

Business Activity and Nexus in Utah



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Purpose

The purpose of this publication is to define nexus and provide general guidelines for determining whether a business entity's activities create nexus with the state of Utah.

Definitions

Nexus

Nexus means a business entity has established a direct or representational presence within a state or jurisdiction. This presence allows the state to require the business to collect and pay certain taxes.

The standards are different for determining whether a business has nexus for purposes of sales tax or corporate franchise/income tax.

Retailer

Utah law defines a retailer as any person regularly engaged in regular solicitation of a consumer market in Utah. A retailer includes commission merchants, auctioneers, salespersons, representatives, distributors, supervisors and employers.

Sales Tax

The United States Constitution requires a business to have sufficient nexus with Utah in order for Utah to require that business to collect and pay sales tax.

A business that engages in the following activities exceeds the minimum threshold of nexus, subjecting it to Utah's sales and use tax requirements.

Retailers and marketplace facilitators must collect and pay sales and use tax on their sales and on sales they facilitate on their marketplace if they:

1. sell tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state; in either the previous calendar year or the current calendar year, that result in either:
 - a. gross revenues of more than \$100,000; or
 - b. 200 or more separate transactions.

2. have or use an office, distribution house, sales house, warehouse, service enterprise or other place of business;
3. maintain a stock of goods in Utah;
4. regularly solicit orders (whether or not those orders are accepted in Utah), unless the activity in Utah is only advertising or solicitation by direct mail, email, the Internet, telephone or similar means;
5. regularly deliver property in Utah other than by common carrier or U.S. mail; or
6. regularly engage in any activity related to the leasing or servicing of property located in Utah.

A seller also has nexus in Utah if:

1. a. the seller has more than 10 percent interest in a related seller, or
b. a related seller has more than 10 percent interest in the seller, or
c. a related seller wholly owns the seller, and
2. a. the seller sells the same or very similar line of products as the related seller under the same or a very similar business name, or
b. the place of business of the related seller or one of its in-state employees is used to advertise, promote or assist sales by the seller to a buyer.

Corporate Tax

Public Law 86-272 restricts a state from imposing a net income tax on income earned within its borders from interstate commerce if the company's only business activity within the state is the solicitation of orders for sales of tangible personal property. **Only the solicitation to sell tangible personal property has immunity under P.L. 86-272.**

Businesses that earn income from Utah sources, other than from merely soliciting sales of tangible personal property, are required to file a Utah corporation franchise and income tax return. For example, a corporation has Utah nexus and is subject to this tax if it:

1. sells or performs services in Utah in which the customer receives the greater benefit of the service in Utah, or

2. earns income from the use of intangible property in Utah. Corporations that make loans or issue credit cards to Utah customers (e.g., banks) are subject to the Utah corporate franchise or income tax whether or not they have a business location in Utah.

For the sale of tangible personal property to be protected under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors. "De minimis" means those activities that, when taken together, establish only a trivial connection with the taxing state.

The following activities establish nexus in Utah (See Utah Administrative Rule R865-6F-6):

1. Repairing, maintaining or servicing the property.
2. Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.
3. Investigating credit worthiness.
4. Installing or supervising installation at or after shipment or delivery.
5. Conducting training courses, seminars or lectures for personnel (other than personnel involved only in solicitation).
6. Providing any kind of technical assistance or service beyond the solicitation of orders.
7. Investigating, handling or otherwise helping to resolve customer complaints, other than mediating direct customer complaints, when the sole purpose is to ingratiate the sales personnel with the customer.
8. Approving or accepting orders.
9. Repossessing property.
10. Securing deposits on sales.
11. Picking up or replacing damaged or returned property.
12. Hiring, training or supervising personnel (except personnel involved only in solicitation).
13. Using agency stock checks or any other instrument or process by which employees make sales in Utah.
14. Maintaining a sample or display room for longer than two weeks (14 days) at any one location within Utah during the tax year.
15. Carrying samples for sale or exchange for anything of value.
16. Owning, leasing, using or maintaining in Utah:
 - a. a repair shop;
 - b. a parts department;
 - c. any kind of office other than an in-home office;
 - d. a warehouse;
 - e. a meeting place for directors, officers, or employees;
 - f. stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;
 - g. a telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

- h. mobile stores, such as vehicles driven by employees who make sales from the vehicles;
- i. real property or fixtures to real property of any kind.

17. Consigning tangible personal property to any person, including an independent contractor, for sale.
18. Maintaining an office or place of business (in-home or otherwise) of any kind other than an in-home office.
 - Any office or other place of business in Utah that does not strictly qualify as an in-home office does not have protection under this rule.
 - It doesn't matter whether the company pays directly, indirectly or not at all for the cost of maintaining the in-home office.
19. Entering into or selling/disposing of franchising or licensing agreements, or selling/transferring tangible personal property associated with a franchise or license by the franchise or licensor to its franchisee or licensee in Utah.
20. Conducting any activity that serves an independent business function apart from the solicitation of orders, even if the activity increases sales.

If you have any questions about business activity or nexus that are not answered above, please contact the Tax Commission at the address in the heading of this publication.

To request an agreement to resolve prior business tax liabilities from the Auditing Division's Voluntary Disclosure Program, the following written information is required.

1. A description of the company's activities, including:
 - a. the number of years doing business in Utah,
 - b. a list of the type of property owned and/or leased in Utah,
 - c. a description of equipment leased for use in Utah,
 - d. the number and length of time representatives acting on your behalf or employees have been in Utah, and
 - e. how Utah business is solicited.
2. The type of tax being offered and a statement why the company is not offering other tax types.
3. A declaration of estimated tax liability for the disclosure period, by tax type.
4. A declaration of the estimated tax liability for periods prior to the disclosure period, by tax type.
5. Disclosure as to whether the company has collected or withheld tax.
6. A statement indicating whether the Utah State Tax Commission or the Multistate Tax Commission has contacted the company, and the nature of the contacts.
7. The voluntary disclosure agreement terms proposed by the company.

See Pub 4 for more information regarding the Voluntary Disclosure Program, or visit the Tax Commission website at tax.utah.gov.