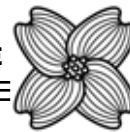




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TITLE 12 – DEPARTMENT OF REVENUE

Division 10 – Director of Revenue

Chapter 114 – Sales/Use Tax – Constitutional Issues

12 CSR 10-114.100 Determining When a Vendor Has Substantial 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 substantial 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 substantial nexus with Missouri. Substantial nexus exists when the vendor has a physical presence or economic nexus 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) Economic nexus – selling tangible personal property for delivery into this state, provided the seller's gross receipts from taxable sales from delivery of tangible personal property into this state in the previous calendar year or current calendar year exceeds one hundred thousand dollars (\$100,000).

(D) Vendor – an out-of-state person who makes sales of tangible personal property for use, storage, or consumption in the state.

(3) Basic Application of Tax.

(A) A vendor with substantial 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 substantial nexus when the vendor has a physical presence or economic nexus in the state.

(B) A vendor does not have substantial nexus if the vendor has less than one hundred thousand dollars (\$100,000) in taxable sales and 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 substantial nexus.

(D) Once substantial nexus has been established, the vendor is liable for use tax on all sales of tangible personal property made in the state.

(E) The fact that a vendor has substantial 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.

(F) 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 Alabama. The taxpayer makes taxable sales of over one hundred thousand dollars (\$100,000) into Missouri. The taxpayer has economic nexus and should register with the department and collect and remit use tax.

(B) A taxpayer is located in Indiana. The taxpayer makes less than one hundred thousand dollars (\$100,000) of taxable sales into Missouri. 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 and remit tax on all sales to Missouri purchasers.

(C) 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.

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

(E) 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 substantial nexus with the state.

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

(G) 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 substantial nexus.

AUTHORITY: section 144.705, RSMo 2016. Original rule filed Dec. 1, 2004, effective June 30, 2005. Amended: Filed Dec. 8, 2022, effective July 30, 2023.*

**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.

South Dakota. v. Wayfair, Inc., et al., 138 S.Ct. 2080 (2018).
Out-of-state seller's physical presence in taxing state is not necessary for state to require seller to collect and remit its sales tax, overruling Quill and National Bellas Hess.