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computer.

Ken Berry, JD • Jun. 08, 2017



The state of Massachusetts wants to impose new tax obligations on cookies. No, not the kind that you bake in the oven. These cookies are stored on your personal computer.

On April 3, 2017, the Massachusetts Department of Revenue issued a new 16-page directive outlining certain activities requiring out-of-state vendors to collect sales tax, including the placement of cookies on browsers. This novel approach by the Bay State's taxing authorities is widely seen as a attempt to sidestep the landmark *Quill*

case decided by the U.S. Supreme Court, the top court in the land (*Quill v. North*

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Notably, the directive established a nexus when cookies are placed on computers and other electronic devices like I-Pads used by Massachusetts residents. Briefly stated, a cookie is a data file sent by a website and stored on your device when you visit the site. Some cookies are only temporary while others are permanent. In either event, they can be used to remember information and easily track your browsing activities.

According to the tax wonks at the Massachusetts Department of Revenue, cookies are proprietary to sellers and are used to facilitate sales within the state. They enable online sellers to store information about consumer behavior and target adds to a select audience. Thus, they argue that ownership and use of cookies is an in-state business activity that can be differentiated from the mail order vendors who escaped a similar fate in the *Quill* case. The state now requires these online sellers to collect and remit Massachusetts sales and use tax just like bricks-and-mortar vendors in Boston's historic Quincy Marketplace.

The sales tax obligation is currently scheduled to take effect on July 1, 2017. This is certainly a groundbreaking precedent and you can expect a confrontation from the usual cadre of high-profile Internet sellers. At least check, no other state in the union has implemented this theory. Whether it survives a challenge or not, don't be surprised if the Supreme Court revisits *Quill* soon in a more modern setting. We will keep a close watch on new developments.

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