



Presumption of Soliciting Business in New Jersey by Out-of-State Seller

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Tax: Sales and Use Tax

P.L. 2014, c. 13, amended N.J.S.A. 54:32B-2(i) (1) to modify the definition of “seller” under the Sales and Use Tax Act for sales occurring on or after July 1, 2014.

PRESUMPTION OF SOLICITING BUSINESS

The new law creates a rebuttable presumption that an out-of-State seller, who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business in New Jersey through in-State representatives if that seller meets the following conditions:

1. The seller enters into an agreement with a New Jersey independent contractor or other representative (in-State representative) to refer potential customers via a link on a website, or otherwise, to that out-of-State seller in exchange for consideration based on completed sales; and
2. The seller has sales from these referrals to customers in New Jersey in excess of \$10,000 for the prior four quarterly periods ending on the last day of March, June, September, and December.

If the agreement between the seller and the in-State representative does not provide for the seller to compensate the representative based on completed sales, the agreement is merely for advertising and does not meet condition 1 above.

The agreement does meet condition 1 if the seller enters into an agreement with a third party under which the third party then enters into an agreement with an in-State representative to act as the out-of-State seller’s representative.

An out-of-State seller that meets both conditions above is presumed to be soliciting business and has nexus with New Jersey. The out-of-State seller must register with New Jersey for Sales Tax purposes and collect and remit Sales Tax on all sales delivered into New Jersey unless the presumption can be rebutted. To register, you must file the Business Registration Application ([Form NJ-REG](#)) through the New Jersey Business Gateway Services website. When completing the registration application, please select “O/S SELLER 5000” as the New Jersey Business Code.

To register, a Business Registration Application (Form NJ-REG) must be filed. Form NJ-REG may be filed online through the Division of Revenue and Enterprise Services’ NJ Business Gateway Services [website](#). A Public Records Filing may also be required depending on the type of business ownership.

Example 1

ABC is an Internet-based retailer of camping equipment that has its home office, warehouse, and administrative office in Maine. ABC sells its camping equipment to customers in New Jersey

and throughout the United States. The camping equipment sold by ABC is delivered by the U.S. Postal Service. ABC entered into agreements with several camping clubs in New Jersey to place links on the out-of-State seller's websites to ABC's website. Under the agreements, ABC pays commissions to the camping clubs based on the completed sales that originate from these links.

ABC's gross receipts from sales resulting from these agreements with the New Jersey camping clubs totaled \$50,000 in the prior four quarterly periods. Thus, ABC is presumed to be soliciting business in New Jersey through the use of in-State representatives, and is required to register for Sales Tax purposes, and collect and remit Sales Tax on all its taxable sales delivered into New Jersey unless the presumption of solicitation can be rebutted.

PRESUMPTION OF SOLICITING BUSINESS MAY BE REBUTTED

An out-of-State seller that is presumed to be soliciting business in New Jersey through in-State representatives may rebut that presumption by establishing that the only in-State activity of the in-State representative(s) on its behalf is placing a link on the in-State representatives' website(s) to the out-of-State seller's website for compensation; and, certifying that none of the in-State representative(s) engage in any solicitation activity in the State targeted at potential New Jersey customers on behalf of the out-of-State seller.

An out-of-State seller will successfully rebut the presumption of soliciting business in New Jersey by meeting both of the following conditions:

1. Prohibition Language

The agreement between the out-of-State seller and the in-State representative provides that the in-State representative is prohibited from engaging in any solicitation activities in New Jersey that refer potential customers to the seller including, but not limited to: distributing flyers, coupons, newsletters and other printed promotional materials, or electronic equivalents, verbal solicitation, initiating phone calls, and sending e-mails; and

2. Proof of Compliance

The out-of-State seller must annually obtain from the in-State representative(s) a signed certification stating that the in-State representative did not engage in any prohibited solicitation activities in New Jersey on behalf of the out-of-State seller at any time during the prior four quarterly periods.

The certification may be submitted in either hard-copy or electronic format and must contain the name, address, and signature of the in-State representative. The certification must also contain a statement that the certification and any information submitted with it are subject to verification and audit by the Division of Taxation.

The out-of-State seller will be considered to have satisfied the second condition if it receives signed certifications from its in-State representatives and accepts the certifications in good faith. The out-of-State seller must retain copies of the certifications and must make the copies available to the Division of Taxation at the Division's request.

Example 2

Assume the same facts as in Example 1, and that none of the camping clubs refer customers to ABC through the use of flyers, newsletters, phone calls or e-mails to club members, or any other means of solicitation in the State targeted at New Jersey customers on behalf of ABC.

ABC may successfully rebut the presumption that it is soliciting business in New Jersey through in-State representatives by showing that the agreements with its in-State representatives contain the prohibition language discussed above, and providing the Division with certifications from its in-State representatives for proof of compliance. If ABC successfully rebuts the presumption of solicitation, it is not required to register for New Jersey Sales Tax purposes.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.