

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

written notice to the New Hampshire Department of Justice at least 45 days prior to conducting examinations of sellers in New Hampshire, imposing sales and use tax ...

Gail Cole • Jul. 12, 2019



New Hampshire Governor Chris Sununu has a bill on his desk that would require other states to jump through hoops before they could impose a sales or use tax collection obligation on a New Hampshire-based seller.

Senate Bill 242 requires “foreign taxing jurisdictions” (aka, other states) to provide written notice to the New Hampshire Department of Justice at least 45 days prior to conducting examinations of sellers in New Hampshire, imposing sales and use tax collection obligations on sellers in New Hampshire, or requesting private customer information from sellers in New Hampshire.

The written notice must provide the full legal name and address of the seller and the

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

Despite these roadblocks, the measure doesn't prevent New Hampshire businesses from complying with "any directive of a foreign taxing authority," should they decide it's in their best interest to do so. If they elect to comply with any such request immediately, they should let the Department of Justice know.

New Hampshire businesses can also elect to comply under protest.

SB 242 stipulates that a foreign taxing authority isn't relieved of its obligation to provide the 45-day advance notice when a New Hampshire business elects to comply with its requests immediately.

Why does New Hampshire want this information?

When it receives the required written notice from a foreign taxing authority, the New Hampshire Department of Justice will determine whether the laws of that state "meet the requirements of the United States and New Hampshire Constitutions and, if they do, whether they can be applied to the New Hampshire remote seller or sellers based on the reasons provided in the required written notice."

The department will consider whether the other state provides safe harbor for New Hampshire sellers that conduct limited business within the jurisdiction, whether its remote sales tax law will be enforced retroactively, and whether the other state is a member of the [Streamlined Sales and Use Tax Agreement](#), or SST (or has adopted laws to be substantially compliant with the simplification measures adopted by the SST).

It will also consider whether the other state enforces consumer use tax collection from its residents (consumers must pay consumer use tax on taxable purchases if the seller didn't collect sales tax at the point of sale). Finally, the department will

consider whether the state’s remote sales tax laws “are fairly related to the tangible

Hello. It looks like you’re using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

of competent jurisdiction in the event they’re “subject to collection, audit, or examination by a foreign taxing authority in connection with alleged sales tax collection or remission obligations.”

In other words: New Hampshire businesses, the state’s got your back.

SB 242 also mandates the establishment of a commission to monitor changes in federal and state-level legislation and actions concerning the imposition of tax collection obligations on New Hampshire remote sellers.

Can New Hampshire do this?

It will be interesting to see what happens if SB 242 is enacted, which it likely will be. Will other states challenge the Live Free or Die State’s actions, or simply comply with them? Will the New Hampshire Department of Justice or one or more businesses actually sue a state for trying to impose a sales or use tax collection obligation on a New Hampshire remote seller?

If so, there’s a good chance the suit wouldn’t be heard in a New Hampshire court. According to a recent ruling by the Supreme Court of the United States, a New Hampshire entity (for example) is not authorized to sue California in New Hampshire court in order to avoid collecting California use tax. Get more details [here](#).

One thing’s for sure: The New Hampshire Department of Justice is setting itself up for a lot of work. More than 40 states have adopted remote seller sales tax laws authorizing them to impose a sales or use tax collection obligation on retailers in New Hampshire that sell into those states. [Learn more about state remote sales tax laws](#).

=====

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.

© 2024 Firmworks, LLC. All rights reserved