

Manhattan Coin Club Minutes

December 12, 2017

President Randy called the meeting to order.

Old Business

Randy reviewed the up-coming programs: January will be 'Alternate Collections', February - British Coins; March- Coin show, April - Jess, May - Mystery Grader, July - club picnic, August - Chuck on 'Silver & Ivory', September, (October & November the newsletter editor missed), December - Christmas Party.

New Business

Dave reported the club has \$2,420.32 in our account with dues still outstanding.

Matt talked about my preparations for the coin show and his visit to the Topeka coin show where he passed out flyers and dealer applications. He has also emailed applications out.

There was a discussion on the recent coin auction and the current prices being paid for silver dollars. The prices were predominantly in the range of \$18-20 in large lots. There was a discussion about the recent auction where lots contents were switched after the lot had been purchased.

Jess showed off his contest winning Christmas sweater he made four years ago.

John P. told the members that since September of 2016, eBay gift cards may not be used to pay eBay or PayPal service fees. The gift card also may not be used to buy eBay Gift Cards, third party gift cards, gift certificates, coupons, coins, paper money, virtual currency, or items generally considered to be "bullion" (for example, gold, silver, and other precious metals in the form of coins, bars, or ingots).

Allan brought up the question of paying dealers [sales tax](#) when the dealer does not have a brick and mortar store in Kansas.



The General Rule: Physical Presence in the State

The current default rule throughout the United States is that you must collect sales tax on Internet sales to customers in those states where your business has a physical presence. The physical presence rule is based on a 1992 United States Supreme Court decision, *Quill Corp. v. North Dakota*, that addressed the obligations of mail order businesses to collect sales tax on out-of-state sales. The decision has been extended to include online retailers. Generally speaking, a physical presence means having:

- a warehouse in the state
- a store in the state
- an office in the state, or

- a sales representative in the state.

The corollary to the physical-presence rule is that if you do not have a physical presence in the state, you generally are not required to collect sales tax for an Internet-based sale to someone in that state.

Examples of Physical Presence

Example 1: You are operating solely out of an office in Hanover, New Hampshire and make a sale to a customer in Topeka, Kansas—a state where your business has no physical presence: You are not required to collect sales tax from the Topeka customer (with the exception of sellers who fall under Kansas’s Amazon law).

Example 2: You are operating solely out of a warehouse in Overland Park, Kansas and make a sale to a customer in Lawrence, Kansas: You are required to collect sales tax from the Lawrence customer.

Related Ads

Example 3: After several years of operating solely out of an office in Hanover, New Hampshire, you open a one-room satellite office just outside of Wichita, Kansas—a state where previously you had no physical presence. A day later, you make a sale to a customer in Kansas City, Kansas: You are required to collect sales tax from the Kansas City customer.

Kansas’s Amazon Law

In 2013, Kansas enacted a new law, codified as K.S.A. Section 79-3702(h)(2)(C) of the Kansas Compensating Tax statute. Under the law, larger Internet retailers with no physical presence in Kansas are required to collect and pay Kansas’s sales tax under certain conditions. More specifically, an out-of-state retailer must collect sales tax from Kansas customers if that retailer:

1. has an agreement with a Kansas resident to pay for customer referrals obtained via a link on the resident’s website (a click-through arrangement), and
2. the out-of-state retailer’s cumulative gross receipts from these sales to Kansas customers exceeds \$10,000 during the preceding twelve months.

Similar laws have been enacted in many other states; they are commonly referred to as Amazon Laws. As you might guess, the name refers to Amazon.com, which is a large, Internet-based retailer that does not have a physical presence in many states where it sells merchandise. Under the default physical presence rule, this type of seller would not have to collect sales tax from customers in states where it has no physical presence. Since most customers don’t pay the corresponding use tax, online sales by large online retailers like Amazon and Overstock.com constitute a significant lost tax revenue for many states. Amazon laws are enacted to try to reduce this loss.

The Kansas Amazon law also includes a provision for so-called affiliate nexus. Briefly, if an out-of-state retailer has a person (sometimes known as an affiliate or affiliated person) in Kansas who works in certain specific ways with the retailer, then the retailer is maintaining a place of business in Kansas for sales tax purposes. If you work with a person in Kansas to help sell, store, or service your products, or the person otherwise has a close connection with your out-of-state business, check Section 79-3702(h)(2)(A) of the Kansas Compensating Tax statute.

