



**ST 2001-01 - USE TAX INFORMATION RELEASE - SALES AND USE TAX – USE TAX NEXUS STANDARDS:
September, 2001; August, 2016; October, 2017; November 2019**

The overarching purpose of this information release is to describe the standards the Department of Taxation will apply to determine whether an out-of-state seller is required to collect Ohio's use tax¹. For information regarding marketplace facilitators, please visit our [website](#) for more information.

- This release only addresses the circumstances in which an out-of-state seller can be required to collect and remit Ohio's use tax from its customers in this state. This information release does not relieve any person of their use tax obligations as a consumer.
- This information release is not intended to be an all-encompassing or all-inclusive description of this subject.
- This information release may be modified by changes in either federal or state laws or by decisions of courts of competent jurisdiction. This release may also be modified and reissued from time-to-time to clarify the Department's position.
- Where no conflict exists between this information release and previously published positions relating to use tax nexus taken by the Department, those positions will remain in effect.

This release is being updated to address the changes to substantial nexus in the recently passed Am. Sub. H.B 166, the biennial budget. These changes are effective August 1, 2019. However, this information release applies to nexus standards established by the U.S. Supreme Court from 1939 to the present. Apart from the specific economic presence standards that are effective on August 1, 2019, decisions of the U.S. Supreme Court are the controlling interpretation of federal law and may be given full retroactive effect to all cases and years still open. Accordingly, the Department of Taxation will enforce the standards described within this information release, apart from the safe harbor activities enumerated in this information release, for all open cases and years.

I. WHAT IS THE STANDARD THE DEPARTMENT OF TAXATION WILL USE TO DETERMINE WHETHER AN OUT-OF-STATE SELLER IS SUBJECT TO OHIO'S USE TAX COLLECTION RESPONSIBILITY?

Ohio law provides that the Department of Taxation can require an out-of-state seller to collect and remit Ohio use taxes under any set of circumstances allowed by Section 8 of Article I of the Constitution of the United States. Specifically, R.C. 5741.01(H) and (I) set forth the legal standard used by the Department of Taxation to determine whether an out-of-state seller is subject to Ohio use tax collection responsibilities. An out-of-state seller is subject to Ohio's use tax collection responsibility when the out-of-state seller engages in any of the following activities:

¹ As with all information releases of the Tax Commissioner, this document serves to communicate with taxpayers how the Department will administer Ohio taxes mandated by the Ohio Revised Code or relevant statutory changes. No information release has any force or effect of law.

- The out-of-state seller uses an office, distribution facility, warehouse, storage facility, or similar place of business within Ohio, whether operated by the seller or any other person, other than a common carrier acting in its capacity as a common carrier [R.C. 5741.01(l)(2)(a)];
- The out-of-state seller regularly uses employees, agents, representatives, solicitors, installers, repair people, salespeople, or other individuals in Ohio for the purpose of conducting its business or either engages in a business with the same or a similar industry classification as the seller selling a similar product or line of products as the seller, or to use trademarks, service marks, or trade names in Ohio that are the same or substantially similar to those used by the seller [R.C. 5741.01(l)(2)(b)];
- The out-of-state seller uses any person other than a common carrier in Ohio for the purpose of any of the following:
 - Receiving or processing orders of its goods or services;
 - Using that person's employees or facilities in Ohio to advertise, promote, or facilitate sales by the seller to customers;
 - Delivering, installing, assembling, or performing maintenance services for the seller's customers;
 - Facilitating the seller's delivery of tangible personal property to customers in Ohio by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage facility, or similar place of business [R.C. 5741.01(l)(2)(c)];
 - *For example, Company A sells pre-fabricated furniture that is required to be assembled. Company A has no physical presence in Ohio, but hires a third-party located in Ohio to assemble its product. Customers may purchase through Company A, assembly of Company A's product. Because the third-party is in this state and performs a service for seller's customer, Company A now has nexus with Ohio.*
- The out-of-state seller makes regular deliveries of tangible personal property into this state by means other than common carrier. [R.C. 5741.01(l)(2)(d)];
 - *For example, the out-of-state seller has goods delivered to this state in vehicles which the out-of-state seller owns, rents, leases, uses, or maintains or has goods delivered by another member of a controlled group, of which the out-of-state seller is a part of, acting as a representative of the out-of-state seller.*
- Other than those safe harbor activities described in this information release, the out-of-state seller is an affiliated person of a person that has nexus with this state [R.C. 5741.01(l)(2)(e)];
- The out-of-state seller owns tangible personal property that is rented or leased to a consumer in Ohio, or offers tangible personal property, on approval, to consumers in Ohio [R.C. 5741.01(l)(2)(f)]; or

- The out-of-state seller has gross receipts in excess of \$100,000 or 200 or more separate transactions in the current or preceding calendar year from the sale of tangible personal property for storage, use or consumption in Ohio or providing of services the benefit of which is realized in Ohio [R.C. 5741.010(I)(2)(g) and (h)].

