



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

NICK A. KHOURI  
STATE TREASURER

**REVENUE ADMINISTRATIVE BULLETIN 2015-22**

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**SALES AND USE TAX NEXUS STANDARDS FOR OUT-OF-STATE SELLERS**

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

**RAB 2015-22.** This Revenue Administrative Bulletin (RAB) supplements RAB 1999-1 following the enactment of 2014 PA 553 and 2014 PA 554 and the adoption of new sections MCL 205.52b and MCL 205.95a to address when an out-of-state seller is presumed to have nexus for purposes of the General Sales Tax Act<sup>1</sup> or the Use Tax Act.<sup>2</sup>

**ISSUES**

- I. When is an out-of-state seller presumed to be engaged in the business of making sales at retail of tangible personal property in Michigan for purposes of the General Sales Tax Act or the Use Tax Act?
- II. When is an out-of-state seller who has agreements with one or more residents of Michigan presumed to be engaged in the business of making sales at retail of tangible personal property in Michigan?
- III. Once nexus is established, how long is an out-of-state seller presumed to be engaged in the business of making sales at retail in Michigan?
- IV. What are the filing requirements for out-of-state sellers who have nexus with Michigan for sales or use tax purposes?
- V. When is this RAB effective?

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<sup>1</sup> MCL 205.51 *et seq.*

<sup>2</sup> MCL 205.91 *et seq.*

## CONCLUSIONS

I. An out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan and subject to the General Sales Tax Act and/or the Use Tax Act when the seller or another person engages in or performs any of the following activities in this state<sup>3</sup>:

- A. Sells a similar line of products as the seller and does so under the same or similar business name as the seller.
- B. Uses its employees, agents, representatives, or independent contractors in Michigan to promote or facilitate sales by the seller to purchasers in Michigan.
- C. 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.
- D. 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.
- E. Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in Michigan.
- F. 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.
- G. 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.
- H. 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 a person's activities in Michigan are not significantly associated with the out-of-state seller's ability to establish or maintain a market in Michigan for sales of tangible personal property to purchasers in Michigan.

**Example 1** - An out-of-state company that uses its own trucks to deliver goods to purchasers in Michigan will have nexus with Michigan for sales and use tax purposes.

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<sup>3</sup> MCL 205.52b and MCL 205.95a, respectively.

**Example 2** - An out-of-state company whose wholly-owned subsidiary delivers goods to purchasers in Michigan will have nexus with Michigan for sales and use tax purposes.

II. An out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan if the seller has entered into an agreement with one or more Michigan residents under which the resident refers potential purchasers (e.g., by a link on an internet website, or by an in-person oral presentation) to the seller for a commission or other consideration based on completed sales.<sup>4</sup>

A. The presumption only arises if both of the following apply:

1. Gross receipts from all referred sales to purchasers in Michigan are greater than \$10,000 during the immediately preceding 12 calendar months; and
2. Gross receipts from all sales to purchasers in Michigan exceed \$50,000 during the immediately preceding 12 calendar months.

B. The out-of-state seller may rebut the presumption by demonstrating that the residents of Michigan with whom the seller has an agreement did not engage in any solicitation or other activity that is 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. The presumption shall be considered rebutted if evidence of all the following is provided:

1. Contract condition. The agreement or contract between the seller and the resident provides that the resident is prohibited from engaging in any solicitation activities in Michigan on behalf of the seller. This includes, but is not limited to: the referral of potential customers to the seller by means of distributing flyers, coupons, newsletters and other printed promotional materials, or electronic equivalents; verbal solicitation (e.g., in-person referrals); initiating telephone calls, and; sending e-mails. In addition, if the resident is an organization such as a club or a non-profit group, the contract or agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described above, and;
2. Proof of compliance condition. Each resident representative provides to the seller a signed statement stating that the resident representative has not engaged in any prohibited solicitation or other activities in Michigan on behalf of the seller, at any time during the immediately preceding 12 calendar months. In addition, if the resident representative is an organization, the statement must also include a statement from the resident organization certifying that its website includes information directed at its members alerting them to the prohibition against the

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<sup>4</sup> When the referral originates from a website this is generally referred to as "click-through" nexus. However, this also applies to agreements in print or any other form of media.

solicitation and other activities described in this bulletin. The statements must be provided and obtained in good faith.

- C. Mere advertising will not give rise to the presumption. This does not apply when advertising is paid for by commissions or other consideration based on completed sales.
- D. An out-of-state seller can use the *Annual Certification of No Solicitation and Statement from Organization*, if applicable, contained in this RAB to satisfy MCL 205.52b(4) and MCL 205.95a(4).
- E. For purposes of MCL 205.52b and MCL 205.95a, resident includes, but is not limited to: an individual domiciled in Michigan; an entity organized or incorporated under the laws of Michigan; or any entity with a place of business, or otherwise engaged in business, in Michigan.

