

REMOTE SELLER NEXUS CHRONICLES - THE PUSH FOR RETAIL EQUALITY: IS THERE STRENGTH IN NUMBERS?

FEBRUARY 26, 2018



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Marketplace Sellers Beware

Remote sellers have long relied on the physical presence requirement upheld in *Quill v. North Dakota* to avoid tax collection in states where they make remote sales. However, based on recent business practices, some remote sellers may have unknowingly triggered physical presence and created a substantial tax liability for prior years. Remote sellers that sell items through popular online marketplaces, such as Amazon.com, need to quickly determine if those relationships have created nexus for them throughout the United States.

Amazon and some competitors have established strategically placed distribution warehouses, known as “fulfillment centers,” all over the world. For instance, it is reported that Amazon has more than 100 fulfillment centers in the United States alone. The fulfillment center approach has been extremely effective for delivering products to consumers in record time, however, that approach may also create substantial tax obligations for marketplace sellers utilizing fulfillment services such as Amazon’s Fulfillment by Amazon (FBA) program or other similar distribution channels.

For example, through its FBA program, Amazon directs participating sellers to send bulk shipments of frequently purchased items to Amazon fulfillment centers located throughout the United States. When a customer places an order for the seller's item via Amazon.com, Amazon ships the product directly from one of their fulfillment centers on the seller's behalf without delay. Sellers utilizing this program may have inadvertently established a physical presence in any state where they have inventory stored in an Amazon fulfillment center.

Physical presence established through fulfillment programs may be of no consequence if the Court overrules *Quill* in *Wayfair*. If *Quill* is upheld, however, we can expect states to put pressure on Amazon to turn over information on their marketplace sellers. This initiative has already been demonstrated as published reports indicate that Amazon turned over seller information to both Massachusetts and Rhode Island earlier this year.

As the states become more aggressive in their efforts to enforce tax collection on remote sellers, by any means necessary, such sellers should reevaluate which states they may be obligated to collect sales tax and consider voluntary disclosure programs or amnesty programs to resolve or limit any past exposure.

If you would like to discuss nexus, voluntary disclosure or amnesty programs, please contact Jason Walker, John Trippier, Richard Farrin or any professional at Zaino Hall & Farrin.

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