

OTR'S GUIDANCE for QUESTIONS INVOLVING NEXUS

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OTR Contact Person: William Bowie, Esq., Office of General Counsel: 202 442-6512 or William.Bowie@dc.gov

ISSUE

AUTHORITY

GENERAL GUIDANCE

FRANCHISE TAX GUIDANCE

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| 1. Nexus with the District | DC Official Code § 47-1801.04(6)(A)
P.L. 86-272* | For District Franchise Tax purposes, in order for a business to have nexus with the District, it must be engaged in business activity [that is not “protected” by PL 86-272] within the District or have physical presence in the District. |
| 2. Entertainment (S-Corporation) Nexus | DC Official Code § 47-1801.04(6)(A)
DC Official Code § 47-1810.01(a)(2)
DC Official Code § 47-1810.02(a) | An entertainment performer that is set up as a corporation and will have a single performance in the District will have nexus with DC and will need to register with the District for tax purposes. |
| 3. Collection Company | DC Official Code § 47-1801(6)(A)
P.L. 86-272 | For District Franchise Tax purposes, a collection company that does not have physical presence in the District and whose only contact with the District is mailing notices and making phone calls to District residents does not have nexus for purposes of District taxes. PL 86-272 does not protect this activity. |
| 4. Sales by Brokerage Firm of Intangible Personal Property | DC Official Code § 47-441.Article IV.1(a) | DC Source income derived from commissions from the solicitation of orders for the sale of securities and intangible property in the District is subject to District Franchise tax, even if the salesperson of the out-of-state brokerage firm maintains no office in the District but regularly solicit sales in person in the District. |

SALES TAX GUIDANCE

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| 5. Customer Service Telephone Business | DC Official Code § 47-1810.1(a)(2)
DC Official Code § 47-1810.2(a)
DC Official Code § 47-2001(n)(1)(N)(ii) | Information of a Proprietary Nature;
1. If gathered information is of a proprietary nature to that business and not sold to others by the business, then the service is not considered to be a taxable service.
If the gathered information is not of a proprietary nature to the business, and is sold to others by the business, the service may then be considered a taxable service. |
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The above guidance is issued as a service to District taxpayers and is intended to address frequently asked questions. The guidance may not be applicable to your specific facts and circumstances; therefore, it should not be used or cited as precedent. For purposes of tax planning, please submit a specific ruling request that identifies the taxpayer and the specific issue(s) involved. As statutes and regulations are subject to change, please note the date that this guidance was released. If you have any questions regarding this guidance, please do not hesitate to contact the attorney listed above, or the Office of General Counsel at (202) 442-6500.

6. Nexus Factors (Vendors)

DC Official Code § 47-2001(f)&(w)

District vendors are required to collect sales tax, but the obligation of out-of-state vendors to collect the tax is conditioned on whether the vendor has sufficient "nexus" or contacts with the District.

“Vendor” includes every person or retailer engaging in business in the District and making sales at retail.

“Engaging in business in the District” includes any activity in connection with the selling, delivering, or furnishing in the District, or any activity in the District in connection with the selling, delivering, or furnishing in the District, of tangible personal property or services sold at retail. The term shall include but not be limited to the following acts or methods.

- ❑ The maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.
- ❑ The having of any representative, agent salesman, canvasser, or solicitor operating in the District for the purpose of making sales at retail, or the taking of orders for such sales.

7. Restocking Fee

DC Official Code § 47-2001(p)(2)(e)

Restocking fees, when the vendor refunds the sales price and charges a restocking fee in lieu of the sales price, are subject to sales tax.

8. Sale of Catalogs at Trade Shows

DC Official Code § 47-2001(n)(1)

Catalogs and publications are subject to taxation in the District. Generally, a company that hires an independent contractor to attend car shows in various states, including the District, set up a newsstand and sell the catalogs, does not create nexus with the District based solely on the activity of the independent contractor.

9. Sale of Medical Equipment

DC Official Code § 47-2001(b)
DC Official Code § 47-2001(n)(1)(Q)
DC Official Code § 47-2006
DC Official Code § 47-2026

For District sales tax purposes, nexus is created for a seller of medical equipment whose activity in the District involves solicitation of sales, selling of equipment, and furnishing of a service, such as repairs.

* *The District generally follows the Statement of Information Concerning Practices of the Multistate Tax Commission and Signatory States under Public Law 86-272. This MTC Statement can be found at the MTC Website at <http://www.mtc.gov/news&vws/Regs102000.pdf>. See pages 130-140.*

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