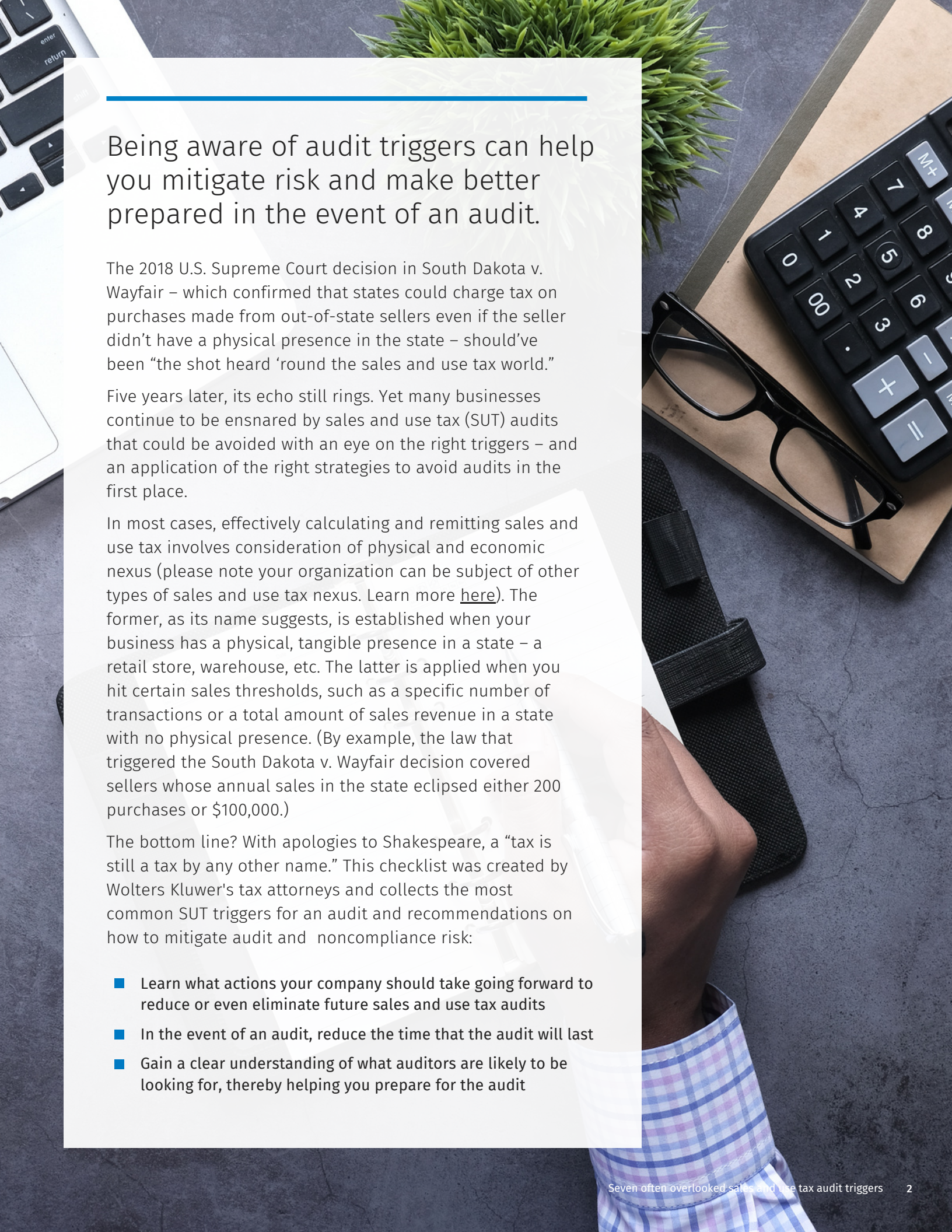




A checklist:
Seven often overlooked
sales and use tax audit
triggers

And recommendations on how to avoid them

Mitigate sales and
use tax risk

A hand holding a pen over a document, with a calculator and glasses nearby.

Being aware of audit triggers can help you mitigate risk and make better prepared in the event of an audit.

The 2018 U.S. Supreme Court decision in *South Dakota v. Wayfair* – which confirmed that states could charge tax on purchases made from out-of-state sellers even if the seller didn't have a physical presence in the state – should've been “the shot heard ‘round the sales and use tax world.”

