akerman

Blog Post

Significant Changes to Illinois Nexus Rules Effective October 1, 2018

September 28, 2018

Illinois recently passed Public Act 100-587 which requires remote sellers with no physical presence in Illinois to register and collect Use Tax on sales sourced to the state if certain thresholds are met, effective October 1, 2018. On September 11, 2018, the Department issued an emergency regulation, Sec. 150.803 to provide further guidance on the state's new economic nexus statute.[1]

Economic nexus was recently the subject of a U.S. Supreme Court case, *South Dakota v. Wayfair*, in which the Supreme Court ruled in favor of South Dakota stating that economic nexus could be Constitutional, overturning *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992) and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753 (1967), which required businesses to have a physical presence in a taxing jurisdiction in order to create nexus for sales and use tax purposes. While the Supreme Court did not create a bright line rule or confirm that the South Dakota economic nexus statute was constitutional *per se* in *Wayfair*, it did positively discuss the law and indicated that if other states were to enact similar provisions, they would likely meet the substantial nexus requirements outline in the Commerce Clause. As such, many states have recently proposed, passed, or issued similar provisions.[2]

Related Work

Tax

Related Offices

Chicago

SALT Insights

Akerman Perspectives on the State of Taxation

Visit this Akerman blog

Public Act 100-587 is largely similar to the economic nexus provision at issue in *Wayfair* and states that a remote seller exceeding the following thresholds in the prior twelve month period must register, collect, and remit Use Tax in Illinois:

- Cumulative gross receipts from sales of tangible personal property to purchasers in Illinois meet or exceed $100,000; or
- 200 or more separate transactions of sales of tangible personal property to purchasers in Illinois.

Additionally, retailers should review their sales on a quarterly basis to determine if they meet or exceed these thresholds for the immediately prior twelve month period.

In their emergency regulation, the Department clarified who may be subject to these rules stating that the regulation *only* applies to remote retailers without a physical presence in Illinois and does *not* apply to retailers that make *exclusively* nontaxable sales (e.g., 100% of their sales are exempt such as sales for resale). Additionally, the Department further defined what is considered a "separate transaction," that sales that are subject to Retailer's Occupation Tax ("ROT" or "sales tax") such as those made at a trade show are excluded from the thresholds, and that if you make sales of both taxable and nontaxable tangible personal property, unless otherwise excluded, both must be included when determining whether you meet or exceed the thresholds listed above.

By allowing sales that are subject to ROT to be excluded from the threshold calculation, the Department is retaining specific safe-harbors that currently exist under Illinois law. For example, the Department recently issued a regulation effective July 27, 2018 which states that remote sellers taking part in trade show activity in Illinois do not have nexus if they meet the following conditions:

1. Attend no more than two trade shows a year;
2. Spend no more than eight days in total at those two trade shows; and
3. Receipts from the in-state trade shows do not exceed $10,000.

As such, retailers may still attend or present at trade shows in Illinois and not create nexus as long as they also do not meet the economic nexus thresholds in Public Act 100-587.

Illinois' economic nexus rules are similar to many other states that also have economic nexus provisions, however, not all states have utilized the same thresholds. For example, Alabama, Connecticut, Georgia, Mississippi, and South Carolina all have thresholds of $250,000. Further, Illinois has carved out specific safe-harbors and other exclusions, which has not been done in all states with similar rules. Taxing jurisdictions and retailers alike are still reeling from the momentous decision in *Wayfair*. We expect to continue to see changes as more jurisdictions respond to Wayfair, both for purposes of sales/use taxes, as well as other state and local tax types.

[1] An emergency regulation in Illinois is effective immediately and for a maximum of 150 days.

[2] Approximately 33 states have passed or proposed economic nexus provisions in the past two years, many within the past several months in response to the *Wayfair* decision. While Illinois' Public Act 100-587 was passed prior to the decision in *South Dakota v. Wayfair*, its effective date has always been October 1, 2018.