Additionally, even if a seller does not have substantial nexus with this state, the seller and any affiliate person of such seller must register with the tax commissioner before selling or leasing tangible personal property or services to a state agency. [R.C. 5741.01(I)(5)] This requires such persons to obtain a registration through the Ohio Business Gateway. Services means all services, not just taxable services enumerated in R.C. 5739.01(B)(3) to (12). Once registered, a seller is required to file tax returns, even if the seller has no sales for the reporting period.

Finally, a seller is presumed to have substantial nexus with Ohio if they perform the activities described above, but a seller may rebut these presumptions. A seller may rebut the presumption of substantial nexus by demonstrating that the activities conducted by the seller or on the seller's behalf are not significantly associated with the seller's ability to establish or maintain the seller's market in Ohio.

II. WHAT ARE EXAMPLES OF ACTIVITIES BY OR ON BEHALF OF AN OUT-OF-STATE SELLER THAT WILL CREATE NEXUS IN OHIO?

An out-of-state seller has nexus in this state when the seller directly or through others acting on the seller's behalf is regularly present in this state conducting activities to establish or maintain the market for the out-of-state seller. Such others can be organizations or individuals who are agents, representatives, independent contractors, brokers or any person acting on behalf of the out-of-state seller. It is irrelevant whether such others reside in Ohio. Activities which create nexus, whether by the out-of-state seller or others acting on the seller's behalf, include, but are not limited to, the following:

- Soliciting sales in this state;
- Delivering property sold to customers in this state;
- Installing or supervising installation in this state;
- Making repairs or providing maintenance or warranty service in this state;
- Providing any kind of technical assistance or consulting service in this state including, but not limited to, engineering assistance, design service, quality control, product inspections, or similar services;
- Investigating, handling, or otherwise aiding in this state to resolve customer complaints;
- Conducting training in this state; or
- Soliciting, negotiating, or entering into franchising, licensing, or similar agreements for this state.

III. ARE THERE ANY SAFE HARBOR ACTIVITIES WHERE NEXUS MIGHT EXIST BUT WHERE THE DEPARTMENT OF TAXATION WILL NOT REQUIRE AN OUT-OF-STATE SELLER TO COLLECT AND REMIT OHIO'S USE TAX FROM ITS CUSTOMERS IN THIS STATE?

If the out-of-state seller's only contacts with this state are limited to one or more of the contacts listed below, the Department of Taxation will not require the out-of-state seller to collect and remit Ohio's use tax from its customers in this state. Except for the first two activities described below, these safe harbors are not mandated by statutory or case law; rather, these safe harbors are provided for purposes of administrative convenience. Please note that each of these activities are not applicable if the out-of-state seller has gross receipts in excess of \$100,000 or 200 or more separate transactions in the current or preceding calendar year from the sale of tangible personal property for storage, use or consumption in Ohio or providing of services the benefit of which is realized in Ohio.

- The out-of-state seller has an agency relationship with a person engaged in the business of telemarketing in Ohio that is engaged by the seller exclusively for the purpose of solicitation of customers in other states; [R.C. 5741.17 (A)(3)]
- The out-of-state seller has ownership of property that is located at the facility of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the final printed product is produced; [R.C. 5741.17(A)(4)]
- The out-of-state seller has tangible personal property temporarily in Ohio for no more than seven days, which need not be consecutive, in a calendar year, and the seller has no more than \$25,000 in gross receipts situated to this state (at any time) in that same calendar year;
- As of August 1, 2019, the out-of-state seller grants a license to use software in this state, but only if the out-of-state seller and its agents, representatives, or any affiliated person, do not provide, from or at a location in Ohio, any technical assistance or other support;
- As of August 1, 2019, the out-of-state seller maintains a website on a server or similar electronic equipment in Ohio, unless the equipment itself is owned, leased or rented by the out-of-state seller or any member of a controlled group of which the seller is a part;
- The out-of-state seller conducts meetings in Ohio with suppliers of goods or services;
- The out-of-state seller conducts meetings in Ohio with government representatives in their official capacity;
- The out-of-state seller enters this state for the purposes of bringing or defending a lawsuit in a court of law in Ohio;
- The out-of-state seller attends meetings, retreats, seminars, conferences, schools or other training in Ohio sponsored by others;
- The out-of-state seller holds retreats, seminars, conferences, or other training in this state for its employees (but not board of director's meetings);