**Example 3** - XYZ Company (XYZ) is an Internet-based retailer of sporting goods specializing in hockey equipment. XYZ is located in Massachusetts. XYZ makes sales of its merchandise throughout the United States and has customers in Michigan. The merchandise sold by XYZ is delivered by the U.S. Postal Service or by common carrier. As part of its marketing plan, XYZ has entered into agreements with several hockey clubs located in Michigan whereby the hockey clubs will maintain links to XYZ's retail website on the clubs' own websites. XYZ will pay a commission and/or other consideration to the hockey clubs based on completed sales that XYZ makes that originate from these links. From October 1, 2015, to September 30, 2016 (i.e., the immediately preceding 12 calendar months), XYZ has gross receipts from sales of its merchandise based on these agreements with the Michigan hockey clubs totaling \$80,000. Other than its customers and the agreement described above, XYZ has no other connection with Michigan. XYZ is presumed to be making taxable sales in Michigan and is required to be registered as a seller, remit Michigan taxes, and file returns.

**Example 4** - ABC Inc. (ABC) is an Internet-based retailer of home tools and supplies. ABC's home office is in North Carolina, ABC makes sales of its products nationwide, including Michigan, and its products are delivered to its customers by common carrier. Other than having customers in Michigan and the agreements described below, ABC has no other connection with Michigan. As part of its business plan to market its products in Michigan, ABC enters into agreements with several local organizations to place online advertisements on their websites, which, when clicked, lead the website user to ABC's retail website. In exchange for placing ABC's advertisements on its website, ABC will pay the organizations a set fee based solely on the number of clicks on the link to ABC's website, whether or not sales are made. ABC's agreement with the organizations is merely to place advertising on the organizations' websites. Therefore, ABC is not presumed to be a seller making taxable sales in Michigan by soliciting business in Michigan. Consequently, ABC is not required to register for sales and/or use tax purposes.

III. The following addresses how long an out-of-state seller will be presumed to be engaged in the business of making sales at retail in Michigan for purposes of MCL 205.52b and MCL 205.95a.

- A. Once nexus is established under MCL 205.52b(1) or MCL 205.95a(1), an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan commencing with the day nexus is established and for the following 11 calendar months.

**Example 5** - An out-of-state seller's representative enters Michigan on January 17 and 18 for purposes of making sales of tangible personal property in Michigan. The out-of-state seller has nexus with Michigan beginning on the second day of contact — January 18 — forward. The seller must remit and file tax returns for the remainder of the month of January and the next succeeding 11 calendar months.

- B. Once nexus is established under MCL 205.52b(3) or MCL 205.95a(3), an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan commencing with the first day of the calendar month and for the following 11 calendar months.

**Example 6** - Under the facts presented in Example 3 above, XYZ has nexus with Michigan beginning on October 1, 2016. The seller must remit and file tax returns for the entire month of October and the next succeeding 11 calendar months.

IV. Out-of-state sellers who have nexus with Michigan for sales or use tax purposes are required to file applicable sales and/or use tax returns. For information regarding registration and return filing obligations, please visit <http://www.michigan.gov/taxes>.

V. This RAB is effective October 1, 2015.

**Annual Certification of No Solicitation  
and Statement from Organization**

**Instructions.** A person may complete the *Annual Certification of No Solicitation*, or any document that satisfies statutory requirements, to annually certify under penalty of perjury that the person has not engaged in any solicitation activities in Michigan at any time during the previous 12 month period.

An organization should also complete the *Statement from Organization*, or any document that satisfies the statutory requirements, to annually certify under penalty of perjury that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described above.

These forms or any other document that satisfies the annual certification requirements of the statute should be kept for a minimum of 7 years.

**ANNUAL CERTIFICATION OF  
NO SOLICITATION**

*(to be completed by persons operating in Michigan)*

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the person named below is operating under an agreement with \_\_\_\_\_ and the  
OUT-OF-STATE SELLER'S NAME  
 person named below has not engaged in "solicitation activities" in Michigan that would refer potential customers to  
 \_\_\_\_\_ at any time during the previous 12 calendar months (\_\_\_\_\_  
OUT-OF-STATE SELLER'S NAME PERIOD

"Solicitation activities" include, but are not limited to, distributing flyers, coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

PERSON'S NAME		
SIGNATURE OF PERSON OR PERSON'S AUTHORIZED REPRESENTATIVE		DATE
PRINTED NAME OF PERSON SIGNING	TITLE	TELEPHONE NUMBER (       )
ADDRESS OF PERSON SIGNING (Street, City, State, Zip Code)		
ADDRESS OF PERSON'S AUTHORIZED REPRESENTATIVE <b>WHEN APPLICABLE</b> (Street, City, State, Zip Code)		

**STATEMENT FROM  
ORGANIZATION**  
*(to be completed by organizations)*

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the website of the organization named below includes information that alerts its members that they are prohibited from engaging in any solicitation activities in Michigan that refers potential customers to \_\_\_\_\_, including, but not limited to, distributing flyers, coupons, newsletters, OUT-OF-STATE SELLER'S NAME and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

PERSON'S NAME		
SIGNATURE OF PERSON OR PERSON'S AUTHORIZED REPRESENTATIVE		DATE
PRINTED NAME OF PERSON SIGNING	TITLE	TELEPHONE NUMBER (        )
ADDRESS OF PERSON SIGNING (Street, City, State, Zip Code)		
ADDRESS OF PERSON'S AUTHORIZED REPRESENTATIVE <b>WHEN APPLICABLE</b> (Street, City, State, Zip Code)		