



TAX BULLETIN 13-11

Virginia Department of Taxation

August 23, 2013

IMPORTANT INFORMATION REGARDING SALES TAX COLLECTION REQUIREMENTS FOR CERTAIN OUT-OF-STATE DEALERS EFFECTIVE SEPTEMBER 1, 2013

BACKGROUND

Virginia law currently sets out the standards for requiring out-of-state dealers to collect the Virginia Retail Sales and Use Tax on sales made into the Commonwealth. Maintaining a business place in Virginia, soliciting business through employees, agents, or independent contractors in Virginia, or regularly making deliveries into the state are among the activities for which a dealer may be deemed to have substantial nexus with Virginia, and thus be required to register for and collect Virginia's Retail Sales and Use Tax.

LEGISLATION

Legislation enacted during the 2012 Session of the Virginia General Assembly (Senate Bill 597, *Acts of Assembly 2012*, Chapter 590), creates a rebuttable presumption that effectively requires certain out-of-state dealers to register and collect Virginia Retail Sales and Use Tax for sales made into Virginia. In order to be subject to this requirement, the out-of-state dealer must belong to a commonly controlled group in which a person or entity maintains a distribution center, warehouse, fulfillment center, office, or similar location in Virginia that facilitates the delivery of tangible personal property sold by the out-of-state dealer.

The statute defines "commonly controlled person" as any person that is a member of the same "controlled group of corporations" as the dealer, or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations."

Affected out-of-state dealers can rebut this presumption by demonstrating that the activities conducted by the commonly controlled person in Virginia are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales.

The legislation provides that it is effective on the earlier of September 1, 2013, or upon passage of federal legislation granting states the authority to require remote sellers to collect taxes on goods shipped to in-state purchasers. Because no such federal legislation has been enacted, the effective date for this legislation is September 1, 2013. Thus, all affected out-of-state dealers must begin collecting sales and use taxes on sales made into Virginia on September 1, 2013.

Further Instructions

For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the “Live Chat” service on the Department’s website, www.tax.virginia.gov.