



Multistate Tax

State Tax Matters

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Sales/Use/Indirect:

Michigan: New Law Imposes Affiliate Nexus and Click-Through Nexus Standards with Rebuttable Presumptions

S.B. 658; S.B. 659, signed by gov. 1/15/15. Effective on October 1, 2015, new law creates a rebuttable presumption that certain sellers are engaged in the business of making sales at retail in Michigan, or have nexus with Michigan, and are thus required to collect Michigan sales tax on in-state sales of tangible personal property when the sellers and/or their affiliates are engaged in or have performed certain activities related to such sales. More specifically, the new law provides that a seller who sells tangible personal property to a purchaser in Michigan is presumed to be engaged in the business of making sales at retail in Michigan if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engages in or performs any of the following activities in Michigan:

URL: [http://www.legislature.mi.gov/\(S\(gdrmjk55izfscm45pmn1kmmk\)\)/mileg.aspx?page=getObject&objectName=2013-SB-0658](http://www.legislature.mi.gov/(S(gdrmjk55izfscm45pmn1kmmk))/mileg.aspx?page=getObject&objectName=2013-SB-0658)

URL: [http://www.legislature.mi.gov/\(S\(gdrmjk55izfscm45pmn1kmmk\)\)/mileg.aspx?page=getObject&objectName=2013-SB-0659](http://www.legislature.mi.gov/(S(gdrmjk55izfscm45pmn1kmmk))/mileg.aspx?page=getObject&objectName=2013-SB-0659)

- Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller;
- Uses its employees, agents, representatives, or independent contractors in Michigan to promote or facilitate sales by the seller to purchasers in Michigan;
- Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in Michigan to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in Michigan;
- Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in Michigan that are the same or substantially similar to those used by the seller;

- Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in Michigan;
- Facilitates the sale of tangible personal property to purchasers in Michigan by allowing the seller's purchasers in Michigan to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in Michigan;
- Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in Michigan; or
- Conducts any other activities in Michigan that are significantly associated with the seller's ability to establish and maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

This presumption may be rebutted by demonstrating that the person's activities in Michigan are not significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

In addition, a seller of tangible personal property is presumed to be engaged in the business of making sales at retail of tangible personal property in Michigan if the seller enters into an agreement, directly or indirectly, with one or more residents of Michigan under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an Internet website, in-person oral presentation, or otherwise, to the seller, if the following conditions are satisfied:

- The cumulative gross receipts from sales by the seller to purchasers in Michigan who are referred to the seller by all residents of Michigan with an agreement with the seller are greater than \$10,000 during the immediately preceding twelve months, and
- The seller's total cumulative gross receipts from sales to purchasers in Michigan exceed \$50,000 during the immediately preceding twelve months.

This presumption may be rebutted by demonstrating that the Michigan residents with whom the seller has an agreement did *not* engage in any solicitation or any other activity within Michigan that was significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

— John Hirz
Senior Manager
Deloitte Tax LLP
jhirz@deloitte.com

Shona Ponda
Senior Manager
Deloitte Tax LLP
sponda@deloitte.com

Multistate Tax Alerts

What's new in the States? Our Multistate Tax Alerts highlight selected state tax developments relevant to taxpayers, tax professionals, and other interested persons. Read our more recent alerts below or visit the archive for ones you may have missed.

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US Supreme Court Hears Oral Arguments on Alabama Sales Tax “4-R Act” Case

The US Supreme Court recently heard oral arguments in *Alabama Department of Revenue v. CSX Transportation, Inc.*, a case concerning whether Alabama's sales tax regime is discriminatory under the Railroad Revitalization and Regulatory Reform Act (“4-R Act”). The 4-R Act prohibits a state from “impos[ing] [a] tax that discriminates against rail carriers providing transportation....” The issue before the Court is whether Alabama's sales tax regime, which imposes a sales tax on a railroad's purchases of diesel fuel but exempts similar purchases by certain competitors (motor and water carriers), violates the anti-discrimination provisions of the 4-R Act. This Multistate Tax Alert summarizes the procedural history of CSX and the parties' arguments before the US Supreme Court, and provides some taxpayer considerations.

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[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-supreme-court-hears-oral-arguments-in-alabama-sales-tax-4-r-act-case.html?id=us:em:na:stm:eng:tax:012315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-supreme-court-hears-oral-arguments-in-alabama-sales-tax-4-r-act-case.html?id=us:em:na:stm:eng:tax:012315)

US Supreme Court Hears Oral Arguments in Colorado Remote Seller Notice Case

The US Supreme Court recently heard oral arguments in *Direct Marketing Association v. Brohl*. The original issue in this case, litigated in Federal District Court, involved whether notice and reporting requirements under Colo. Rev. Stat. § 39-21-112(3.5) (applicable to retailers that do not collect Colorado sales tax) violated the Commerce Clause of the US Constitution. The District Court had previously granted a motion for summary judgment brought by the Direct Marketing Association (“DMA”) and issued a permanent injunction enjoining the Colorado Department of Revenue from enforcing the remote seller notice and reporting law, holding that the law violated the Commerce Clause of the US Constitution. The District Court's decision was subsequently reversed by the US Court of Appeals for the 10th Circuit, holding that under the Tax Injunction Act (“TIA”) (28 U.S.C. § 1341) the District Court lacked jurisdiction to issue a permanent injunction prohibiting enforcement of the law. The issue before the US Supreme Court is whether the TIA bars federal court jurisdiction over the suit to enjoin the DOR from enforcing the remote seller notice and reporting law. It is important to note that DMA has also brought a separate action in Colorado state court. That court has granted DMA's motion for a preliminary injunction, preventing Colorado from enforcing its remote seller use tax notice law. This Multistate Tax Alert summarizes the parties' arguments before the US Supreme Court and provides some taxpayer considerations.

[Issued: January 15, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-supreme-court-hears-oral-arguments-in-colorado-remote-seller-notice-case.html?id=us:em:na:stm:eng:tax:012315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-supreme-court-hears-oral-arguments-in-colorado-remote-seller-notice-case.html?id=us:em:na:stm:eng:tax:012315)

New York City Administrative Law Judge Permits Non-NYC Subsidiary to be Excluded from Combined Group

An Administrative Law Judge (the “ALJ”) from the New York City Tax Appeals Tribunal recently ruled in favor of Astoria Financial Corporation (“Astoria Financial”), dismissing claims brought by the New York City Department of Finance (the “Department”) that Astoria Financial should have included a certain non-taxpayer subsidiary in its New York City combined Banking Corporation Tax returns for the years 2006-2008. The Department is appealing this ALJ decision to the New York City Tax Appeals Tribunal. Accordingly, the decision is not yet final. This Multistate Tax Alert summarizes this ALJ decision.

[Issued: January 20, 2015]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-nyc-alj-permits-non-nyc-subsidiary-to-be-excluded-from-combined-group.html?id=us:em:na:stm:eng:tax:012315>

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