

Gavel to Gavel: Retail Protection Act to affect internet sales

By: Sheppard F. Miers Jr. August 24, 2016 0



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Internet sales to Oklahomans are going to be subject to new sales tax rules starting Nov. 1.

The new Oklahoma Retail Protection Act of 2016 is to provide a sales tax level playing field between brick-and-mortar businesses that have been required to collect sales tax on their sales from locations in Oklahoma and many out-of-state businesses selling only via the internet that have not been collecting sales tax from their Oklahoma customers. The act is also focused on reducing the estimated significant fiscal impact being experienced by Oklahoma state and local government due to inability to collect sales and use tax.

Many out-of-state vendors selling to Oklahoma customers only via the internet probably do not collect sales tax due to a 1992 U.S. Supreme Court case, *Quill Corp. v. North Dakota*. It held that an out-of-state vendor is not required to collect and pay sales tax if it does not have an office or store giving it a physical presence "nexus" in the state.

If sales tax is not collected, state and local use tax generally is required to be paid by a retail consumer on the items purchased from the out-of-state vendor via internet. But requiring compliance and payment of use tax by individual consumers has reportedly been ineffective under existing law.

The act will try to shift and increase the burden of sales and use tax compliance. In effect, it will treat some out-of-state vendors selling only via the internet as though they are selling from within Oklahoma. A taxable "nexus" in Oklahoma will be attributed to them, requiring them to collect sales tax if they are involved with specified activities or people within the state, such as having in-state affiliates or service providers.

Out-of-state vendors will also be required to send an annual statement to internet customers in Oklahoma that use tax should be paid if due. The act may be challenged by out-of-state vendors as being in violation of the Commerce Clause of the U.S. Constitution and inconsistent with the test for imposing tax liability under the *Quill* case.

The potential effects of the act should be considered by businesses and individuals involved in out-of-state vendor internet sales to Oklahoma customers.

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