Physical Presence and Nexus in Kansas

While the physical presence rule may seem clear, that is not necessarily the case. In *Quill*, the Supreme Court discusses not only physical presence, but also several types of potential nexus (connection) between a business and a state. Many states, including Kansas, have used the term nexus rather than physical presence in their sales tax laws or other official documents, and have sometimes defined nexus in ways that could go beyond physical presence.

For guidance on how physical presence is determined specifically under Kansas law, consult Section 92-20-7 of the Kansas Administrative Regulations, covering registration of ostensibly out-of-state retailers. The section defines when a retailer is “engaged in business within” Kansas. Note that the definition includes not only items usually associated with physical presence but also items associated with affiliate nexus.

For a more readable explanation of how the Kansas Department of Revenue (KDOR) looks at this issue, check Publication KS-1510, *Sales Tax and Compensating Use Tax*. In the section headed “What is Nexus?” it lists items that constitute either physical presence, or, arguably, affiliate nexus. In addition, in other places, the publication tends to equate physical presence with nexus. For example, in discussing consumer’s use tax, it refers to a retailer that may have “established a physical presence ‘nexus,’” and in several other instances uses the phrase “physical presence or ‘nexus.’”

Non-Taxable Items

Some items sold via the Internet to Kansas customers may be exempt from sales tax under Kansas law. For example, Section 79-3606(mm) of the Kansas Retailers’ Sales Tax Act states that sales of seeds and tree seedlings used for the purpose of producing plants to prevent soil erosion on land devoted to agricultural use are exempt from sales tax. For further information on many exemptions, check generally KSA 79-3606 and the section “Items Exempt from Sales Tax” in the KDOR publication on sales tax exemptions certificates.

The Customer’s Responsibility

In cases where the online retailer does not have to collect sales tax, it is the customer’s responsibility to pay the tax—in which case it is known not as a sales tax but, rather, a use tax or, in Kansas, a compensating use tax. There is a brief explanation of the compensating use tax on a KDOR webpage. You also can find more complete information, including multiple illustrative examples, Kansas in Publication KS-1510, *Sales Tax and Compensating Use Tax*. As one of the KDOR examples states, “Individual Kansas consumers buying goods in other states or through catalogs, mail-order companies, over the Internet, or from TV, magazine, and newspaper ads must pay Kansas consumers’ use tax on these purchases if the seller does not charge” tax to the consumer.

Proposed Federal Legislation

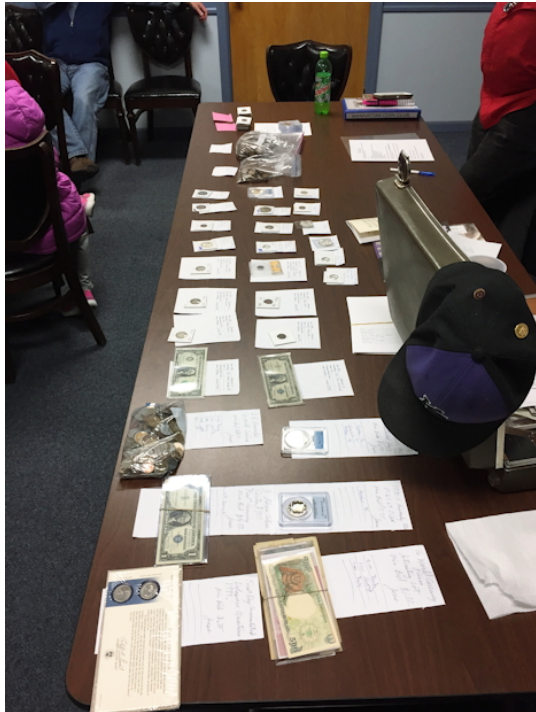
At the federal level Congress has repeatedly considered legislation that would affect large Internet retailers and how online sales taxes are collected in all states. The most recent form of a proposed federal law is the Marketplace Fairness Act of 2015. As in previous versions, the 2015 Act would allow states to require sellers not physically located in their state to collect taxes on online and catalog sales made to people in their state. Sellers that make \$1 million or less in annual sales and have no physical presence in the state would be exempt from this requirement. States would have to meet certain criteria to simplify their sales tax laws and make sales tax collection easier before they could require sellers to collect the tax.

Final Words

For most small online businesses, it is the long established physical presence rule that will apply in Kansas. However, because Internet sales tax is a subject of ongoing debate, you should consider checking in periodically with the Kansas Department of Revenue to see if the rules have changed.

The members enjoyed the many treats available.

Jess won the door prize of one silver troy ounce and Sarah won a liberty half-dollar.



Following the silent auction with no further business the meeting adjourned.

