



# House of Representatives

General Assembly

**File No. 497**

February Session, 2010

House Bill No. 5481

*House of Representatives, April 13, 2010*

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING THE COLLECTION AND REMITTANCE OF THE SALES TAX BY REMOTE SELLERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (12) of subsection (a) of section 12-407 of the  
2 general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective July 1, 2010, and applicable to sales occurring on and after*  
4 *said date*):

5 (12) "Retailer" includes: (A) Every person engaged in the business of  
6 making sales at retail or in the business of making retail sales at  
7 auction of tangible personal property owned by the person or others;  
8 (B) every person engaged in the business of making sales for storage,  
9 use or other consumption or in the business of making sales at auction  
10 of tangible personal property owned by the person or others for  
11 storage, use or other consumption; (C) every operator, as defined in  
12 subdivision (18) of this subsection; (D) every seller rendering any  
13 service described in subdivision (2) of this subsection; (E) every person  
14 under whom any salesman, representative, peddler or canvasser

15 operates in this state, or from whom such salesman, representative,  
16 peddler or canvasser obtains the tangible personal property that is  
17 sold; (F) every person with whose assistance any seller is enabled to  
18 solicit orders within this state; (G) every person making retail sales  
19 from outside this state to a destination within this state and not  
20 maintaining a place of business in this state who engages in regular or  
21 systematic solicitation of sales of tangible personal property in this  
22 state (i) by the display of advertisements on billboards or other  
23 outdoor advertising in this state, (ii) by the distribution of catalogs,  
24 periodicals, advertising flyers or other advertising by means of print,  
25 radio or television media, or (iii) by mail, telegraphy, telephone,  
26 computer data base, cable, optic, microwave or other communication  
27 system, for the purpose of effecting retail sales of tangible personal  
28 property, provided such person has made one hundred or more retail  
29 sales from outside this state to destinations within this state during the  
30 twelve-month period ended on the September thirtieth immediately  
31 preceding the monthly or quarterly period with respect to which such  
32 person's liability for tax under this chapter is determined; (H) any  
33 person owned or controlled, either directly or indirectly, by a retailer  
34 engaged in business in this state which is the same as or similar to the  
35 line of business in which such person so owned or controlled is  
36 engaged; (I) any person owned or controlled, either directly or  
37 indirectly, by the same interests that own or control, either directly or  
38 indirectly, a retailer engaged in business in this state which is the same  
39 as or similar to the line of business in which such person so owned or  
40 controlled is engaged; (J) any assignee of a person engaged in the  
41 business of leasing tangible personal property to others, where leased  
42 property of such person which is subject to taxation under this chapter  
43 is situated within this state and such assignee has a security interest, as  
44 defined in subdivision (35) of subsection (b) of section 42a-1-201, in  
45 such property; [and] (K) every person making retail sales of items of  
46 tangible personal property from outside this state to a destination  
47 within this state and not maintaining a place of business in this state  
48 who repairs or services such items, under a warranty, in this state,  
49 either directly or indirectly through an agent, independent contractor

50 or subsidiary; and (L) every person making sales of tangible personal  
 51 property or services through an independent contractor or other  
 52 representative, if the retailer enters into an agreement with a resident  
 53 of this state, under which the resident, for a commission or other  
 54 consideration, directly or indirectly refers potential customers,  
 55 whether by a link on an Internet web site or otherwise, to the retailer,  
 56 provided the cumulative gross receipts from sales by the retailer to  
 57 customers in the state who are referred to the retailer by all residents  
 58 with this type of an agreement with the retailer, is in excess of two  
 59 thousand dollars during the preceding four quarterly periods ending  
 60 on the last day of March, June, September and December. Such retailer  
 61 shall be presumed to be soliciting business through such independent  
 62 contractor or other representative, which presumption may be  
 63 rebutted by proof that the resident with whom the retailer has an  
 64 agreement did not engage in any solicitation in the state on behalf of  
 65 the retailer that would satisfy the nexus requirement of the United  
 66 States Constitution during such four quarterly periods.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to sales occurring on and after said date</i>	12-407(a)(12)

**FIN**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 11 \$</b>	<b>FY 12 \$</b>
Department of Revenue Services	GF - Potential Revenue Gain	8.4-9.3 million	8.4-9.3 million

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill requires certain remote sellers who have no physical presence in Connecticut to collect sales tax on applicable Connecticut sales. This is estimated to result in a potential General Fund revenue gain of \$8.4 million to \$9.3 million annually beginning in FY 11, which is associated with additional sales and use tax collections.