Five years later, its echo still rings. Yet many businesses continue to be ensnared by sales and use tax (SUT) audits that could be avoided with an eye on the right triggers – and an application of the right strategies to avoid audits in the first place.

In most cases, effectively calculating and remitting sales and use tax involves consideration of physical and economic nexus (please note your organization can be subject of other types of sales and use tax nexus. Learn more [here](#)). The former, as its name suggests, is established when your business has a physical, tangible presence in a state – a retail store, warehouse, etc. The latter is applied when you hit certain sales thresholds, such as a specific number of transactions or a total amount of sales revenue in a state with no physical presence. (By example, the law that triggered the *South Dakota v. Wayfair* decision covered sellers whose annual sales in the state eclipsed either 200 purchases or \$100,000.)

The bottom line? With apologies to Shakespeare, a “tax is still a tax by any other name.” This checklist was created by Wolters Kluwer's tax attorneys and collects the most common SUT triggers for an audit and recommendations on how to mitigate audit and noncompliance risk:

- Learn what actions your company should take going forward to reduce or even eliminate future sales and use tax audits
- In the event of an audit, reduce the time that the audit will last
- Gain a clear understanding of what auditors are likely to be looking for, thereby helping you prepare for the audit



Getting on a "doubtful user" list can greatly elevate your risk for a sales and use tax audit.

Seven underlying sales and use tax audit triggers

1 Issuing invoices without tax

If you send invoices excluding tax to a customer that is subsequently audited by the state, the invoices totaling a large sum can attract an auditor's attention and potentially get your company on a "doubtful user" list. That list then goes on to an audit selection process which can greatly elevate your risk for an audit.

2 Failing to register in your remote-employee states

The pandemic helped reveal the many advantages of a work-from-home workforce and hid one easy-to-miss liability. In many states, even having a single employee work in the state creates a physical nexus. So, if your employee withholding registrations and sales tax registrations don't match, you could find yourself on a doubtful user list.

3 Bidding on a government contract in a state without registration

Drop this one directly into your "Strange But True" files: Even though state governments are non-taxable entities, if you're submitting a bid for a state government contract, most states will require you to be registered for sales tax purposes whether or not you have nexus in that state.



4 Failing to properly manage customers' exemption certificates

It's tempting to exempt a customer based on what you think their tax status is. For example, since many manufacturers are tax-exempt in many states, it'd be easy to assume that you can exempt a given manufacturing client from sales tax on something they purchase from you. But if that customer didn't provide an exemption certificate, or its certificate is incomplete or expired, then when it is subsequently audited, your organization may also end up on a doubtful user list.



5 Not paying use tax in locations where your company is registered

If you have a location in a state and are paying all kinds of taxes – sales tax, property tax, income tax, franchise tax – but aren't paying use tax, that may raise a flag with auditors (who will analyze your purchases in the state to determine if your vendors neglected to charge you tax).

6 Transactions involving a high-profile, signature project

Big projects (think “new factories and big expansions”) tend to be headline news. They can also prompt state departments of revenue (DORs) to study them under a microscope. They'll consider both the lead company and all contractors, running through a simple decision flow: “Who's this project for?” leads to “Should it have use tax?” leads to “Is there a significant amount of use tax being collected?” And the answers to those questions may prompt an audit.

7 Filing a tax refund claim

There are many companies that will do refunds for you on a contingency basis, meaning that they only get paid if you get a refund. After your organization files the refund claim, it gets audited. You may even get the refund, but the Department of Revenue, to offset that, can find that your company hasn't paid tax on a whole bunch of other things, resulting in your payment to DOR, not vice versa. Instead, only seek refunds if you are absolutely sure there is nothing else you can be liable for, or claim a refund in the event of an already occurred audit.



Recommendations on how to mitigate sales and use tax audit risk



Get it all in writing

Even if you don't collect tax in a state – i.e., you don't think you have to register in a state because you don't think you have nexus – still ask your customers if they're exempt from tax (in which case, get an exemption certificate from them) or if they self-assess use tax (in which case, get them to sign a statement that indicates that they self-assess use tax on your purchases or on all purchases). That way, if it's found later that you should have registered and collected tax all along, you have the documentation to exempt specific sales or avoid having to pay tax on behalf of your customer.



