



This Technical Bulletin provides general guidelines for determining whether the activities of a person create nexus with New Jersey for Sales and Use Tax purposes.

DEFINITIONS

“Nexus” means some definite link, some minimum connection, between the State and the entity it seeks to tax.

“Person” includes an individual, trust, partnership, limited partnership, limited liability company, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, fiduciary, and any other legal entity.

“Seller” includes a person maintaining a place of business in the State or having an agent maintaining a place of business in the State and making sales, whether at such place of business or elsewhere, to persons within the State of tangible personal property, specified digital products, or services, the use of which is taxed by the Sales and Use Tax Act.

SALES TAX NEXUS

The U.S. Supreme Court has ruled that the Commerce Clause of the U.S. Constitution requires a person to have a physical presence in a state before the state can impose its Sales Tax jurisdiction.

A person who has physical presence in New Jersey and sells taxable items or services must register and collect and remit Sales Tax whenever such sales are completed by delivery of the item(s) to a New Jersey location or when performance of the service is within this State.

NEXUS-CREATING ACTIVITIES

Activities occurring in New Jersey that create nexus for Sales Tax purposes include, but are not limited to:

1. Selling, leasing, or renting tangible personal property, specified digital products, or services;
2. Maintaining an office, distribution house, showroom, warehouse, service enterprise (e.g., restaurant, entertainment center, business center, etc.), or other place of business;
3. Having employees, independent contractors, agents, or other representatives (including salespersons, consultants, customer representatives, service or repair technicians, instructors, delivery persons, and independent representatives or solicitors acting as agents of the business) working in the State;
4. Selling, storing, delivering, or transporting energy (natural gas or electricity) to users or customers;

5. Collecting initiation fees, membership fees, or dues for access to or use of health, fitness, athletic, sporting, or shopping club property or facilities;
6. Parking, storing, or garaging motor vehicles;
7. Delivering goods sold in seller's own vehicle.

CLICK-THROUGH NEXUS

N.J.S.A. 54:32B-2(i)(1) creates a rebuttable presumption that an out-of-State seller that makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business and has nexus in New Jersey if that seller meets the following conditions:

1. The seller enters into an agreement with a New Jersey independent contractor or other representative for compensation in exchange for referring customers via a link on its website, or otherwise, to that out-of-State seller; 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.

An out-of-State seller that meets both of these conditions is presumed to be soliciting business and has nexus with New Jersey. The out-of-State seller must register for Sales Tax purposes and collect and remit Sales Tax on all sales delivered to New Jersey.

Because the law creates a rebuttable presumption, the out-of-State seller may provide proof that the independent contractor or representative did not engage in any solicitation on their behalf in New Jersey. The burden is on sellers to prove that they are not required to collect and remit Sales Tax.

REGISTERING FOR SALES TAX PURPOSES

A seller that has nexus with New Jersey must register and collect and remit Sales Tax on all taxable sales that occur within this State. The Business Registration Application (Form NJREG) can be filed online through the Division of Revenue and Enterprise Services' NJ Business Gateway Services website at <http://www.state.nj.us/treasury/revenue>.

MORE INFORMATION

For more information, see Technical Bulletin 76 "Presumption of Soliciting Business in New Jersey by Out-of-State Seller," <http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb76.pdf>, Publication S&U-5, "Making Mail-Order and Internet Sales," <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/su5.pdf>, and Publication ANJ-10 "Out of State Sales & New Jersey Sales Tax," <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj10.pdf>

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