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**CPA.com Workshop Tools**

**Compliance & Advisory: Roadmap to Your Sales and Use Tax Practice Model**

Sample Engagement Letter for Sales and Use Tax Nexus Study



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[Date]

[Client Name]

[Company Name]

[Address]

[City, State, Zip]

RE: Multi-Jurisdictional Nexus Study

Dear Name:

[*CPA Firm*] (“firm,” “we,” “us,” or “our”) is pleased to present this engagement letter, together with the enclosed Professional Terms and Conditions, to [*Client Name*] (“you” or “your”) with respect to state and local tax consulting services. This letter, and the attached *Terms and Conditions Addendum[[1]](#footnote-1)* and any other attachments incorporated herein (collectively, “Agreement”), confirm our understanding of the terms and objectives of our engagement, the nature and limitations of the services we will provide, and the fees for our services. The engagement between you and our firm will be governed by the terms of this Agreement.

*Objective*

The primary objective of our engagement is to identify required state tax filings for filing of sales tax, income tax, franchise tax and gross receipts tax for your top 10 states determined by top sales revenue sourced and shipped to the state *[List the states included]* in which you is not already registered (hereafter “top 10 states”). To accomplish our objective of assisting you with the nexus study, our process methodology is composed of interrelated phases. Each of these phases is discussed in detail below.

Phase 1

During this phase, firm will work with the you to understand the relevant business activities conducted in the various taxing jurisdictions *[list jurisdictions included]* for your top 10 states. Once we are provided this information, we will summarize nexus-creating activities outside of *[list home state*] and prepare a summary report. These services will commence on *[insert date].*

Your Support

You will need to provide the following information:

* + - (i.e. listing of sales by state for one complete year, including the number of transactions per state {define the types of transactions needed and based on mailing, shipping or billing address},
    - and completion of the nexus questionnaire and business overview spreadsheet (identify business activities conducted on state by state basis, noting whether it is by mailing shipping, or billing address, where services are performed, where the benefit of the service is received, etc.).
    - any state questionnaires/nexus inquiries received (identify if answering for all states, states filed in, blank returns, top 10 only states, etc. be specific in what the client needs to provide) by the client for the past 5 years.

***Deliverables***

We will issue the following deliverable(s) upon completion of our services.

* [*Outline deliverable(s) to be prepared. Omit language that implies promised results or performance related to the services or products to be delivered. Elements to describe:*
  + *Describe the contents of the summary report (i.e. a spreadsheet with columns for state, nexus creating activities, "presence" in the state, and whether or not a filing obligation exists)].*

Any recommendations included in the deliverable(s) will be based upon information you provide. The deliverable(s) presented as part of this engagement are for internal use only and are not to be distributed externally to third parties, in whole or in part, or used for any other purpose.

Our advice is based upon tax reference materials, facts, assumptions, and representations that are subject to change. Tax reference materials include, but are not limited to the Internal Revenue Code (“IRC”), regulations, Revenue Rulings, Revenue Procedures, Private Letter Rulings and court decisions. We will not update our advice after the conclusion of the engagement for subsequent legislative or administrative changes or future judicial interpretations. To the extent we provide written advice concerning federal tax matters, we will follow the guidance contained in U.S. Treasury Department Circular 230, §10.37, *Requirements for Written Advice*.

We may be available to update our advice as a separate engagement. If you ask us to update our work for changes in the information or representations that you provide to us or tax law changes, we will confirm this representation in a separate engagement letter.

If for any reason we are unable to complete the engagement, we will not issue the deliverable(s).

To the extent you would like additional states reviewed (beyond the states and jurisdictions listed) a separate fee quote will be provided for these additional services.

Phase 2

Firm will discuss the nexus findings with management and recommended next steps. An email following the discussion will be provided. Any deliverables are for solely for management’s use. (add comment about this is valid of date it was completed.) We will not audit or otherwise verify the data… (in the deliverables section of the Consulting EL template)

***Deliverables***

We will issue the following deliverable(s) upon completion of our services.

* [*Outline deliverable(s) to be prepared. Omit language that implies promised results or performance related to the services or products to be delivered. See instructions for examples*].Any recommendations included in the deliverable(s) will be based upon information you provide.