Review nexus regularly

Periodic reviews help ensure that you are sales tax compliant. Modern sales and use tax software, like CCH® SureTax®, help their users effortlessly track their economic nexus obligations with visual dashboards and transaction reports. Once you achieve nexus threshold, register with the local DOR, and make sure you collect and remit tax on time. It is highly recommended to conduct annual nexus study with a third party experts, such as Wolters Kluwer's Professional Services to avoid any unnecessary fees, penalties and interest down the road.



Track your “road warriors”

If you have got traveling business development representatives who do interstate sales calls, you may actually be creating a physical nexus in the states they visit – even, in some states, after just a single sales call. In addition to that liability, your marketing and sales teams that attend out-of-state tradeshow could be generating sales tax if they close deals at the show. (In fact, if you simply sponsor a tradeshow, DOR officials may assume that you have nexus.) In short, know where your sales are being made and track how they may relate to nexus.



Register everywhere you have presence

Yes, every state's registration process may be a bit different. And yes, some of them have painstakingly long registration forms (complete with little bits of information – like officers' social security numbers – that will take time to run down). But enduring the annoyance involved with the homework required to register far outweighs the potential tax, interest and penalties that could come part-and-parcel with an audit. Good news is – you can always rely on Wolters Kluwer's [Sales Tax Registration Services](#) to save time.



Be up-front with all vendors

Collaborate closely with all your vendors to ensure everyone knows who's taxing what and what the rates are (an especially important exercise for big, complex projects).



Work recovery analyses both ways

If you hire a firm to conduct a recovery study to uncover opportunities, ensure they also identify whether or not (and to what extent) you have potential exposure on other taxable transactions. In short, if you're going to contract them to look for "the good," be sure to have them reveal "the bad" and "the ugly" for you, too.



Assume an audit is on the way – and prepare accordingly

Ultimately, there are two basic states "being audited" and "waiting to be audited." The best way to be safe when audited is to already have a use tax accrual system in place that ensures you have documentation that backs up the decisions you made.

The outcome of *South Dakota v. Wayfair* ushered in an entirely new era in sales and use tax. No matter where you do business, companies that ace how their SUT is tracked are also primed to ace how it's managed – meaning fewer painful audits and more opportunities to open new markets with fewer apprehensions.





About CCH® SureTax®

Sales and use tax automation platform

CCH® SureTax® is a sales and use tax software platform designed to take the complexity out of taxability determination, calculations, and compliance by offering a simple, intuitive interface to manage sales and use taxes, all within one platform. Here are just a few of the reasons it has become a go-to resource for companies in retail and wholesale, manufacturing, communications, construction, software, business services industries, and more:

- 1** Our tax research process is SOC (System and Organization Controls) 1 and SOC 2-compliant. Wolters Kluwer's experienced tax research team constantly monitors legislation changes and ensures the tax rates and rules in CCH SureTax are always up to date.
- 2** Easily monitor sales tax nexus thresholds, something that is becoming an ever-more-essential calculation in the omnichannel sales environment.
- 3** Simplify sales and use tax management from tax determination to compliance — all within one platform.



Automate sales and use tax

Lets you skip error-prone, time-consuming manual entry with end-to-end tools for sales tax management.



Automatically apply proper taxability to products

Enables you to properly categorize what you sell, including digital services, tax-exempt items, and more.



Manage compliance

Keeps your team current with critical information about state rates and sales tax holidays, just for starters.



