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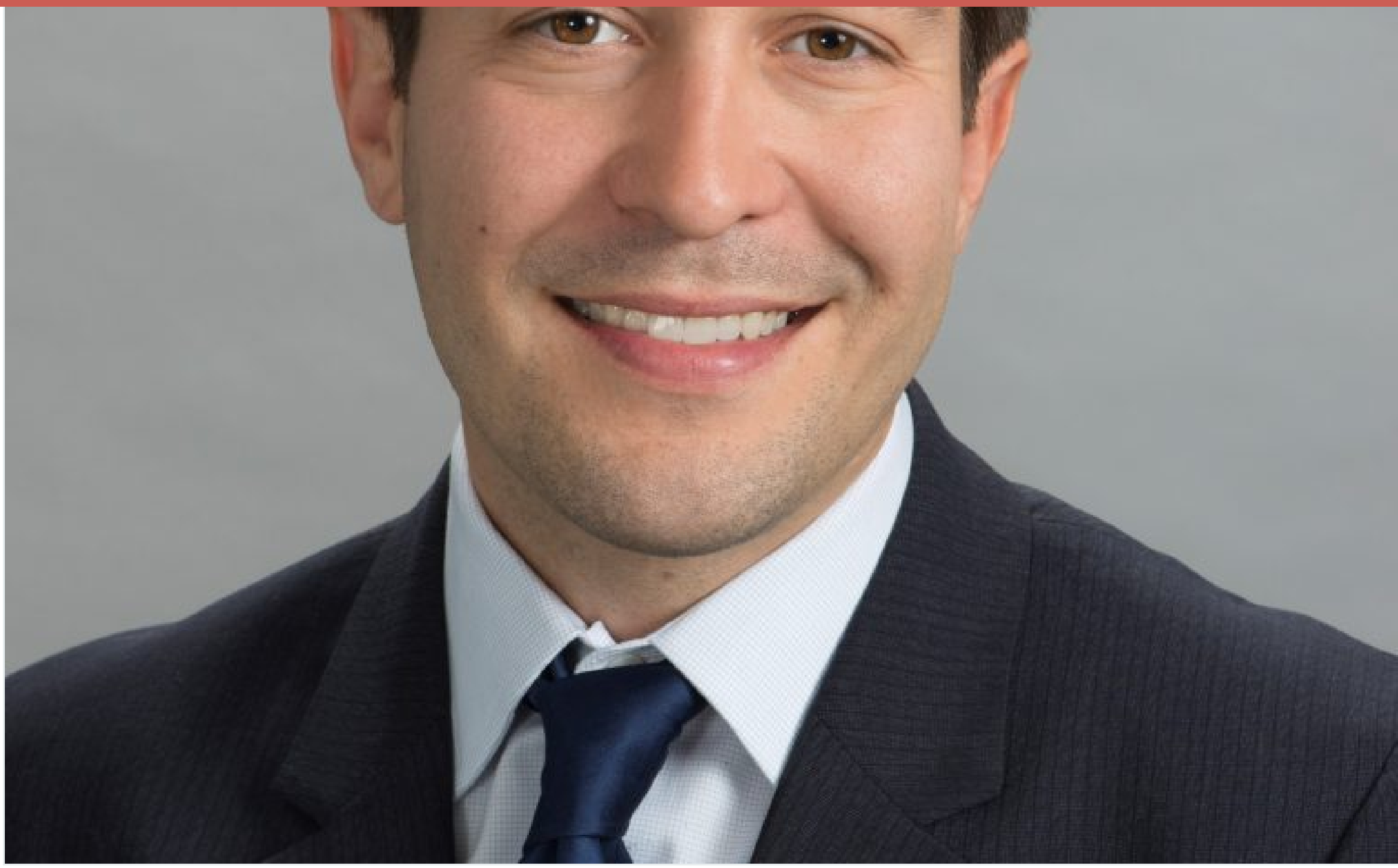

As state and local tax authorities continue to pursue lost sales tax revenue from out-of-state business e-commerce, a new enforcement approach has emerged. Referred to as “reporting laws,” these statutes require out-of-state sellers with no sales tax nexus in a given state to comply with some type of reporting or notification requirement when making remote sales. These new laws attempt to impose a new compliance requirement on out-of-state sellers for sales and use tax reporting purposes, thereby compelling taxpayers with no physical connection to a given state to provide sales and use tax related information to taxing authorities.

E-Commerce and State Sales Tax Nexus

State authorities' frustration with lost sales tax revenue related to the growth in e-

State Specific Reporting Laws

States that have recently enacted sales tax reporting laws include Colorado, Kentucky, Louisiana, Oklahoma, South Carolina, South Dakota, and Vermont. Each of these states' laws has its own nuances and requirements, further complicating out-of-state taxpayers' efforts to understand compliance responsibilities. These reporting laws typically have two components: (1) remote sellers must file an annual report with the Department of Revenue and (2) sellers must provide notification to in-state buyers of use tax responsibilities.

Colorado was the first jurisdiction to enact these types of sales tax reporting requirements. After the passage of *Colo. Rev. Stat. Section 39-21-112.3.5* in 2010, a taxpayer sought a permanent injunction in Federal District Court, arguing that the statute violated the Commerce Clause. However, the U.S. Court of Appeals for the 10th Circuit upheld Colorado's law on February 22, 2016, with the U.S. Supreme Court declining to review the Appeals Court decision (*Direct Mktg. Ass'n v. Brohl, 2016 BL 411370, U.S., No. 16-267*, petition for certiorari denied Dec. 12, 2016).

Potential Developments

Colorado's law may now have opened "Pandora's box" with regard to this issue. Other states, including Alabama, Kansas, Nebraska, and Utah, have plans to introduce similar laws. As states continue to pursue lost sales tax dollars, reporting laws may appear with increasing frequency. It is unclear what tools are at states' disposal that would compel taxpayers to comply with sales tax reporting laws. But many practitioners have noted that the burden of reporting laws may incentivize more taxpayers simply to start collecting sales tax in jurisdictions where they have no physical presence. The incentive for remote sellers to collect sales tax may prove a powerful tool for states in recapturing lost sales tax revenue related to the growth in e-commerce. As such, taxpayers should anticipate an expansion in these types of

notification requirement that the retailer that does not collect Colorado sales tax must send to the Department of Revenue for each Colorado purchaser that specifies the total amount paid for Colorado purchases.

Recommendations

Taxpayers can no longer rely on a lack of physical presence in determining state sales tax reporting obligations. In navigating multi-state sales tax compliance, taxpayers will need to be cognizant of myriad new reporting laws. As such, taxpayers selling in more than one tax jurisdiction, regardless of physical presence, should consult with a tax advisor to assist in monitoring any potential new compliance requirements.

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Sales Tax

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