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NOTICE 21-23

CLICK-THROUGH NEXUS ELIMINATED
(NOVEMBER 1, 2021)

During the 2021 Legislative Session Senate Bill 50 was passed and signed into law. Section 14 of the Bill amends K.S.A. 79-3702 to eliminate the "click-through" nexus provisions for affiliated persons related to sales and use tax collections.

K.S.A. 79-3702 is the definitional section of the Kansas compensating use tax act. Prior to amendment, K.S.A. 79-3702(h)(2) contained the "click-through" nexus provisions for affiliated persons related to sales and use tax collections. With enactment of the new "remote seller" provisions, [See Notice 21-17 Remote Sellers] the "click-through" nexus provisions previously found in K.S.A 79-3702(h)(2) and (j) have now been eliminated. As amended, these provisions state:

> (2) A retailer shall be presumed to be doing business in this state if any ~~of the following occur:~~
>
> ~~(A) Any~~ person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state and such person:
>
> ~~(i)~~ *(A)* Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;
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> ~~(ii)~~ *(B)* maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;
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> ~~(iii)~~ *(C)* uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the retailer;
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> ~~(iv)~~ *(D)* delivers, installs, assembles or performs maintenance services for the retailer's customers within the state;
>
> ~~(v)~~ *(E)* facilitates the retailer's delivery of property to customers in the state by allowing the retailer's customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;
>
> ~~(vi)~~ *(F)* has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act; or

~~(vii)~~ *(G)* conducts any other activities in the state that are significantly associated with the retailer's ability to establish and maintain a market in the state for the retailer's sales.

~~(B) Any affiliated person conducting activities in this state described in subparagraph (A) or (C) has nexus with this state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state.~~

~~(C) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of $10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer's ability to establish or maintain the retailer's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date of this subparagraph.~~

~~(D) The presumptions in subparagraphs (A) and (B) may be rebutted by demonstrating that the activities of the person or affiliated person in the state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.~~

(3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this section.

(i) "Director" means the director of taxation.

~~(j) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.~~

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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