

**New Hampshire Department of Revenue Administration
109 Pleasant Street, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE
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A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Customer Service at (603) 271-2191.

Foreign Sales and Use Tax

Protection of Private Customer Information in Connection with Retail Purchase Transactions

In July of 2009, the New Hampshire Legislature enacted RSA Chp. 78-D, entitled “Protection of Private Customer Information In Connection With Retail Purchase Transactions.” See NH Laws of 2009, Chp. 169:1. RSA Chp. 78-D addresses Foreign Sales and Use Tax. Although New Hampshire does not impose a sales tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire; other states do impose a sales tax on goods and services purchased by customers within their boundaries. Other states also impose an excise or use tax on the usage, storage or consumption of goods and services purchased by their residents from a business located outside of the taxing state. Many of these taxing states require their residents to report and pay the use tax directly to the state.

RSA Chp. 78-D sets forth a process in New Hampshire by which a foreign state may obtain private customer information for use in the determination of sales or use tax liability of the customer in that foreign state, or for use in the determination, collection, and remittance of sales or use tax by the retailer with respect to a New Hampshire retail purchase transaction. The “private customer information” a foreign state may obtain includes “documents, records and other information maintained in any form which contains the purchaser’s name, address, telephone number, credit card, debit card or check number; a description of the goods or service purchased; the identity of any person for whom the goods or services were purchased; and the identification of the point of transfer of any goods or services that comprise any sale of services or goods, or both, for any purpose other than resale in the regular course of business that is completed at a location within New Hampshire; and where delivery or other first use of the services or goods occurs in New Hampshire.” See RSA 78-D:2, I (e).

Under the new law, effective July 9, 2009, a foreign state may obtain such information only if the foreign state first provides the retailer with written confirmation that the foreign state has given the New Hampshire Department of Revenue Administration written notice of its intent to collect use tax on the particular retail transaction *and* the New Hampshire Department of Justice has determined that the foreign state’s sales and use tax statutes:

- Impose upon its residents a requirement to individually pay sales or use tax on the use, storage, or consumption of goods or services purchased in any other state;

- Specifically identify the goods and services to which the use tax applies and exemptions to the use tax;
- Require that the retailer or its affiliates have adequate physical presence to establish nexus with the foreign state for the imposition of an obligation of the retailer to determine, collect, and remit a sales and use tax with respect to purchases by foreign state residents;
- Require every resident to submit annually to the foreign state a statement (i) identifying each and every item subject to such foreign state's sales and use tax purchased outside such foreign state for storage, use or consumption within such foreign state during an applicable period, (ii) stating the value of such items purchased, and (iii) including a statement under penalties of perjury that such resident complied with the requirement stated in this chapter;
- Require its residents or the foreign state to provide the retailer at the time of a New Hampshire retail purchase transaction with information establishing whether or not the goods or services purchased in the state are intended to be used, stored, or consumed within the foreign state, and provide that any information supplied by its residents is irrefutably presumed to be correct and complete, and that the retailer may rely on such information regardless of the accuracy or completeness of such information;
- Require that any agency of such foreign state responsible for enforcing such foreign state's sales or use tax shall annually audit, investigate, or examine not less than 10 percent of the total use tax returns filed by residents of such foreign state with respect to each year;
- Require that any agency of such foreign state responsible for enforcing such foreign state's use tax shall conduct its audit, investigation, or examination practices with respect to residents' use tax returns in a manner that ensures that such practices are applied equally regardless of the state in which the sales transaction occurs, and that requires any such agency to file a public report annually demonstrating compliance with this nondiscrimination requirement;
- Create an irrebutable presumption that, in the absence of voluntary information by the resident, the goods or services purchased are intended to be used in the state in which they are purchased; and
- Explicitly impose use tax collection requirements on out-of-state retailers with respect to retail purchase transactions that are completed in those other states.

In order to facilitate a foreign state's requests for private customer information under RSA Chp. 78-D, and to comply with the written confirmation requirement, the New Hampshire Department of Revenue Administration has created Form A-305. A foreign state shall file a Form A-305 with the Department of Revenue Administration and, if the Department of Justice determines the foreign state's statutes comply with RSA 78-D:2, II (a) through (i), the Department of Revenue Administration will forward an approved Form A-305 to the foreign state, which the foreign state will provide to the retailer as the "written confirmation" of the intent to collect use tax.

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301 or by contacting them at (603) 271-2191.