

Sales and Use Tax Notices

You May Need to Register With Maryland

An amendment to the Maryland Sales and Use Tax Act that changes the definition of an out-of-state vendor may require you to register as an out-of-state vendor and file Maryland sales and use tax returns effective July 1, 1995.

Under Maryland law, out-of-state vendors must register with the Maryland comptroller and file Maryland sales and use tax returns. The term "engage in the business of an out-of-state vendor" is defined in the Maryland Code, Tax-General Article, Sec. 11-701(b). Before July 1, 1995, the term included:

- i. permanently or temporarily maintaining, occupying, or using any office, sales or sample room, or distribution, storage, warehouse, or other place for the sale of tangible personal property or a taxable service directly or indirectly through an agent or subsidiary; or
- ii. having an agent, canvasser, representative, salesman, or solicitor operating in the state for the purpose of delivering, selling, or taking orders for tangible personal property or a taxable service. Section 11-701(b)(2):
Effective July 1, 1995, the Maryland General Assembly amended Section 11-701(b)(2) to expand the term "engage in the business of an out-of-state vendor" to include:
- iii. entering the State on a regular basis to provide service or repair for tangible personal property. The Comptroller's Office intends to interpret Section 11-701(b)(2), including sub-paragraph (iii), as broadly as is permitted under the United States Constitution. It is our position that the Constitution does not require an out-of-state vendor to have a substantial physical presence in the taxing state for the state to require that vendor to collect sales and use tax. All that is required is for the out-of-state vendor to demonstrate more than a "slightest presence" in the taxing state.

In general, entering the state to service or repair tangible personal property will be regarded as "regular" if a vendor, such as furniture or appliance dealers, provides such service or repair as a customary, usual or normal course of business.

The statute does not define the term "service...for tangible personal property." Therefore, the comptroller will apply the dictionary definition of "service." As used in Section 11-701(b)(2)(iii), service is defined as "installation, maintenance, or repairs provided or guaranteed by a dealer or manufacturer." The American Heritage Dictionary, Second College Edition (1985).

A dealer or manufacturer who regularly installs, or who performs maintenance for, tangible personal property such as furniture or appliances is engaged in the business of an out-of-state vendor within the meaning of Section 11-701(b)(2)(iii).

No minimum number of service or repair visits is required to meet the definition. If it is the vendor's policy to provide service or repair for tangible personal property, and

the vendor in fact provides such services or repairs during the audit period, these services or repairs will be regarded as regular. On the other hand, any services or repairs that are provided on a discretionary and infrequent basis will not be regarded as regular.

We will examine all relevant information in making a determination, including advertising materials and promotional literature, representations made to prospective customers before sale, whether the vendor routinely employs service or repair personnel or regularly contracts for such services or repairs, and the vendor's description of its business operations as contained in business documents and submissions to government agencies in the vendor's home state.

If you believe that your company engages in the business of an out-of-state vendor, as defined in Section 11-701(b)(2) please register by filing out a Combined Registration Application. The application is available on www.marylandtaxes.com. If you have any questions, please contact one of the assistant attorneys general assigned to the Compliance Division at 410-767-1561.

For additional information:

Comptroller of Maryland Revenue Administration Division 110 Carroll Street
Annapolis, Maryland 21411

Call Taxpayer Service at 410-260-7980 or 1-800-638-2937 (from elsewhere in Maryland) from 8:00 a.m. to 5:00 p.m. eastern time. E-Mail: taxhelp@cmp.state.md.us

For the deaf or hard-of-hearing:

TTY users call via Maryland Relay at 711.

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