The estimate is based on data from a comparable 2008 New York state law, and has been adjusted for differences in population and sales tax rate. It should be noted that retailers with affiliate programs in other states that have enacted similar laws have terminated such affiliate agreements, thus eliminating the legal basis for establishing nexus. The revenue gain described above assumes that the bill does not result in the termination of affiliate agreements.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: *New York State Department of Taxation and Finance*

**OLR Bill Analysis****HB 5481*****AN ACT CONCERNING THE COLLECTION AND REMITTANCE OF THE SALES TAX BY REMOTE SELLERS.*****SUMMARY:**

This bill requires certain remote sellers who have no physical presence in Connecticut to collect Connecticut sales tax on their taxable sales in Connecticut.

State law requires “retailers” to collect Connecticut sales tax if they are “engaged in the business” of making retail sales in the state. If a retailer is engaged in business in Connecticut, it is said to have “nexus” here.

This bill presumes a company is a retailer with sales tax nexus in the state if it annually sells more than \$2,000 worth of taxable items or services in Connecticut through certain agreements with Connecticut residents. The agreements must provide that, in return for the resident referring potential customers to the company, he or she will receive a commission or other compensation from that company. Under the bill, the referrals can be direct or indirect and can be made by any means, including a link on an Internet website. By extending Connecticut sales tax nexus to companies that have such agreements, the bill requires them to collect Connecticut sales tax on all their taxable sales in Connecticut, not just on items sold through the referrals.

The bill applies to any company that annually earned more than \$2,000 in gross revenue from sales in the state under such referral agreements in the preceding four quarters ending on the last days of March, June, September, and December. It establishes a presumption that such a company is soliciting business in Connecticut through the independent contractors or representatives. The company can rebut

the presumption by proving that the resident with whom it has an agreement did not solicit business in Connecticut in a manner that would satisfy the federal constitutional nexus requirement (see BACKGROUND).

By law, if a retailer does not collect and remit to the Department of Revenue Services (DRS) the sales tax due on a taxable item or service, a person who buys it for use in Connecticut must pay the equivalent use tax on that purchase directly to DRS.

EFFECTIVE DATE: July 1, 2010 and applicable to sales on or after that date.

## **BACKGROUND**

### ***U.S. Supreme Court Decisions***

The U.S. Supreme Court has ruled that a state may require a company engaged in interstate commerce to collect taxes on its behalf if the tax is “applied to an activity with substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state” (*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

The Court has also ruled that a company does not have the required nexus if it has no physical presence in a state and its only connection with it is to solicit business there through catalogs, flyers, advertisements in national publications, or phone calls and to fulfill orders by delivering merchandise to customers by mail or common carrier (*Quill Corp v. North Dakota*, 504 U.S. 298 (1992); *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967)). But, in another case involving an out-of-state company with no property or employees in Florida, the Court found nexus by virtue of the company’s arrangements with 10 Florida residents who, as independent contractors and in return for a sales commission or other compensation, solicited or took sales orders on its behalf (*Scripto v. Carson*, 362 U.S. 207 (1960)).

### ***New York State Court Decision***

Amazon.com filed suit against a 2008 New York law that is similar to this bill, alleging that New York's law violates (1) the U.S. Constitution's Commerce Clause by taxing out-of-state entities that have no substantial nexus with New York, (2) the U.S. and New York constitutions' due process clauses by effectively creating an irrebuttable presumption of "solicitation" and being overly broad, and (3) both constitutions' equal protection clauses by intentionally targeting Amazon.

The New York court dismissed all three complaints on the grounds that, even if all Amazon's alleged facts are accepted as true, "there is no basis on which the company can prevail." (*Amazon.com LLC v. New York State Department of Tax and Finance*, Supreme Court of the State of New York, Eileen Bransten, J., Index No. 601247/08, 2009 NY Slip Op. 29007; 2009 N.Y. Misc. Lexis 28, January 12, 2009.) Amazon appealed the decision to the New York Court of Appeals on February 27, 2009. The case was argued on October 29, 2009 and a decision is pending.

#### **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 35    Nay 13    (03/25/2010)