

PA Pursues Online Vendors

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Although the PA Department of Revenue has pushed back the deadline for compliance, the Department seems dead set on forcing certain online vendors to collect sales tax on sales to Pennsylvania customers.

In Sales and Use Tax Bulletin 2011-01 the Department set forth its interpretation of the law of nexus as applied to online vendors. In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) the United States Supreme Court held that, under the Commerce Clause of the U.S. Constitution, a vendor without physical presence could not be required to collect a state's sales and use tax. However, in *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960) the Court upheld Florida's right to compel the company to collect that state's tax because non-employee sales representatives regularly solicited orders in the state on the company's behalf.

The Department noted that many online vendors have affiliates performing activities in PA on their behalf, such as operating distribution or fulfillment centers. In addition, some online vendors pay other companies to provide website links enabling customers to purchase merchandise from the online vendor. In the opinion of the Department, these and other in-state activities on behalf of the online vendors are sufficient to establish nexus under the Supreme Court's rulings.

Initially, the Department indicated that it would pursue enforcement action against such online vendors who failed to register and begin collecting tax by February 1. On January 27, the Department extended its compliance deadline to September 1, indicating that a number of online vendors are willing to comply but needed more time to implement new tax collection processes. Revenue Secretary Dan Meuser indicated that online vendors who refuse to comply will "face a variety of escalating enforcement options over time ..." and that there will be no more extensions.

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