



Notice

NEW JERSEY OFFERS VOLUNTARY DISCLOSURE PROGRAM TO OUT-OF-STATE SELLERS WITH CUSTOMER REFERRAL AGREEMENTS

The New Jersey Division of Taxation is offering a Voluntary Disclosure Program to help certain out-of-state businesses comply with provisions of the Sales and Use Tax law that went into effect in 2014. (The benefits of this program and its procedures are detailed below.)

The 2014 legislation applies to certain out-of-state sellers (retailers, service providers and other businesses) that reach agreements with businesses located in New Jersey for referrals of New Jersey customers. These sellers may not have a physical presence in New Jersey, but State law considers them to be soliciting in New Jersey because of their referral agreements. If they meet all criteria in the 2014 law, these sellers must register in New Jersey and collect and remit New Jersey Sales and Use Tax.

Is Your Business in Compliance?

Effective July 1, 2014, the definition of “seller” in the New Jersey Sales and Use Tax Act has included the following language:

A person making sales of tangible personal property, specified digital products, or services taxable under the "Sales and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be soliciting business through an independent contractor or other representative if the person making sales enters into an agreement with an independent contractor having physical presence in this State or other representative having physical presence in this State, for a commission or other consideration, under which the independent contractor or representative directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, and the cumulative gross receipts from sales to customers in this State who were referred by all independent contractors or representatives that have this type of an agreement with the person making sales are in excess of \$10,000 during the preceding four quarterly periods ending on the last day of March, June, September, and December.

This presumption may be rebutted by proof that the independent contractor or representative with whom the person making sales has an agreement did not engage in any solicitation in the State on behalf of the person that would satisfy the nexus requirements of the United States Constitution during the four quarterly periods in question. Nothing in this



subparagraph shall be construed to narrow the scope of the terms independent contractor or other representative for purposes of any other provision of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.);

The Voluntary Disclosure Program is for out-of-state businesses that engage in the contacts described above and, therefore, are considered to be soliciting business in New Jersey.

A Path to Compliance

Beginning on August 21, 2017, and ending on November 21 2017, businesses have the ability to enter into an agreement with the Division and comply with the registration and reporting requirements in the Sales and Use Tax Act based on the following terms:

- The taxpayer must file any required returns for the two quarters between January 1, 2017, and June 30, 2017; all prior periods will be considered closed;
- The Division will waive all penalties;
- The State will assess statutory interest (prime rate plus 3% as applicable to each period at issue);
- Within 45 days of the execution of an agreement with the Division, taxpayers will register with the Division of Revenue and Enterprise Services using New Jersey Business Code "O/S SELLER 5000." They will electronically file quarterly Sales and Use Tax returns (ST-50), report all sales subject to New Jersey Sales Tax, and remit payment of the tax due;
- The taxpayer will pay statutory interest within 30 days of filing the Sales and Use Tax returns;
- Participants in the initiative must not have been contacted by the Division of Taxation regarding Sales and Use Tax compliance.

For more information on the law governing out-of-state sellers and customer referral agreements, see [TB-76R](#)

To participate in the program, or if you have questions, please contact Stephen L. Szabo III, Auditor, Nexus Audit Group at New Jersey Division of Taxation, PO Box 269, 50 Barrack St., Trenton, NJ 08695-0269. He also can be reached by phone, 609-984-7985, or by email: Stephen.Szabo@treas.nj.gov