

SALES TAX UPDATE

New State Sales and Use Tax Requirements for Remote Sellers

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Historically, an out-of-state seller cannot be required to collect and remit a state's sales tax unless the seller has a physical presence within that state. The physical presence requirement is based on the 1992 United States Supreme Court decision in *Quill v. North Dakota*.

Many states are arguing that with the explosion of the Internet as a sales tool, the decision reached in *Quill* in 1992 is no longer applicable in today's economy. To get the Supreme Court to revisit its decision in *Quill*, various states have passed regulations requiring remote sellers who lack an in-state physical presence to either collect sales tax or comply with new notice reporting requirements.

The notice reporting requirements vary by state but generally include the following:

- a notice on each invoice that sales tax was not collected and the purchaser may be required to pay use tax directly to the state,
- an annual notice to each purchaser detailing the total purchases made during the year, and/or
- an annual notice to the state reporting total sales to each in-state purchaser during the year.

Some states have set de minimis reporting thresholds based on a company's in-state sales volume for the year. If annual sales within that state do not exceed the threshold amount, the reporting requirements will not apply to the company for that tax year. In Colorado, for example, if a company's in-state sales are less than \$100,000 for the year, the company is not subject to the use tax reporting requirements for that year.

The Supreme Court has recently agreed to revisit the *Quill* decision and a ruling is expected in Summer 2018. Although the Supreme Court decision could ultimately overturn the state reporting requirements, we recommend implementing the following changes on all invoices for products on which state sales tax is not collected:

- **Invoices should not imply that no sales tax is due.** An invoice line designated "Sales Tax" and showing the amount of sales tax as "0.00" implies that there is no tax due on the purchase. This line should either be omitted from the invoice, or the description should be changed to "Sales Tax Collected By [name of seller]"
- **Add a disclaimer to each invoice stating:**
 - The company is not required to, and does not collect, State sales or use tax,
 - The purchase may be subject to State use tax unless the purchase is exempt from taxation in the State,
 - The purchase is not exempt from State sales or use tax merely because it is made over the internet, by catalog, or by other remote means, and
 - The State requires that an in-state purchaser report all purchases that are not taxed by the retailer and pay the use tax on those purchases unless exempt under State law. The tax may be reported and paid on an individual's income tax return, or by filing a sales or use tax return at the end of the year. These forms and instructions may be found on the State's website.

We strongly encourage you to review the states in which you make remote sales to determine how these recent changes may impact your company's ongoing sales tax requirements.