

Michigan's New Expansive Sales Tax Standards Including "Click Through" Nexus Standards Take Effect October 1, 2015

October 1, 2015

On October 1, 2015, Michigan's new expansive sales tax nexus standards including "click through" nexus standards take effect. The "click through" nexus standard closely parallels other so-called "Amazon nexus" laws adopted by other states.

The new standard will subject sellers to sales tax in Michigan under the following circumstances:

- If one or more residents of Michigan receives a commission to refer potential purchasers to the seller, such sales exceed \$10,000 and total sales in Michigan exceed \$50,000 in the preceding year.
- If an affiliate of the seller with presence in Michigan 1) sells a similar line of products in Michigan under a similar business name, 2) promotes sales by the seller in Michigan, 3) distributes products for the seller from a Michigan location, 4) uses similar trademarks or trade names, 5) delivers, installs, repairs or maintains products for the seller's purchasers, 6) allows pick-ups or returns within Michigan, or 7) shares management, business systems, practices or employees with the seller.

The statute provides that advertising within the state will not subject a seller to nexus as long as the advertiser does not receive a commission for such advertising. Other provisions exist to allow sellers to document that all individuals with agreements with the seller are prohibited from soliciting sales in the state and sign written agreements confirming that they have not solicited sales.

The standards will require sellers deemed to have nexus as of October 1, 2015 to remit tax on all sales to Michigan customers regardless of whether the tax is charged to those customers. Sales tax in Michigan is imposed on the seller, but the law allows the seller to pass the tax on to the buyer. A seller that fails to charge tax to a customer that is subsequently determined to have nexus under the new standards is subject to tax and may not be able to recover that tax from customers unless their contractual terms give them that right.

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