

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SALT



SUBJECT

LOUISIANA AND VERMONT ENACT USE TAX NOTIFICATION/REPORTING REQUIREMENTS AND VERMONT ENACTS SALES TAX ECONOMIC NEXUS

SUMMARY

On June 17, 2016, Louisiana Governor John Bel Edwards (D) signed into law H.B. 1121, 2016 Regular Session (La. 2016), and, on May 25, 2016, Vermont Governor Peter Shumlin (D) signed into law H.B. 873, 2015-2016 Sess. (Vt. 2016) by which each state enacts use tax notification and/or reporting requirements that apply to remote sellers. Vermont also adopted a sales/use tax economic nexus standard.

DETAILS

Louisiana - Use Tax Notification and Reporting

By way of the enactment of H.B. 1121, Louisiana adopted use tax notification and reporting requirements that apply to “remote retailers,” effective July 1, 2017. A remote retailer is generally defined as an out-of-state vendor that is not subject to sales tax where the cumulative Louisiana sales of the retailer and its affiliates exceed \$50,000 per calendar year.

Under H.B. 1121, a remote retailer is subject to the following use tax notification and reporting requirements:

- ▶ **At the time of the sale** - A remote retailer must provide a Louisiana purchaser with notice that its purchase is subject to use tax, unless it is specifically exempt. The notice must specify that there is no exemption based on the fact that a purchase is made over the Internet, by catalog, or by other remote means, and include a statement that Louisiana law requires that use tax be paid annually on the individual income tax return or through other means.

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- ▶ **By January 31st of each year** - A remote retailer must send an annual notice to a Louisiana purchaser that contains the amount paid for purchases in the preceding calendar year. This notice must: (i) if available, contain a list of dates and amounts of purchases; (ii) if known, note whether the property or service is exempt; (iii) disclose the name of the retailer; and (iv) include a statement that Louisiana law requires that use tax be paid annually on the individual income tax return or through other means.
- ▶ **By March 1st of each year** - A remote retailer must file an annual statement with the Department of Revenue that includes the total amount paid by the purchaser in the past calendar year. It must *not* contain other detail as to the specific property and services purchased.

Vermont - Use Tax Notification

By way of enactment of H.B. 873, Vermont has adopted use tax notification requirements that apply to “noncollecting vendors,” effective the earlier of July 1, 2017, or beginning on the first day of the first quarter after the sales and use tax reporting requirements challenged in *Direct Marketing Assoc. v. Brohl*, 814 F. 3d 1129 (10th Cir. 2016) are implemented by Colorado. A noncollecting vendor is generally defined as a vendor that makes taxable sales to Vermont purchasers, but does not collect sales tax.

Under H.B. 873, a noncollecting vendor is subject to the following use tax notification requirements:

- ▶ **No specified due date** - A noncollecting vendor must notify a Vermont purchaser that sales or use tax is due, and that Vermont requires the tax to be paid on his or her tax return. Failure to provide the required notice may result in a \$5 penalty for each instance of noncompliance.
- ▶ **On or before January 31st of each year** - A noncollecting vendor must send notification to a Vermont purchaser who had made \$500 or more of purchases in the preceding calendar year that shows the total amount paid by the purchaser. In addition, the notice must state that Vermont requires the reporting and payment of sales or use tax on nonexempt purchases. Failure to provide the required notice may result in a \$10 penalty for each instance of noncompliance.

Vermont - Economic Nexus

Also by way of enactment of H.B. 873, Vermont adopts a sales and use tax economic nexus standard. According to this standard, a vendor has sales and use tax nexus in Vermont if:

- ▶ During any 12 month period, its Vermont taxable sales are at least \$100,000, or it has 200 or more individual sales transactions with Vermont customers; and
- ▶ Engages in regular, systematic, or seasonal sales of tangible personal property in the state by the display of advertisements, the distribution of catalogues, periodicals and flyers, or by radio, television, mail, Internet, telephone, computer database, cable optic, cellular, or other communication systems.

This provision is effective the later of July 1, 2017, or beginning on the first day of the first quarter after a U.S. Supreme Court decision, or federal legislation is enacted, that overturns the physical presence requirement of *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

BDO INSIGHTS

- ▶ Beginning July 1, 2017, Louisiana remote retailers should consider whether they have a use tax notification and reporting obligation. If so, such a remote retailer should ensure it has the systems in place to notify and report as required by the new law.
- ▶ Beginning July 1, 2017, or if Colorado implements its use tax notification and reporting law, whichever first occurs, Vermont noncollecting vendors should make a similar assessment. It is understood that a state court injunction prohibits Colorado from enforcing its use tax notification and reporting law, which Colorado won't seek removal of until final resolution of *Direct Marketing Assoc. v. Brohl*.
- ▶ Louisiana and Vermont are among a few states, including Kentucky, Oklahoma, South Carolina, South Dakota, and Vermont, that have enacted use tax notification and/or reporting laws.
- ▶ States other than Vermont that have adopted a sales and use tax economic nexus standard include Alabama and South Dakota. See the [BDO SALT alert](#) that discusses the Alabama economic nexus standard, and the [BDO SALT alert](#) that discusses the South Dakota economic nexus standard. Tennessee also recently issued Proposed Rule 1320-05-01-.129, which, if promulgated, would establish a sales and use tax economic nexus standard in that state. So, Tennessee may be the next state to adopt a sales and use tax economic nexus standard.
- ▶ On June 8, 2016, Newegg, Inc. filed a Notice of Appeal in the Alabama Tax Tribunal challenging Alabama's economic nexus regulation. In addition, on April 29, 2016, American Catalog Mailers Association and Netchoice filed a Complaint for Declaratory Judgment in the Sixth Circuit Court of South Dakota challenging that state's economic nexus law, which has the effect of staying enforcement of the law during the pendency of that action.

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