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Department of Revenue
Division 10—Director of Revenue
Chapter 114—Sales/Use Tax—Constitutional Issues

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 114—Sales/Use Tax— Constitutional Issues

12 CSR 10-114.100 Determining When a Vendor Has Sufficient Nexus for Use Tax

PURPOSE: Chapter 144, RSMo contains the statutory provisions governing application of use tax. The legal responsibility for paying use tax may fall upon either the vendor or the purchaser. The vendor must register with the department, and collect and remit use tax if it has sufficient nexus with the state. Unless the purchaser pays use tax to a vendor registered with the department to collect use tax, the purchaser must remit use tax to the state. This rule explains when a vendor must register with the department, and collect and remit use tax on sales to Missouri purchasers.

(1) In general, an out-of-state vendor must register with the department, and collect and remit use tax when the vendor has sufficient nexus with Missouri. Sufficient nexus exists when the vendor has a physical presence in Missouri.

(2) Definition of Terms.

(A) Nexus—contact with the state.

(B) Physical presence—owning or leasing real or tangible personal property within this state; or having employees, agents, representatives, independent contractors, brokers or others that reside in, or regularly and systematically enter into, this state on behalf of the vendor.

(C) Vendor—a person who makes sales of tangible personal property for use, storage or consumption in the state. A person is not considered a vendor if:

1. The person's total gross receipts did not exceed five hundred thousand dollars (\$500,000) in this state, or \$12,500,000 in the entire United States, in the immediately preceding calendar year;

2. The person maintains no place of business in this state; and

3. The person has no selling agents in this state.

(3) Basic Application of Tax.

(A) A vendor with sufficient nexus with Missouri must collect and remit use tax on sales, rentals or leases of tangible personal property purchased for use, storage or consumption in Missouri if the transaction is not subject to Missouri sales tax. The vendor has sufficient nexus when the vendor has a physical presence in the state.

(B) A vendor does not have sufficient nexus if the only contact with the state is delivery of goods by common carrier or mail, advertising in the state through media, or occasionally attending trade shows at which no orders for goods are taken and no sales are made.

(C) Occasional deliveries into the state by the vendor's delivery vehicles with no other contacts do not constitute physical presence to establish sufficient nexus.

(D) Once sufficient nexus has been established, the vendor is liable for use tax on all sales of tangible personal property made in the state whether or not the sales activity related to the property or activity would be sufficient in and of itself to establish physical presence.

(E) Once nexus has been established, it will continue to exist for a reasonable period of time after the vendor no longer has a physical presence in the state. The department presumes that the vendor has nexus with the state for any sales to Missouri customers made during at least one (1) reporting period after the vendor no longer has physical presence in the state. A vendor registered with the department to collect tax will continue to have nexus until the vendor withdraws its registration.

(F) The fact that a vendor has sufficient nexus does not relieve the purchaser from liability for use tax. The liability for use tax is joint and several for the vendor and purchaser. The purchaser is relieved from the liability for the tax if the purchaser pays a separately stated Missouri tax to a vendor who is registered with the department to collect the tax.

(G) A taxpayer must allow the department to review the taxpayer's records even if the taxpayer believes that it does not have nexus with the state.

(4) Examples.

(A) A taxpayer is located in Indiana. The taxpayer makes substantial sales into Missouri, which are delivered either by common carrier or U.S. mail. The taxpayer has no other contacts with the state. The taxpayer is not required to collect Missouri tax. Subsequently, the taxpayer acquires a warehouse in Missouri to store inventory for another part of its business. By acquiring the warehouse, the taxpayer has established a physical presence in the state and must collect tax on all sales to Missouri purchasers.

(B) An out-of-state company hires sales representatives to cover a five (5)-state territory including Missouri. The sales representatives reside in Illinois but regularly travel to Missouri to solicit retail sales. The out-of-state company must collect tax on all sales to

Missouri purchasers, regardless whether the sales representatives are employees or independent contractors.

(C) An out-of-state company that lacks sufficient nexus voluntarily registers to collect use tax. The company should collect and remit the appropriate tax to Missouri.

(D) An out-of-state taxpayer leases machinery to various customers in Missouri. The taxpayer also sells tools and supplies over the Internet to customers in Missouri. The taxpayer must collect use tax on all of its sales and leases in Missouri because its leased property located in Missouri creates sufficient nexus with the state.

(E) Same facts as (4)(D) above, except the taxpayer has received valid exemption certificates for the leases. The taxpayer must still collect use tax on its sales.

(F) An out-of-state company accepts an order from a Missouri customer. The out-of-state company orders the merchandise from a wholesaler in Missouri for drop shipment directly to the customer. The out-of-state company must collect sales tax on the transaction because its ownership of the tangible personal property in the state creates sufficient nexus.

AUTHORITY: section 144.705, RSMo 2000. Original rule filed Dec. 1, 2004, effective June 30, 2005.*

**Original authority: 144.705, RSMo 1959.*

Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992). The U.S. Supreme Court reaffirmed the physical presence test for nexus. The out of state vendor whose only contact with the taxing state was by mail order did not have physical presence to establish taxable nexus.

Burke & Sons Oil Co. v. Director of Revenue, 757 S.W.2d 278 (Mo. App. 1988). Occasional deliveries into the state by the vendor's own vehicles with no other contacts with the state are not sufficient presence to create taxable nexus.

ATD International v. Director of Revenue, (AHC 1997). Taxpayer sold, installed and serviced telephone equipment. Taxpayer solicited business through advertising in Missouri. Its employees negotiated contracts at Missouri businesses and it installed and maintained equipment in Missouri. Taxpayer had sufficient physical presence in Missouri to have taxable nexus.

Rembrandt Restaurant, Inc. v. Director of Revenue, (AHC 1995). The fact that an out of state vendor has nexus does not prohibit the director from holding the purchaser liable for use tax.