
What all Direct Selling Companies **MUST** know about Sales Taxes

By Jim Richmond

THE 50 STATES

- Presently 45 states and the District of Columbia impose a sales tax.
- Only the states of Alaska, Delaware, Montana, New Hampshire and Oregon do not impose a sales tax.
 - However, in Alaska approximately 100 local jurisdictions (boroughs and cities) do impose a sales tax.

LOCAL JURISDICTIONS

- Currently 37 states permit local jurisdictions to impose a sales tax.
- At this time there are more than 7,500 local jurisdictions (counties, cities, etc.) that impose a sales tax.
- Of these 7,500 local jurisdictions, 7,200 are administered (collected) by their respective state.

LOCAL JURISDICTIONS

- The 300 local jurisdictions not administered by their respective state are in the states of Alabama, Alaska, Arizona, Colorado, Idaho, and Louisiana.
- These jurisdictions are referred to as “home rule”, or “self administered” jurisdictions. If a company will collect any of these sales taxes on behalf of their independent sellers, it must have a separate Agreement or Letter of Understanding and registration with these jurisdictions.

ALASKA

- The majority of companies in this industry do not collect local sales taxes in Alaska. This is primarily due to the low amount of sales, cost of obtaining and maintaining a sales tax license, special exemptions and that the jurisdictions prefer not to have the company outside of their state administer their tax for fear of losing control of this source of revenue.

RATES AND EXEMPTIONS

- Rates and exemptions vary from state-to-state and even within a state that has local sales taxes.

EXEMPTIONS

- The most common exemptions are for food, supplements and clothing.
- While the exemption provision for these products is broad in nature, a company must review its products to determine the correct status.

SHIPPING

- The taxability of shipping charges varies from state-to-state and is dependent on the terminology used on the invoice, the taxability of the products sold and basis for the charge.

LEGAL REQUIREMENTS

- The states of Kansas, Texas, Washington and Wisconsin **require** by law that all direct selling, multi-level marketing and network marketing companies administer sales taxes on behalf of their independent sellers. There are no exceptions to this rule.

LEGAL REQUIREMENTS

- A company will also be required to collect taxes in the states where it is domiciled (located) and those where it has a physical presence such as employees, property or inventory.

OTHER STATES

- The remaining states and local jurisdictions have statutory authority to require any company to collect their sales tax, even if that company is not a retailer, if the state or local jurisdiction deems it necessary for the protection and efficient administration of the revenue due.
- Given the current financial condition of the states and local jurisdictions, it is anticipated that many will become very aggressive and seek to impose this provision.

AGREEMENTS

- All of the states require a company that will administer sales taxes on behalf of its independent seller to enter into an Agreement or Letter of Understanding to formalize the process.
- No company should begin collecting taxes without first entering into an Agreement or Letter of Understanding.

AGREEMENTS

- Companies that are collecting but have not entered into such agreement are strongly advised to do so.
- These Agreements or Letters of Understanding provide important protection for the company.

SUGGESTED RETAIL PRICE

- Sales tax must be collected on the suggested retail price and ship-to-address.
- Exceptions can be made if the company has a procedure in place to designate that a purchase from an independent seller is for personal use or consumption and for purchases by preferred customers.

RETAILING TO THE GENERAL PUBLIC

- Companies that retail products directly to the general public or as a convenience to the retail customers of their independent sellers, in addition to selling at wholesale to their independent sellers, will find it more difficult to defend itself from the responsibility of collecting sales taxes than a company that is only wholesaling.

RESALE OR EXEMPTION CERTIFICATE

- If a company elects to only collect sales taxes in those states where it is legally required do so it must obtain a valid resale or exemption certificate from its independent sellers in those states where it is not collecting. These certificates must be renewed periodically based on each state's law.

SOFTWARE

- There are various companies that provide software to enable a company to collect and pay sales taxes.
- A company should review the different packages and services available before making a decision.

ASSISTANCE

- Companies should also obtain the services of a qualified and knowledgeable individual or firm to assist them in this process.

BENEFITS

- There are many benefits that a company will derive if it elects to administer all the sales taxes.
- These include, but are not limited to,
 - compliance with the Sarbanes-Oxley Act
 - controlling and ensuring compliance with the various sales taxes laws
 - reducing the compliance burden and associated costs on its sellers
 - time value of money
 - vendor compensation
 - creating a culture of partnership between the company, its salesforce, and state and local taxing jurisdictions.

CREDIBILITY

- Your company's credibility depends on your knowledge and compliance with the law, your commitment to your salesforce and customers and your awareness of legal and regulatory trends affecting the industry.

NEXUS

- Having an agreement and registering with a state for the collection and payment of sales tax on behalf of the independent sellers does not create nexus or the need to file a business activity return (Income, Franchise, etc.) with a state. Nor does it require the company to register with the secretary of state as a Foreign Entity.

SUMMARY

- Companies that do not seriously address the administration of sales taxes but ignore the issue all together may learn too late that they face a significant liability for failure to comply, and a loss of credibility.

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