

Additional Nexus Standard

Out-of-State Retailers Have Nexus in Certain Circumstances

Effective July 1, 2015, Tennessee law creates a rebuttable presumption that out-of-state retailers have nexus, and must collect sales and use tax from Tennessee customers, if the retailer pays an in-state party a fee or commission to route customers to the retailer.

The new legislation says that a dealer that makes sales of tangible personal property or services in Tennessee is presumed to have a substantial nexus with this state, and it is required to collect and remit sales and use tax on all of its taxable sales in Tennessee if both of the following conditions are met:

- 1) The dealer enters into an agreement or contract with one or more people located in Tennessee under which, for consideration, the person refers potential customers to the dealer, by link on an Internet Web site or other means.
- 2) The cumulative gross receipts from retail sales by the dealer to customers in Tennessee as a result of referrals to the dealer by all of the dealer's resident representatives under the type of agreement or contract described above total more than \$10,000 during the preceding 12 months.

Example: Company A is an online retailer of golf clothing located in California that sells its merchandise nationwide. Other than making sales of its products in Tennessee delivered by common

carrier, as described below, Company A has no other connections with Tennessee. Company A enters agreements with Tennessee golf clubs where the clubs maintain links on their websites to Company A's retail website. Company A pays a commission to the clubs based on its sales originating from those links. During the preceding 12 months, Company A had gross sales based on these referrals totaling \$85,000.

Company A is presumed to have nexus with Tennessee and must collect sales and use tax from its Tennessee customers.

A Dealer May Rebut the Presumption

A dealer may rebut the presumption by proving that the referring entity's activity did not substantially contribute to its market in Tennessee during the past year.

The legislation says that a dealer may rebut the presumption only by clear and convincing evidence that the person with whom it has an agreement did not conduct any activities in Tennessee that would substantially contribute to the dealer's ability to establish and maintain a market in Tennessee during the preceding 12 months.

For More Information

Visit www.tn.gov/revenue. Click on [Revenue Help](#) to search for answers or to submit an information request to one of our agents.

References

Public Chapter 514, §§ 27 & 28 (2015)