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Pennsylvania Department of Revenue bulletin declares remote sales tax collection authority

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Authored by: Amy St Clair

On December 1, 2011, the Pennsylvania Department of Revenue issued a tax bulletin stating that several activities, including, but not limited to, the solicitation of business by an out of state retailer via "click through" technology on an in-state website, and the usage of an affiliate, agent and/or independent contractor to provide service(s) within the Commonwealth are considered the maintenance of a place of business in the Commonwealth, thereby establishing sales and use tax nexus for the out of state retailer. [[Sales and Use Tax Bulletin 2011-01](#), Pennsylvania Department of Revenue (12/1/11)].

Background

Nationally, remote sales tax collection recently has garnered considerable debate. At the state level, the issue generally has been addressed through state legislatures, with New York beginning a trend with its enactment of the first click through nexus law. Since New York's action, many states have followed suit. Pennsylvania, however, was not successful in its attempt when it introduced legislation in 2011 to create a sales tax collection obligation for remote sellers using in-state affiliate websites [[House Bill 14](#), introduced October 3, 2011]. The legislation also provided that nexus could be established for one member of a controlled group through the activities of other

members. Further, the bill would have imposed a notice and reporting obligation for use tax purposes.

The Department Clarifies Nexus-creating Activities for Remote Sellers

Though the state legislature did not enact H.B. 14, the Department of Revenue issued Bulletin 2011-01 which lists many of the provisions included in H.B. 14 as examples of activities falling under the state's existing statutory definition of maintaining a place of business. The bulletin states that the following activities create nexus for sales and use tax purposes. The list is not all inclusive.

1. A remote seller storing its property or the property of a representative at a distribution or fulfillment center located within the Commonwealth, regardless if the center also stores property of third parties that is distributed from the same location.
2. A remote seller who has a contractual relationship with an entity or individual physically located in Pennsylvania whose website has a link that encourages purchasers to place orders with the remote sellers. The in-state entity or individual receives consideration for the contractual relationship with the remote seller.
3. A remote seller utilizing affiliates, agents and/or independent contractors located in Pennsylvania who will provide repair, delivery or other service relating to tangible personal property sold by the remote seller to Pennsylvania customers.
4. A remote seller's affiliates, agents and/or independent contractors provide service(s) within the Commonwealth (including, but not limited to storage, delivery, marketing or soliciting sales) that benefit, support and/or complement the remote seller's business activity.
5. A remote seller's employee(s) regularly travel(s) to Pennsylvania for any purpose related to the remote seller's business activity.
6. A remote seller who accepts orders that are directly shipped to Pennsylvania customers from a Pennsylvania facility which is operated by a remote seller's affiliate, agent or independent contractor.
7. A remote seller who regularly solicits orders from Pennsylvania customers via the website of an entity or individual physically located in Pennsylvania, such as via click-through technology.

The Department stated that, "when a remote seller is maintaining a place of business in this Commonwealth ..., as illustrated by the foregoing examples, such remote seller has nexus with the Commonwealth. [Pennsylvania statutes], read in conjunction with the United States Constitution and relevant United States Supreme Court decisions requires these remote sellers to collect sales tax on sales within Pennsylvania."

The Department's reason for issuing the bulletin is "to explain existing sales tax nexus law for remote sellers, clarifying the law and the department's authority to require e-commerce and other out-of-state sellers with physical presence in Pennsylvania to collect sales tax." According to a news release, companies whose business activities establish nexus in Pennsylvania must become licensed to collect sales tax as soon as possible, but no later than by February 1, 2012. [[Revenue Department Clarifies Existing Sales Tax Nexus Law for Remote Sellers](#), Pennsylvania Department of Revenue (12/1/2011)]

PwC Observes

"Pennsylvania may be the first state to enforce sales tax collection responsibilities on remote sellers through a revenue department technical bulletin without the backing of legislative changes," notes Jennifer Jensen, SALT Director with PwC in Washington DC. "As multiple state and federal bills are being debated, it is noteworthy that the Pennsylvania Department of Revenue is asserting that this policy change is merely a matter of enforcing current state and federal law and Supreme Court decisions. It will be interesting to monitor other states' reactions to Pennsylvania's position."

For more information, please do not hesitate to contact:

Jennifer Jensen (202) 414-1741 jennifer.jensen@us.pwc.com

Bryan Mayster (202) 414-4498 bryan.mayster@us.pwc.com

Amy St Clair (702) 691-5445 amy.c.st.clair@us.pwc.com

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