



TAX BULLETIN 17-3

Virginia Department of Taxation

May 3, 2017

IMPORTANT INFORMATION REGARDING NEW LAW REQUIRING ANY DEALER OWNING INVENTORY LOCATED IN VIRGINIA TO REGISTER FOR THE RETAIL SALES AND USE TAX

Effective June 1, 2017, a change in Virginia law requires any dealer owning inventory for sale located in Virginia to register for collection of the Retail Sales and Use Tax. This Tax Bulletin is intended to provide guidance and facilitate compliance with the new law.

Generally

Effective June 1, 2017, House Bill 2058 and Senate Bill 962 (2017 *Acts of Assembly*, Chapters 51 and 808) provide that the ownership by a dealer of tangible personal property for sale located in Virginia is deemed to be sufficient activity within the Commonwealth to require the dealer to register for the collection of the Retail Sales and Use Tax.

Previously, Virginia law did not specifically enumerate that the ownership of inventory in Virginia was an activity that constitutes sufficient contact with the Commonwealth to give rise to the obligation for a dealer with no other connection to Virginia to register with the Department of Taxation as a Retail Sales and Use Tax dealer.

CURRENT LAW AND POLICY

In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the U.S. Supreme Court ruled that the Commerce Clause bars a state from requiring an out-of-state mail-order company to collect use tax on goods sold to customers located within the state when the company has no outlets, sales representatives, or significant property in the state. The Court determined that only Congress has the authority to require out-of-state vendors without a physical presence in a state to register and collect the state's tax.

The Virginia Retail Sales and Use Tax generally applies to all sales of tangible personal property to customers within Virginia. Consistent with the *Quill* decision, Virginia law sets out specific criteria for evaluating whether dealers are required to collect the tax on their sales into the Commonwealth. Generally, the duty to register will arise when a

dealer making sales in the Commonwealth owns or leases real property in Virginia; conducts certain activities through employees, agents, independent contractors, or representatives within Virginia; conducts certain advertising, solicitation, or delivery activities within Virginia; shares common ownership or business relationships with an in-state business; or owns tangible personal property leased or rented to Virginia consumers.

Under current law, some dealers who store inventory in Virginia facilities owned by third parties are not required to collect the tax because ownership of tangible personal property for sale located in Virginia is not currently one of the factors triggering the obligation to register.

CHANGE IN LAW EFFECTIVE JUNE 1, 2017

Effective June 1, 2017, the ownership of inventory stored at a Virginia warehouse or fulfillment center will give rise to an out-of-state dealer's obligation to register and to collect Retail Sales and Use Tax on its sales to Virginia customers.

Example 1

An out-of-state dealer of tangible personal property, without other contacts creating a requirement to register and collect Virginia Sales and Use Tax, stores its inventory in a warehouse or fulfillment center within the Commonwealth owned by a third-party. The dealer's tangible personal property is offered for sale on the dealer's website and purchased by and delivered to a consumer located in Virginia. All fulfillment services are provided by a third-party. The out-of-state dealer must register for the collection of the Virginia Retail Sales and Use Tax.

Example 2

An out-of-state dealer of tangible personal property, without other contacts creating a requirement to register and collect Virginia Sales and Use Tax, stores its inventory in a warehouse or fulfillment center within the Commonwealth owned by a third-party. The dealer's tangible personal property is offered for sale on a third-party website and is purchased by and delivered to a consumer located in Virginia. All fulfillment services are provided by a third-party. The out-of-state dealer must register for the collection of the Virginia Retail Sales and Use Tax.

The duty to register is not mitigated by the fact that the out-of-state dealer has no offices, real property, affiliates, subsidiaries, agents, or other physical presence within Virginia. The presence of the dealer's inventory in the form of tangible personal property within the Commonwealth is sufficient to require the dealer to register for the collection of the tax on the dealer's sales to Virginia consumers. The result is the same regardless of whether or not the specific item of tangible personal property received by the Virginia consumer was stored inside the Commonwealth before the sale. The duty

to register is also unaffected by whether the dealer uses a third-party fulfillment service to store the inventory and/or to provide order processing.

Dealer Requirement Unchanged

As a threshold matter, an entity must qualify as a dealer under Virginia law in order for the storage of inventory to give rise to the obligation to register and to collect Virginia Retail Sales and Use Tax. The other criteria for determining dealer status is unaffected by the law change described herein. Out-of-state entities, with no other connection to Virginia, that are also not making sales to Virginia consumers, are not required to register and collect Virginia Retail Sales and Use Tax. Consequently, tangible personal property that is passing through Virginia or that is stored in Virginia and that is owned by an out-of-state entity that is not making sales in Virginia does not require the out-of-state entity to register and to collect Virginia Retail Sales and Use Tax.

Example 3

An out-of-state entity owns tangible personal property that is not for sale in Virginia but that is in transit from State A to State B (neither state is Virginia). The property is stored by the shipping company in a Virginia warehouse. There is no requirement for the property's owner to register and collect the Virginia Retail Sales and Use Tax because the owner is not making sales into Virginia.

Implementation of New Law

Beginning June 1, 2017, all dealers who store inventory in Virginia and who have sales to Virginia customers of any tangible personal property must register for the collection of the Retail Sales and Use Tax.

How to Register

Affected dealers must register with the Department of Taxation for the Retail Sales and Use Tax by completing [Form R-1 Business Registration Application](#) or by registering on the Department's on-line Business Tax Registration system, [iReg](#). Affected dealers should register for the tax as "Out-of-State Dealers" in Section V(B) of Form R-1. Please see [Virginia Form R-1 Business Registration Application Instructions](#).

Dealers who register online are able to download their Form ST-4, Certificate of Registration immediately. Dealers who submit a paper application by mail or fax will experience a short delay as their application is entered manually and for any mailing time. Additional information about registering with the Department of Taxation is available at [Register a Business in Virginia](https://www.tax.virginia.gov/register-business-virginia) (<https://www.tax.virginia.gov/register-business-virginia>).

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Out-of-state dealers should report their sales on [Form ST-8 Virginia Out-Of-State Dealer's Use Tax Return](#) monthly. Information about filing Retail Sales and Use Tax forms and remitting the tax is available at [Sales and Use Tax](#).

This Tax Bulletin is available on-line in the [Laws, Rules & Decisions](#) section of www.tax.virginia.gov/. If you have any questions regarding this Tax Bulletin, please contact the Department of Taxation Office of Customer Services at (804) 367-8037.