



Two Important Sales Tax Developments You Need to Know About

1. Merely Selling to Customers in Certain States Likely Results in a Sales Tax Issue

Businesses must have a “physical presence” (e.g., an employee) within a state before they are required to charge sales tax to in-state customers, according to a landmark 1992 U.S. Supreme Court case.

However, nearly a dozen states this year have implemented laws skirting this U.S. Supreme Court rule by requiring businesses to collect sales tax without first establishing an in-state physical presence.

Indiana, for example, requires businesses with more than \$100,000 of sales to Indiana customers to charge Indiana sales tax. Likewise, Louisiana requires businesses with more than \$50,000 of sales to Louisiana customers to notify these customers of Louisiana use tax due. States with similar rules include: Colorado, Maine, Massachusetts, Ohio, Rhode Island, Tennessee, Vermont, Washington, and Wyoming.

2. Using an Inventory Fulfillment Service Likely Creates a Multi-State Sales Tax Issue

If your business uses a third-party logistics (3PL) inventory provider, such as Amazon’s “Fulfillment by Amazon” program, you may have sales and income tax nexus in every state the provider stores your inventory. (Note: most 3PLs, including Amazon, are able to provide you with the location of your inventory.)

This is a significant compliance issue that may result in substantial back-taxes, interest, and penalties. For example, Amazon currently has fulfillment centers in almost 30 states.

The Multistate Tax Commission (“MTC”) is offering a unique, one-time opportunity for businesses to receive a total waiver of all back-taxes, interest, and penalties in 24 states. This program began on August 17, 2017 and runs through October 17, 2017.

Next Steps

In both alerts above, the states are extending their power to tax perhaps beyond their constitutional limit. However, while these issues remain to be settled, the states will continue imposing penalties and interest to noncompliant businesses.

Contact Stephen Bradshaw by calling 770.396.2200 if you have additional questions regarding these developments.