

USE TAX ACT (EXCERPT)
Act 94 of 1937

205.95a Sale of tangible personal property; nexus with state; presumptions; purchase of advertisements; agreement; effectiveness of section; definitions.

Sec. 5a.

(1) A seller who sells tangible personal property is presumed to have nexus with this state and shall register with the department and collect the tax levied under this act 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 this state:

(a) 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.

(b) Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state.

(c) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state for storage, use, or consumption in this state.

(d) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state 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 this state.

(f) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state 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 this state.

(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 this state.

(h) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state.

(2) The presumption under subsection (1) may be rebutted by demonstrating that a person's activities in this state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales of tangible personal property to purchasers in this state.

(3) In addition to the presumption under subsection (1), a seller of tangible personal property is presumed to have nexus in this state and shall register with the department and collect the tax levied under this act if the seller enters into an agreement, directly or indirectly, with 1 or more residents of this state 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 all of the following conditions are satisfied:

(a) The cumulative gross receipts from sales by the seller for storage, use, or consumption in this state to purchasers in this state who are referred to the seller by all residents of this state with an agreement with the seller are greater than \$10,000.00 during the immediately preceding 12 months.

(b) The seller's total cumulative gross receipts from sales for storage, use, or consumption to purchasers in this state exceed \$50,000.00 during the immediately preceding 12 months.

(4) The presumption under subsection (3) may be rebutted by demonstrating that the residents of this state with whom the seller has an agreement did not engage in any solicitation or any other activity within this state that was significantly associated with the seller's ability to establish or maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state for storage, use, or consumption in this state. The presumption under subsection (3) shall be considered rebutted by evidence of all of the following:

(a) Written agreements prohibiting all of the residents with an agreement with the seller from engaging in any solicitation activities in this state on behalf of the seller.

(b) Written statements from all of the residents with an agreement with the seller stating that the resident representatives did not engage in any solicitation or other activities in this state on behalf of the seller during the immediately preceding 12 months, if the statements are provided and obtained in good faith.

(5) An agreement under which a seller purchases advertisements from a person or persons in this state to be delivered through television, radio, print, the internet, or any other medium is not an agreement described in subsection (3) unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon completed sales of tangible personal property.

(6) This section applies to transactions occurring on or after the effective date of the amendatory act that added this section and without regard to the date the seller and the resident entered into an agreement described in subsection (3). The 12 months before the effective date of the amendatory act that added this section are included as part of the immediately preceding 12 months for purposes of subsection (3).

(7) As used in this section:

(a) "Affiliated person" means either of the following:

(i) Any person that is a part of the same controlled group of corporations as the seller.

(ii) Any other person that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

(b) "Controlled group of corporations" means that term as defined in section 1563(a) of the internal revenue code, 26 USC 1563.

History: Add. 2014, Act 554, Eff. Oct. 1, 2015