Based on the state nexus study, additional services may be requested including but not limited to:

* To the extent the you have nexus for prior periods in the states that were reviewed, we can assist you with estimating the amount of potential tax due for these periods. To the extent you would like assistance from us to come into compliance with prior tax filing responsibilities, this can be generally accomplished through the submission and filing of a voluntary disclosure agreement with a particular state, if available.
* We can assist you with obtaining state tax registrations in a state to the extent they are needed.
* We can assist you with putting procedures in place to request and document customer exemption certificates.
* We can also assist you with a sales tax technology solution and/or make recommendations to you on a provider for this service.

If any of these services are requested, we will confirm this in a new engagement letter.

***Hardware and Software Warranties***

During the course of the engagement, we may recommend purchase and installation of computer or technological hardware, software, communications, or services by your company. Warranties, to the extent they exist, are provided only by the manufacturer/developer/vendor of those computer or software products. We will do our best to provide appropriate recommendations when available, but the final decision and responsibility to purchase any computer or software products is at your sole discretion.

***Computer Consulting Limitations***

We have a basic understanding of computer hardware, but we have experience with sales and use tax software and related integrated applications. We do not have the skill set to work on your network, computer hardware, Windows configuration, mapping of drives or any other computer related issues. We advise that you maintain an ongoing relationship with a qualified IT professional and/or company to ensure that you have assistance available when technology needs arise. This includes your obligation to ensure that you have access to the internet in order to work with the software solutions and other “cloud-based” applications that we will use as a core part of the services we provide to you.

***Client Responsibilities***

Support includes, but is not limited to, the collection of all relevant documents (paper or electronic) and the scheduling of interviews and coordination of meetings to acquire all the information required to completely and accurately perform the study.

Failure to receive such support in a timely manner may negatively affect our ability to fulfill the requirements in the *Engagement Objectives and Scope* and *Engagement Deliverables* within the agreed-upon timeframe.

We will not perform management functions or make management decisions. Management is responsible for proper recording of transactions in the accounts, for safeguarding of assets, and for maintaining substantial accuracy of the taxpayer’s financial records. Management also is responsible for the identification of, and the taxpayer’s compliance with, laws and regulations applicable to its activities. It is your responsibility to provide us support of your personnel to achieve timely completion of the service. We may provide advice, research materials, and recommendations to assist your management in performing its functions and making decisions; however, management has the final responsibility and should review the services carefully.

Management Functions

Your management agrees to:

* make all management decisions and perform all management functions, including determining product codings;
* evaluate the adequacy and results of the services performed;
* accept responsibility for the results of the services, including decisions regarding the implementation of any recommendations noted; and
* establish and maintain internal controls over as well as monitor ongoing activities.

You agree that your management and employees are responsible for the proper recording of transactions in the records, the safekeeping of assets, and the accuracy of any prepared financial statements.

Ultimate Responsibility

You have final responsibility for your *[insert service description].* We will provide you with a copy of the deliverable(s) for review prior to finalization. You agree to review and examine deliverables carefully for accuracy and completeness. You are solely responsible for implementation of any strategies discussed in the deliverable(s).

***Timing of the Engagement***

Our engagement shall commence upon receipt of this executed Agreement *and retainer (optional)*. Our services will conclude after one of the following events has occurred:

* transmission of the deliverable(s) as identified above,
* notice to you that no deliverable(s) will be provided,
* written notification by either party that the engagement is terminated, or
* one year from the execution date of this Agreement.

***Professional Fees***

Our professional fee for the services for the states and jurisdictions outlined above will be $[*X*], *of which [X]% is due upon execution of this Agreement as a retainer* (*Optional*). In addition, this fee depends upon the timely delivery, availability, quality, and completeness of the information you provide to us. You agree that you will deliver all records requested and respond to all inquiries made by our staff to complete this engagement on a timely basis. You agree to pay all fees and expenses incurred whether or not we finalize our advice.

If we foresee any out-of-scope activities, we will discuss with your management before proceeding with those activities. To the extent any assistance provided to you is deemed out of scope, the time will be billed at our current hourly rates.

All invoices would be issued monthly and payable within thirty days. Any disputes need to be submitted within 10 days.

***Requests for Additional Services***

We have adopted a “Service Order” Policy. If you request that we provide services beyond those outlined in this agreement we will be happy to provide you with a “Service Order” outlining the scope of that request, our fees, and anticipated timeline for those services. Although we strive to meet your needs, we reserve the right to decline a request for additional services that is outside the scope of services we provide, our expertise or for any other reason. A “Service Order Request” form is provided in Appendix B. Any such requests will be considered addendums to this agreement.

