹	E/W ⁹	NH	T	T	T	T
AZ	T	T	T	T	NJ	E	E	E	E
CA	T	T	T	T	NM	T	T	T	T

Quantify the Problem

- Review your sales for the last 12 months in each state you are not registered in.
- If your sales are not material then don't worry for now. Keep track of the sales and act accordingly when they become material.
- In each state your taxable sales are material determine your first date of nexus. For inventory you may use the Amazon Inventory event detail or one of the tools available by TaxJar or Wherestock. For nexus created by deliveries use two years at this stage.
- For rough estimates of back taxes penalty and interest use \$120 for every \$1000 in sales you have



Materiality



When is it time to start collecting and register?

It depends on:

- Sales Volume
- Capital Reserves
- Profit Margins
- Risk Tolerance

Fix The Problem



- Rank your states by potential liability
- Possible Fixes
 - Do nothing
 - Use the MTC Amnesty
 - Register Prospectively
 - Register Historically
 - Use a State Amnesty
 - Use a state Voluntary disclosure agreement (VDA)

Using the MTC Amnesty



- Fill out a Voluntary Disclosure form through the Multi-State Tax Commission, and indicate which specific states you want to pursue through this amnesty. Keep in mind that many of the MTC states are NOT participating in the amnesty program.
- Be Careful not to pick a state not participating or you could end up doing a VDA.
- Make sure you qualify for the program. You do not want to be kicked after you disclose who you are.
- Consider using a Sales tax expert familiar with the MTC program



MTC Amnesty continued



- Seller will receive an agreement back from state
- Seller must submit registration paperwork
- States will confirm eligibility after agreement and registration received. If seller is not eligible they will need to proceed with a normal VDA.

Registrations

- Trick Question: When did you first start doing business in our state? What the state really wants to know is when your nexus began.
- Prospective registration is when you use a current or future date to register.
- Historical registration is when you use a past date.
 - State will want all back taxes, penalty and interest to the date used on the registration.
- Consider using a sale tax expert familiar with FBA registrations.



Common Mistake



Collect Tax for One Sales Channel
but not all Channels

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State Amnesties



- Not true amnesties. Still have to pay back taxes. Waiver of some or all penalty and interest
- Read the fine print - usually do not limit the look back period
- Few and far between
- VDAs are generally a better option

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Traditional VDAs



- Agreement generally on a no-name basis
 - Limited look back period
 - Eliminate or reduce penalty and interest
 - *Not available in certain circumstances*
- Registration is part of the process
- Deadlines
 - Critical; extensions possible
- Primary Steps
 - Calculate the tax
 - Complete the forms necessary
 - Send forms & money in on time



Be Careful - Mistakes are Costly

Registrations completed incorrectly can lead to:

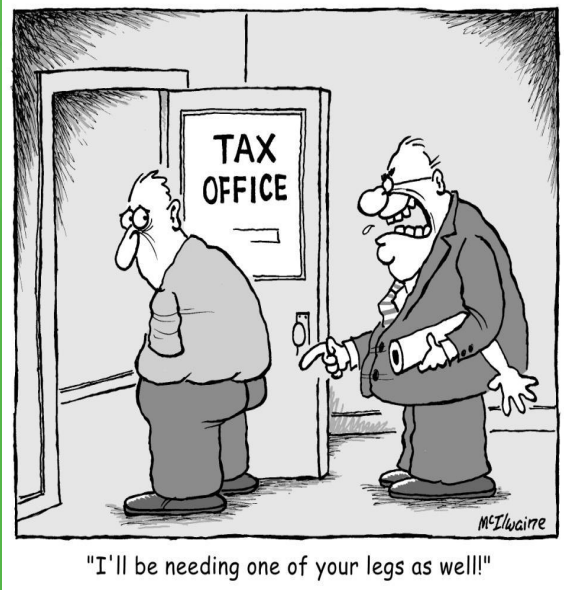
- **Unnecessary Secretary of State filings**
- **Unnecessary income tax filings**
- **Exposure to past liability**

The Next
Question is this...

How do I
File
Going Forward



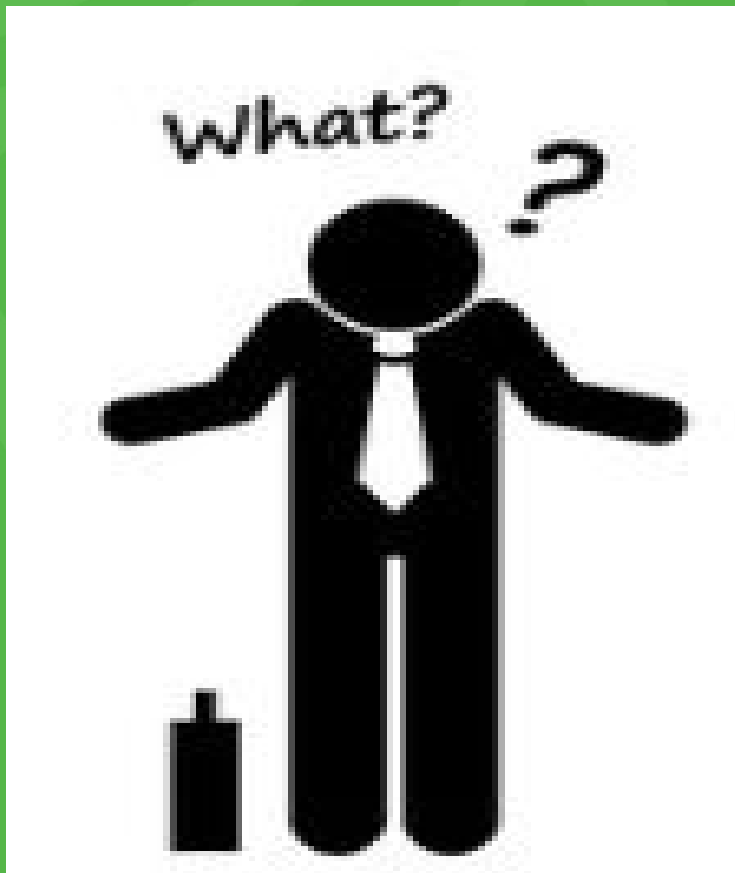
FBA Workshop



- Program to help you customise your own plan
 - How to determine materiality & calculate exposure
 - How to determine if the amnesty right for you
 - Help you determine if you actually qualify
 - How to deal with the states not participating
 - How to avoid pitfalls
 - Income tax considerations
 - Participate in a detailed question and answer session
- We offer this detailed workshop for a \$49
- Or we can assist directly with one-on-one consultations, registrations, MTC assistance, VDAs

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Questions



Workshop Registration Link



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