



New Jersey E-Commerce Sales Tax Legislation

Client Advisories

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On June 30, 2014, New Jersey Governor Christie signed A-3486 into law, effective for sales made on or after July 1, 2014.

The legislation is an effort to collect additional sales taxes and to attempt to level the playing field between retailers which have a physical presence in New Jersey and those who sell online. The substance of the new rules appears as an expansion of the definition of "Seller" in the sales tax provisions (N.J.S.A. 54:32B-2).

Currently, sales made online are subject to sales tax just like sales made at stores physically located in New Jersey. Quite often, online-only retailers do not collect the New Jersey sales tax, which leaves the purchaser responsible for paying the corresponding use tax (which very often goes unpaid). Without collecting either the sales tax or the use tax, New Jersey has not been collecting its share of the tax applicable to the sale. Equally important, the online-only retailers have maintained a competitive advantage over those retailers which have a physical presence in New Jersey.

In an effort to collect those taxes and level the playing field, the new legislation provides:

"A person making sales of tangible personal property, specified digital products, or services under the 'Sales and use Tax Act' . . . shall be presumed to be soliciting business through an independent contractor or other representative if the person making sales enters into an agreement with an independent contractor having physical presence in the State or other representative having physical presence in this State, for a commission or other consideration, under which the independent contractor or representative directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, and the cumulative gross receipts from sales to customers in this State who were referred by all independent contractors or representatives that have this type of an agreement with the person making sales are in excess of \$10,000 during the preceding four quarterly periods ending on the last day of March, June, September, and December. This presumption may be rebutted by proof that the independent contractor or representative with whom the person making sales has an

agreement did not engage in any solicitation in the State on behalf of the person that would satisfy the nexus requirements of the United States Constitution during the four quarterly periods in question.”

In other words, for sales made on or after July 1, those online retailers who use independent contractors (or other representatives) to market their New Jersey sales now have an affirmative duty to collect New Jersey sales tax if (i) the independent contractors have a physical presence in New Jersey, and (ii) the dollar threshold is satisfied.

Should you have any questions about the new law or other tax matters, please contact Gordon F. Moore, Esq., Chair of **Archer’s Tax Law Practice Group**, at gmoore@archerlaw.com or (856) 795-2121.

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