

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

TENNESSEE DEPARTMENT OF REVENUE EXPECTED TO FURTHER ADVANCE SALES AND USE TAX ECONOMIC NEXUS RULE

SUMMARY

On August 8, 2016, the Tennessee Department of Revenue held a public hearing on Proposed Rule 1320-05-01-.129 that would establish a sales and use tax economic nexus standard in the state beginning 90 days after the Department files a final rule with the Tennessee Secretary of State.

DETAILS

Sales and Use Tax Economic Nexus

Under Proposed Rule 1320-05-01-.129, an out-of-state dealer who engages in the regular or systematic solicitation of consumers in the state through any means, and whose Tennessee taxable sales exceed \$500,000 during any calendar year, has substantial nexus in the state. An out-of-state dealer subject to the economic nexus standard must register with the Department for sales and use tax purposes by January 1, 2017, and report and pay tax on sales of tangible personal property and other taxable items delivered to Tennessee consumers by July 1, 2017.

The economic nexus rule is not yet final. However, now that a public hearing has been held, the Department is expected to issue a final rule after various internal reviews are completed. Once the final rule is filed with the Secretary of State, it will become final 90 days after the date of such filing.

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BDO INSIGHTS

- ▶ The Department is expected to file a final rule with the Secretary of State. An out-of-state dealer who solicits sales in Tennessee through *any means* and expects to exceed the \$500,000 taxable sales threshold should consider the impact that this rule may have on them for tax planning and reporting purposes.
- ▶ Tennessee followed Alabama by using a regulation to implement a sales and use tax economic nexus standard. See the [BDO SALT alert](#) that discusses the Alabama economic nexus standard. South Dakota and Vermont recently adopted economic nexus standards via legislation. See the [BDO SALT alert](#) that discusses the South Dakota economic nexus standard, and the [BDO SALT alert](#) that discusses the Vermont economic nexus standard. In addition, economic nexus legislation has been introduced in several other states.
- ▶ Even though there appears to be an economic nexus trend, there is hope for taxpayers. Litigation is underway challenging the Alabama and South Dakota economic nexus standards, which at least has the effect of staying enforcement of the South Dakota law. In addition, on July 14, 2016, U.S. Representative Jim Sensenbrenner (R-WI) introduced H.R. 5893, 114th Congress, 2d. Sess. (2016), which, if enacted, would essentially codify the sales and use tax physical presence standard enunciated by the U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and settle any disputes as to the appropriate sales and use tax nexus standard.

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