

# Nexus in Arizona

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The purpose of this publication is to provide general guidance on the meaning of “nexus” and for determining whether nexus exists with the State of Arizona and a potential out-of-state taxpayer.

## General

“Nexus” is the connection required to exist between a state and an out-of-state potential taxpayer such that the state has the constitutional right to impose a tax. The United States Constitution limits the states’ right to tax through the Due Process Clause and the Commerce Clause. Each of those clauses has a different requirement or threshold that must be met before a state may impose a tax collection or payment responsibility on an out-of-state taxpayer. For example, the Due Process Clause requires that a non-resident have certain ‘minimum contacts’ with a state before it can exercise jurisdiction over him, and the Commerce Clause requires ‘substantial nexus’ or a certain level of connection exist with an out-of-state taxpayer before a tax collection or payment responsibility may be imposed. Each of those requirements must be satisfied before a state can impose a tax collection or payment responsibility. Those requirements may change by legislative action or through court cases.

Additionally, Public Law 86-272, 15 U.S.C. §§ 381-384, places restrictions on the imposition of income tax by a state on out-of-state companies with limited activity within the state.

## Transaction Privilege and Use Tax

### Sales Tax and Nexus

The tax, commonly referred to as a “sales tax,” is in reality two distinct taxes, transaction privilege tax (TPT) and use tax. TPT is a tax on the privilege of doing business in Arizona. It is measured by the value of tangible personal property (TPP) sold by the vendor in Arizona. The vendor is liable for the tax, even though the vendor may pass on the tax to the consumer.

The following is a general guideline of activities that, if engaged in by an out-of-state vendor with no locations in Arizona, may exceed the minimum threshold of nexus and subject the business to TPT collection requirements of Arizona:

- Employee(s) present in the state conducting business on behalf of the company for more than two days per year.

- Maintenance of an office or place of business in Arizona.
- Delivery of merchandise into Arizona on vehicles owned or leased by the taxpayer.
- Ownership or lease of real or personal property in Arizona.
- Independent contractors or other non-employee representatives present in Arizona for more than two days per year for the purpose of establishing and maintaining a market for the taxpayer.

Examples of establishing and maintaining a market include: soliciting sales; making repairs; collecting delinquent accounts; delivering property sold to customers; installing products; conducting training for employees or representatives of the company or customers; resolving customers complaints; providing consulting services; soliciting, negotiation, or entering into franchising agreements.

### Use Tax and Nexus

Use tax is a tax on any TPP bought from an out-of-state vendor that is stored, used, or consumed in Arizona and on which no tax was paid to the state of sale. The consumer is liable for use tax, however, a vendor that does not have sufficient Arizona nexus for TPT purposes may collect and remit the use tax for the convenience of the consumer. If tax was paid to the state of sale when the TPP was purchased, then Arizona allows a credit for the amount paid. If a lesser amount of tax was paid to the state of sale than would have been paid had the property been purchased in Arizona, the consumer is responsible for the difference.

Arizona imposes a use tax collection responsibility on out-of-state vendors where the vendor has sufficient nexus for use tax purposes. There is no clear standard that distinguishes between the substantial nexus requirement for TPT and the substantial nexus requirement for use tax. In determining which tax (TPT or use) applies, consideration must be made of whether the types of activities that establishes nexus are related or unrelated to the business activity sought to be taxed. Generally speaking, the substantial nexus requirement for use tax purposes may be satisfied through in-state activities where those activities are unrelated to the business activity sought to be taxed by the state.

For more information on what activities create nexus for out-of-state vendors for Arizona TPT and use tax purposes, see Transaction Privilege Tax Ruling (TPR) 16-01.

### **Corporate Income Tax**

As noted, Public Law 86-272 (15 USC 381-384) includes additional restrictions such that no state may impose a tax on net income where the only contact between the taxpayer and the state is the solicitation of orders for the sale of TPP and where orders, if approved, are shipped from a point outside the state. Out-of-state companies that limit their activities in this manner generally have no nexus to Arizona for income tax purposes.

Examples of types of activities that, if engaged in, can subject a company to income taxation can be found in Arizona Corporate Tax Ruling (CTR) 99-5.

This publication contains items that are examples only and should not be considered exhaustive or conclusive. If you have any specific questions about business activity or nexus that are not answered above, please contact:

602-716-7083

or

nexus@azdor.gov

You may fill out a Nexus Questionnaire and send to the department for a determination. The questionnaire can be found at: <https://azdor.gov/forms/other-forms/nexus-unit-questionnaire-regarding-activities-arizona>