***Subpoenas and Other Court Orders***

In the event that we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our standard hourly rates at the time the services are performed provided we are not a party to the lawsuit. We will request a retainer payment in advance of the services being performed, as well as ongoing replenishments of the retainer. You also agree to reimburse us for all out-of-pocket expenses incurred in that regard.

***Third Party Disclosure and the use of Third Party Services***

Unless you indicate otherwise, you consent to and authorize our firm to transmit confidential information that you provide to us to third parties in order to facilitate delivering our services to you. Examples of such transmissions may include, but are not limited to, the access to your contact information by members of our team (independent contractors such as consultants, administrative assistants, or third party developers), transfer of accounting information and other data files via the internet, online back-up services, web site developer and hosting services (for newsletter and order processing), or a credit card processing company. We only work with established companies that we believe to be reputable and that have demonstrated their commitment to safeguarding your data. As the paid provider of professional services, our firm remains responsible for exercising reasonable care in providing such services, and our work product will be subjected to our firm's customary quality control procedures. Please feel free to inquire if you would like additional information regarding the transmission of confidential information to entities outside the firm.

***Third Party Service Providers***

During the course of our work with you, we will use one or more third party applications (including internet-based application providers) to provide portions of our services to you. By signing this agreement, you confirm that you understand the services being provided and also agree that [FIRM NAME] is not liable for record retention or any other aspect of the services provided by these 3rd parties, even if we absorb the cost (in part or in full) of a third party service as a benefit to you. You at all times assume responsibility for a decision to maintain hard copies of your original documents or to limit your document retention to the digital copies stored by the web application for a reasonable period of time.

***Record Retention***

Our workpapers are the property of our firm and will be maintained by us in accordance with our firm’s record retention policy and any applicable legal and regulatory requirements. Our workpapers are not a substitute for your own records and do not mitigate your record retention obligations under any applicable laws or regulations. Our policies require that we maintain workpapers for X years. Catastrophic events or physical deterioration may result in damage to or destruction of our firm’s records, causing the records to be unavailable before the expiration of the retention period as stated in our record retention policy.

*[Optional Paragraph if subscription services are employed]*

If our engagement with you ends for any reason, you will have the option to continue any third party subscription based services at your expense (in some cases we may have absorbed the cost of these services during our work with you). You agree to complete the transfer of services to your name and assume responsibility for payment within 10 days of the end of our work with you. Our “end date” will be defined as the 11th business day following the date shown on the email or letter of termination/resignation transmitted by either party. You understand that if you do not assume responsibility for these services that they may be cancelled. Additional fees may apply if you elect to restore those services (if that option is available from the service provider) or request copies (digital or hard copy) of records from the third party provider.

***Mediation/Arbitration***

If any dispute arises among the parties hereto, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. Costs of any mediation proceeding shall be shared equally by all parties.

[CLIENT NAME] and [FIRM NAME] both agree that any dispute over fees charged by [FIRM NAME] to the client will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, in the event of a dispute over fees charged by [FIRM NAME], each of us is giving up the right to have the dispute decided in a court of law before a judge or jury and instead we are accepting the use of arbitration for resolution.

***Governing Law***

This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and county of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ without regard to the principles of conflicts of law thereof.

***Third Party Settlements***

In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, then to the extent that such obligation is or may be a direct or indirect result of your intentional or knowing misrepresentation or provision to us of inaccurate or incomplete information in connection with this engagement, and not any failure on our part to comply with professional standards, you agree to indemnify us, defend us, and hold us harmless as against such obligations.

***Termination and Withdrawal***

We reserve the right to withdraw from the engagement without completing services for any reason, including, but not limited to, non-payment of fees, your failure to comply with the terms of this Agreement, or as we determine professional standards require. If our work is suspended or terminated, you agree that we will not be responsible for your failure to meet governmental and other deadlines, or for any liability, including but not limited to, penalties or interest that may be assessed against you resulting from your failure to meet such deadlines.

If this Agreement is terminated before services are completed, you agree to compensate us for the services performed and expenses incurred through the effective date of termination.

***Assignment***

All parties acknowledge and agree that the terms and conditions of this Agreement shall be binding upon and inure to the parties’ successors and assigns, subject to applicable laws and regulations.

