



2021-02 INTERPRETATION

REMOTE SELLERS WITH SPORADIC PHYSICAL PRESENCE

Issue:

Some businesses primarily conduct remote sales into taxing communities, but occasionally their business activities may introduce physical presence in a particular community. Does sporadic physical presence require the business to comply year-round with physical presence filing requirements, even if subsequent filings are for remote sales?

Discussion:

Physical Presence is defined in the Uniform Code as follows:

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

- 1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;*
- 2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state.*
- 3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;*
- 4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.*

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

The last clause of the definition of physical presence states that once physical presence is established in a jurisdiction in any calendar year, the physical presence is deemed to continue for the for the following calendar year.

Recommendation:

Sellers conducting remote sales into jurisdictions should also monitor if they conduct business activity into that jurisdiction that could establish physical presence in that jurisdiction.

If physical presence is established in a member jurisdiction, the seller should review and apply Section 230 of the Uniform Code to determine its reporting requirements.

Rationale:

Certain types of sellers do periodically establish physical presence in a taxing jurisdiction which is temporary or incidental in nature. The Commission and its member jurisdictions agree that it is important to provide sellers with a specific measurement on how long a seller’s temporary physical presence is considered to be in place.

The definition of Physical Presence provides this measurement by outlining that physical presence remains in effect for the calendar year following the establishment of the temporary physical presence. This measurement prevents frequent changes to a seller’s filing requirements on sales in the State of Alaska.

Approved by Policy Committee 2/16/2021