



MULTISTATE TAX COMMISSION

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Nexus Program Director's July 28, 2020 Update on Significant Nexus Law Developments Since April 21, 2020

See PowerPoint concerning states that have enacted economic nexus statutes or promulgated regulations or notices implementing economic nexus, as well as states that have enacted laws requiring marketplace facilitators/providers to collect sales/use tax on facilitated sales.

Rulings or Administrative Actions

Arkansas

Arkansas Department of Finance and Administration Opinion No. 20200416 (5/15/2020) provides that a marketplace seller that sells only through a marketplace facilitator that is registered and collecting sales/use tax on those facilitated sales does not need to register for a sales tax permit or file “zero” returns.

Arkansas Department of Finance and Administration Opinion No. 20200301 (5/15/2020) determined that a food delivery service fits within its definition of “marketplace facilitator” and is required to collect sales/use on food deliveries, sourced to the delivery location.

District of Columbia

OTR Notice 2020-06 (5/26/2020) states that marketplace facilitators are required to collect sales tax on food and drink deliveries.

Illinois

Illinois Department of Revenue published proposed regulation section 150.804, 86 Ill. Admin. Code 150 providing that for marketplace sellers with no physical presence (including inventory) in the state, the marketplace facilitator will collect Illinois use tax on facilitated sales, but when the marketplace seller has inventory in the state, then the marketplace seller is responsible for collecting and remitting Illinois Retailers Occupation tax. The Department recommends in that situation, the marketplace facilitator collect the tax on behalf of the marketplace seller and then transmit the collected amount to the marketplace seller, who should remit it to the Department.

California

The CDTFA has adopted emergency regulations, Cal. Code of Regulations, title 18, Div. 2, Section 1684.5, providing guidance to marketplace sellers and facilitators concerning its marketplace facilitator collection requirements.

Indiana

Indiana Department of Revenue published Information Bulletin #204 and Information Bulletin #89 (June 2020) providing guidance for remote sellers and marketplace facilitators, advising that marketplace facilitators are required to collect sales/use tax on facilitated sales, as well as food and beverage taxes, county innkeepers' tax, auto-rental excise tax, and vehicle sharing excise tax.

Louisiana

Louisiana Department of Revenue has published the Remote Sellers Information Bulletin No. 20-002 (5/7/2020) to provide guidance to direct marketers, advising that those exceeding the economic nexus thresholds, as of 7/1/2020, must collect the correct state and local use tax rate, not the flat combined rate, and remit the correct local tax to the Louisiana Remote Sellers Sales Tax Commission. Direct marketers below the thresholds can voluntarily continue to collect the flat combined rate.

Oregon

Oregon Department of Revenue has published OR 150-317-1010, providing guidance on the nexus rules for the Oregon Commercial Activity Tax.

Utah

Utah Tax Commission published a Notice (May 2020) advising that effective 1/1/2020, those who facilitated food sales and deliveries from restaurants are excluded from the definition of "marketplace facilitator." The restaurant must collect and remit the sales tax.

Wisconsin

Wisconsin Department of Revenue has published FAQs (7/1/2020) providing sales/use tax guidance to marketplace sellers and providers.

Several state tax agencies have publicly announced guidance on whether teleworkers in their states during the COVID-19 commuting restrictions imposed by "stay home" orders to create nexus or employer withholding obligations. Please see accompanying Excel spreadsheet on this topic.

Cases

Oregon

In *ABC Inc. et al v. Oregon Department of Revenue*, Oregon Tax Court, No. TC-MD 170364N (April 22, 2020), following audit, the taxpayer (the Disney enterprises), a diversified worldwide entertainment company and unitary group, challenged the Department's determination that it had nexus for corporate income tax purposes. The court determined that issues of material fact on that question and denied cross motions for partial summary judgment. The taxpayer claimed that it lacked physical presence in Oregon, although acknowledging that it had a small amount of licensing income from the state. The court held that physical presence was not necessary to establish nexus, but determined that the parties needed to further develop the facts.

Congress and Other Federal Activities

Senators Thune (SD) and Brown (OH) introduced on 6/18/2020 S. 3995, the Remote and Mobile Worker Relief Act of 2020, which provides that an employee must work in a state over 30 days before that state can tax such income, and if the employee is an emergency worker working in the state due to coronavirus, such worker must work in the state for over 90 days before the state can tax such income. The bill also provides that taxing jurisdiction of an employee is that of their employer regardless of where the employee is located if they are working remotely during the coronavirus pandemic. It further provides that no nexus can exist for an out-of-state business with an employee working in the state during the pandemic. Jad Chamseddine, Tax Analysts, "New Mobile Workforce Bill Aims to Help Workers Amid Pandemic" (6/19/2020).

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