***Severability***

If any portion of this Agreement is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of the terms set forth in this Agreement.

***Entire Agreement***

The engagement letter, including this *Terms and Conditions Addendum* and any other attachments, encompass the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. Any modification to the terms of this Agreement must be made in writing and signed by both parties.

***[Non-Solicit Clause-Optional paragraph]***

We value each and every one of our clients as well as each and every one of our employees. We have spent a great deal of time and resources to locate, train, and retain our employees. We respectfully request that you do not solicit our employees to work for you. If you do hire one of our employees within 2 years of when they last worked for [FIRM NAME], we will be due a finder’s fee equal to 50% of the annual salary they were earning as of their last day of employment. Payment will be due within 10 days of your receipt of our invoice.

***Conclusion***

This letter sets forth the entire agreement relating to our work with you. This letter supersedes any prior agreements, discussions or understandings. No amendment or modification of this agreement shall be valid unless in writing, signed by both parties to this agreement. As indicated earlier in this agreement, you may request that we perform additional services at a future date beyond the scope of this engagement letter. If this occurs, we will communicate with you regarding the scope and estimated cost of these additional services. Engagements for additional service will necessitate that we issue a Service Order as an addendum to this agreement, or a separate engagement letter to reflect the obligations of both parties. For additional services available, please refer to Appendix A.

*[Optional paragraph:*

*The terms of this agreement are valid if signed by both parties within 10 days of the date of this letter. After that date an updated agreement may be necessary, which will include any changes to our fees, billing structure, or any other aspect of our work.]*

If this letter correctly describes your understanding of our engagement, please print and sign an original of this engagement letter and return it to us along with your retainer deposit by [*Insert date*] for work to begin. For your convenience our Retainer Request includes a link that you may use if you prefer to remit payment online using a major credit card. If paying online using your credit card, please simply fax your signed Engagement Letter to [Fax Number/Email].

Sincerely,

[Your Name and Title]

ACCEPTED:

The above letter and the supporting Appendix(s) confirms our understanding of the services to be performed and the limitations of those services.

**Entity Name**

By:

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

Enclosure: Professional Terms of Use and Conditions

Appendix A

Services to be Provided

Additional services available to [CLIENT NAME]

|  |  |  |
| --- | --- | --- |
| x | Service | Frequency & Quantity/Notes |
|  | SUT Calculations |  |
|  | SUT Return Preparation |  |
|  | SUT Return Filing |  |
|  | Jurisdictional Registration |  |
|  | Nexus Study (Initial) |  |
|  | Continuous Ongoing Nexus Evaluation |  |
|  | Exemption Certificate Management |  |
|  | Product Taxability Review |  |
|  | Reverse Audit |  |
|  | Refund Study |  |
|  | Internal Compliance Audit |  |
|  | Nexus Study |  |
|  | State Sales Tax Audit Defense |  |
|  | Voluntary Disclosure Agreement (VDA) |  |
|  | Audit Representation |  |
|  | Ongoing SUT Evaluation |  |

Appendix B

Service Order Request – Engagement Letter Addendum

*[Leverage this form when quantities within the engagement change, but not additions to services (including added states)]*

**[YOUR COMPANY LETTERHEAD]**

Date

[Client Name]

[Company Name]

[Address]

[City, State, Zip]

Re: Addendum to Existing Engagement Letter/Service Order Request:

Dear [Client Name]:

This letter is to confirm your request for the following services, which are outside of the scope of your Engagement Letter with us:

[DESCRIBE THE NATURE OF THE SERVICES HERE]

By signing this addendum to our agreement you are providing your consent for us to initiate services and receive payment as described below. All other terms and conditions relating to the services you have requested are as outlined in the Engagement Letter.

Estimated Fee for the services described above: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current available retainer balance: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Balance due in order to begin work: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With this signed agreement, you authorize us to draft payment electronically for the “balance due” shown above using the credit card or bank account on file with us.

Estimated start date of this request: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Estimated completion date of this request: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notes:

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Date

**OPTIONAL PARAGRAPHS**

1. CNA’s sample Terms and Conditions Addendum includes several additional and important engagement letter provisions and is available in the [Policyholder Resource Center](https://forms.cpai.com/members/access.jsp). [↑](#footnote-ref-1)