

Connecticut: Plans for regulation establishing nexus for out-of-state internet sellers



David M. Kall | Thursday, November 30, 2017

The week before Thanksgiving, the [New England State and Local Tax Forum](#) held a one-day conference for tax professionals, in which they addressed significant developments in the state and local tax arena with an eye toward helping practitioners with compliance. They also discussed evolving issues that will impact the field in the future.

One of the speakers was Kevin Sullivan, the Commissioner of the Connecticut Department of Revenue Services. In a post discussing Sullivan's remarks at the forum, [Bloomberg](#) reported that he plans for Connecticut to establish internet taxing regulations that "mimic Massachusetts' digital 'cookie' tax rule."

We have followed Massachusetts' cookie regulation saga, addressing it [most recently](#) on Nov. 2, 2017. We noted that in April, the Bay State first tried to impose its 6.25 percent sales and use tax on out-of-state internet-vendor installed software, referred to as "apps," and ancillary data, including cookies, on in-state customers' devices.

The Department of Revenue failed to comply with the applicable public notice requirements, and, prompted by a lawsuit, called back the proposed rule and conducted its due diligence. Finally, as of Oct. 1, 2017, the new nexus regulation is up and running.

The regulation defines "cookies" as "text data files generally used by an internet vendor to enhance its customer sales [that are] stored locally on computers and physical communications devices of the

Connecticut Plans for regulation establishing nexu

customers of an Internet vendor when such customers visit the vendor's website for the first time and act to identify the customer on each subsequent visit."

On Oct. 24, 2017, Crutchfield Corp. sued the Massachusetts Department of Revenue, and two officials, seeking a court declaration that the so-called cookie tax is unconstitutional because it violates the commerce clause of the U.S. Constitution, and the Internet Tax Freedom Act. As of this writing, there have not been any more recent significant development in the suit.

Despite the controversy surrounding the Massachusetts "cookie" rule, Connecticut is the next state hoping to tax internet sales using the presence of cookies on purchasers' computers, according to Commissioner Sullivan. He revealed to Bloomberg that the "Connecticut Department of Revenue Services...will issue new guidance and regulations on the 'taxability of Connecticut destined e-commerce sales; by early 2018.... [for] e-retailers that sell 'more than \$300,000 annually,'" based on the existing nexus criteria there. Massachusetts has a higher threshold, 100 or more individual transactions that exceed \$500,000 of in-state sales annually.

Commissioner Sullivan also pointed out that Connecticut, in an existing effort to capture tax revenue to which it is entitled, pursues companies that are not registered with the state, namely from the top 500 e-commerce entities. Additionally, it offers "the opportunity for prospective-only resolution by voluntary disclosure agreement."

Connecticut was one of the states that participated in the Multistate Tax Commission's voluntary amnesty program. Broadly speaking, the initiative gave on-line sellers the chance to register for future internet tax law compliance in return for forgiveness of past non-compliance. We [detailed](#) this program a month ago.

An [Avalara](#) piece discussing Connecticut's plans noted that its pursuit of top e-commerce sellers, and its voluntary disclosure program, "have had a modicum of success." About 22 out-of-state firms now tax their on-line sales to in-state consumers, despite some tax professionals advise their clients otherwise. Such practitioners reason that the United States Supreme Court case *Quill v. North Dakota* still protects sellers without a physical presence in Connecticut.

The outcome of Crutchfield Corporation's lawsuit in Massachusetts, along with a South Dakota "Kill *Quill*" challenge that many hope the United States Supreme Court will hear, may impact Connecticut's chances for success with its similar regulation.



David M. Kall

[Team member bio](#)