

Alabama Department of Revenue

News Release

July 29, 2003

Recent Legislation Clarifies “Remote Entity Nexus”

Montgomery, July 29, 2003—A new act effective Friday will make it easier for state and local governments in Alabama to collect the proper taxes on products delivered to customers in Alabama.

Act 2003-390, effective Aug. 1, 2003, outlines the conditions which establish a foreign business’ physical presence (or “nexus”) in Alabama, thereby requiring the business to collect and remit state and local use tax. Additionally, the new law defines the relationship between two related entities—an out-of-state vendor and an in-state business—which would result in the out-of-state vendor being required to collect and remit state and local taxes to Alabama.

“With Alabama’s fiscal crisis and the revenue loss of uncollected sales tax from Internet transactions, there is an increasing need for clarifying a state of nexus between a remote seller and an in-state business,” explained State Revenue Commissioner Dwight Carlisle. “This significant legislation is another step toward the department’s goal of promoting taxpayer compliance with Alabama’s sales and use tax laws.”

The new law is patterned after legislation passed in other states, which are also struggling to collect taxes on the growing amount of retail transactions being conducted via the Internet and catalog sales. The legislation was sponsored in the House by Rep. Betty Carol Graham and in the Senate by Sen. Hank Sanders.

The following criteria will determine if the relationship between the entities of an out-of-state vendor and an in-state business establishes a substantial physical presence, or nexus:

- If an out-of-state vendor and an in-state business maintaining one or more locations are related parties;
- If they use an identical or substantially similar name, trade name, trademark, or goodwill, to develop, promote, or maintain sales;
- If they pay for each other’s services in whole or in part contingent upon the volume or value of sales;
- If they share a common business plan or substantially coordinate their business plans;
- If the in-state business provides services to the out-of-state vendor related to developing, promoting or maintaining the in-state market, resulting in benefit to the out-of-state vendor.

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The following criteria determine whether the entities of an out-of-state vendor and an in-state business are considered “related parties”:

- If one or both is a corporation, and one entity and any party related to that entity in a manner requiring an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Sec. 318, Internal Revenue Service Code, owns directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation’s outstanding stock;
- If one or both is a limited liability company, partnership, estate or trust, and any member, partner or beneficiary and the limited liability company, partnership, estate or trust and its members, partners and beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, or capital, or stock, or value of the other entity, or both entities;
- If an individual stockholder and his/her family members (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of both entities’ outstanding stock.

For more information concerning Alabama’s determination of remote entity nexus, contact the Sales, Use and Business Tax Division at (334) 242-1490 or visit the department’s Web site at www.ador.state.al.us.

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