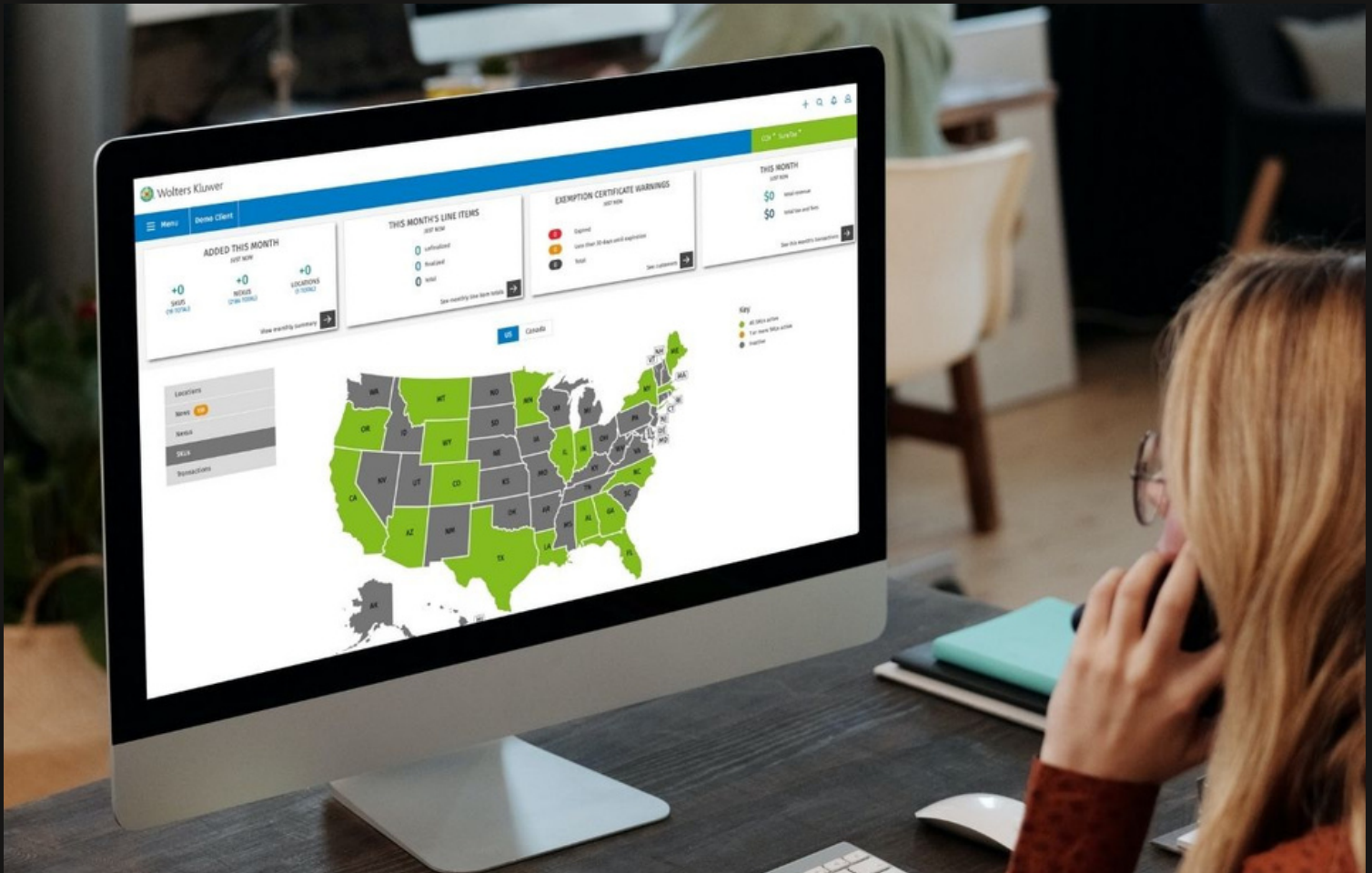
Effortlessly track exemption sales

Makes it easy to document non-taxed transactions and track proof of exemption certificates.



Capitalize on tax rebates

Helps you leverage opportunities for rebates for sales taxes paid on-time in full in states that offer this opportunity.



Contact information:
Wolters Kluwer
2700 Lake Cook Road
Riverwoods, IL 60015
United States
800-739-9998, Option 1

For more information, email us at CCH
CCH-SalesCorporateTeam@WoltersKluwer.com
Instantly book a demo

Visit our web page for
Sales and use tax software — [CCH® SureTax®](https://www.SureTax.com)
www.SureTax.com



About Wolters Kluwer

Wolters Kluwer (WKL) is a global leader in professional information, software solutions, and services for the healthcare; tax and accounting; governance, risk and compliance; and legal and regulatory sectors. We help our customers make critical decisions every day by providing expert solutions that combine deep domain knowledge with technology and services. Wolters Kluwer reported 2022 annual revenues of €5.45 billion. The group serves customers in over 180 countries, maintains operations in over 40 countries, and employs approximately 20,300 people worldwide. The company is headquartered in Alphen aan den Rijn, the Netherlands. Wolters Kluwer shares are listed on Euronext Amsterdam (WKL) and are included in the AEX and Euronext 100 indices. Wolters Kluwer has a sponsored Level 1 American Depositary Receipt (ADR) program. The ADRs are traded on the over-the-counter market in the U.S. (WTKWY).