- The out-of-state seller holds recruiting or hiring events in Ohio;
- The out-of-state seller advertises in Ohio through various electronic or print media;
- The out-of-state seller rents customer lists to or from an entity located in Ohio;
- The out-of-state seller has no more than seven instances of nexus creating activities in Ohio in a calendar year, and the seller has no more than \$25,000 in gross sales situated to this state (at any time) in that same calendar year;
- The out-of-state seller attends trade shows in Ohio as a consumer; or
- The out-of-state seller participates in one or more trade shows in Ohio as an exhibitor provided that the out-of-state seller has no more than seven instances of nexus creating activities in this state in a calendar year and does not have gross receipts in Ohio in excess of \$25,000 situated to this state (at any time) in that same calendar year.

IV. WHAT ARE THE USE TAX REGISTRATION AND FILING REQUIREMENTS FOR AN OUT-OF-STATE SELLER SUBJECT TO OHIO'S TAXING JURISDICTION?

An out-of-state seller who falls within this state's taxing jurisdiction and makes taxable sales will be required to obtain a seller's use tax permit, collect tax on taxable sales made to consumers in this state, and file returns and remit the appropriate tax. Information about registration and permits can be obtained by calling 1-888-405-4039, or from the Department's website by visiting tax.ohio.gov.

The duty to obtain a seller's use tax permit, collect tax on taxable sales made to consumers in this state, and file returns and remit the appropriate tax commences with the month that includes the day of the contact that establishes a regular presence and applies prospectively from that date.

For example, On May 4, 2019, an out-of-state seller first enters Ohio to engage in nexus-creating activities that are protected by the safe harbor provisions. On September 8, 2019, the out-of-state seller's activities exceed the safe harbor provisions. The out-of-state seller would be required to obtain a seller's use tax permit, collect tax on taxable sales made to consumers in this state, and file returns and remit the appropriate tax beginning with the September return due on October 23, 2019, and would include all sales made for the entire month of September 2019.

V. ONCE NEXUS IS ESTABLISHED, HOW LONG DOES THE FILING REQUIREMENT LAST?

When an out-of-state seller no longer has nexus creating contacts, the out-of-state seller may cancel its license and stop collecting and remitting use tax on its sales in this state. However, if the out-of-state seller reestablishes nexus by engaging in any nexus creating contacts within twelve months of canceling its license, the Department of Taxation will presume that the new contact remains part of a regular presence in this state. Thus, the out-of-state seller continued to have nexus during the interim period. The out-of-state seller will be required to reinstate its license and pay tax on all its sales in this state during the interim period and continue collecting tax on a prospective basis.

VI. CAN AN UNREGISTERED OUT-OF-STATE SELLER SUBJECT TO THESE NEXUS GUIDELINES REQUEST A VOLUNTARY DISCLOSURE AGREEMENT?

An out-of-state seller with a filing responsibility under these nexus guidelines but not yet registered with or contacted by the Department of Taxation with respect to audit or criminal investigation is eligible to request a Voluntary Disclosure Agreement (VDA). The VDA guidelines are available on the Department's website by visiting www.tax.ohio.gov or by calling the Department at 1-888-405-4039.

VII. CAN AN OUT-OF-STATE SELLER LACKING NEXUS VOLUNTARILY REGISTER TO COLLECT AND REMIT OHIO'S USE TAX FROM ITS CUSTOMERS IN THIS STATE?

Pursuant to R.C. 5741.17, an out-of-state seller lacking nexus may voluntarily register to collect use tax on its sales made to customers in Ohio. The out-of-state seller is not necessarily obligated to pay other Ohio taxes merely because it voluntarily registered to collect use tax on its sales made to customers in Ohio. Nonetheless, even though the out-of-state seller may cancel its license at any time, the out-of-state seller remains subject to audit for the periods during which the seller was registered or was collecting tax.

VIII. I (OR MY AFFILIATE) IS SELLING OR LEASING TANGIBLE PERSONAL PROPERTY OR SERVICES TO A STATE AGENCY SHOULD I REGISTER?

Even though a seller or its affiliates may not have substantial nexus with Ohio, sellers or their affiliates making retail sales of tangible personal property or services to a state agency are required by the Ohio Revised Code to register with the tax commissioner by obtaining a seller's license. The seller may obtain a license through the Ohio Business Gateway (OBG).

If you have any questions regarding this matter, please contact the Department at 1-888-405-4039 (Ohio Relay Services for the Hearing or Speech Impaired: 1-800-750-0750).