collect sales or use tax from persons who purchase taxable property or services through the Internet unless the provider acts as a vendor of taxable property or services (Colo Rev Stat Sec. 24-79-102 ; Colo Rev Stat Sec. 29-1-1001).

Nexus and Collection Responsibility

Once it is determined that a taxable transaction is involved, it must be determined whether nexus is sufficient to trigger tax liability and on whom tax collection responsibility rests.

In the absence of specific statutes or other defined policy governing taxation of sales of personal property that are made over the Internet, the law and issues applicable to mail order sales (see ¶60-500) may provide a basis for determining sales and use tax treatment of sales made by electronic commerce.

As with mail order sales, transactions involving electronic sales of tangible personal property to Colorado purchasers by vendors that have no physical presence in Colorado may raise nexus issues. Unless a vendor has substantial nexus with the purchaser's state, the state has no constitutional basis for the imposition of sales or use tax collection responsibility. Factors that may be taken into account include:

- location of vendor (distribution center or corporate headquarters),
- location of purchaser (at time of purchase, corporate headquarters, or place of business).
- presence of vendor within purchaser's tax jurisdiction (which may include a number of brief in-state sales or service calls),
- place where purchase will be used, and
- method of delivery.

Colorado has not enacted legislation that specifically addresses nexus standards for purposes of taxing electronic commerce. In general, every retailer doing business in Colorado and making sales of tangible personal property for storage, use, or consumption in the state must collect sales or use tax from the purchaser (Colo Rev Stat Sec. 39-26-204(2)). "Doing business in this state" means selling, leasing, or delivering in Colorado or performing any activity in the state in connection with selling, leasing, or delivering tangible personal property by retail sale for use, storage, distribution, or consumption within the state (Colo Rev Stat Sec. 39-26-102(3) ; Reg. 26-102.3). The term includes soliciting business from persons residing in Colorado by use of any communication media, or newspaper, radio or television advertising media, or any other means.

➔ ***CCH Comment: Internet Tax Freedom Act.***--The federal Internet Tax Freedom Act (discussed below) prohibits the imposition of collection obligations on a remote seller on the basis of the in-state accessibility of the seller's out-of-state computer server (except for taxes for Internet access that were imposed prior to October 1, 1998).

Under the Commerce Clause, out-of-state vendors that do no more than communicate with customers within the state by mail or common carrier as part of an interstate business and that have no physical presence in the state cannot constitutionally be required to collect tax, under the U.S. Supreme Court's ruling in *Quill Corp. v. North Dakota,* Docket No. 91-194, 504 U.S. 298 (1992). However, no broad-based bright line currently exists as to what constitutes physical presence sufficient to trigger nexus in an electronic commerce environment. Sales and use tax nexus and other constitutional issues are discussed at ¶60-075.

➔ ***Practitioner Comment:*** Consider setting up a new company for your Internet business. A retail business selling tangible goods, with physical presence in numerous states, should consider setting up its new Internet retail business as a separate, new corporation (NewCo). The "bright-line" test in *Quill Corp. v. North Dakota,* (US SCt) Docket No. 91-194, 504 U.S. 298 (1992), looks to NewCo's physical presence in each state, not to the physical presence situs of the original bricks and mortar retail business. As long as NewCo's Internet business has operated as a separate and distinct business from the bricks and mortar retail business of the parent, it probably will be subject to a separate physical presence test as current precedent suggests (*Bloomingdale's by Mail v. Department of Revenue,* ((PA) 130 P.A. Commw. 190, 567 A.2d 773, (1989)); *SFA Folio Collections, Inc. v. Tracy,* ((OH) 73 O.S.3d 119, 652 N.E.2d 693 (1995)). However, one must monitor the developments of the Advisory Commission on Electronic Commerce for their upcoming report to Congress (due April 2000) for any proposed changes in this area.

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Federal Internet Tax Freedom Act

The federal Internet Tax Freedom Act (P.L. 105-277, 112 Stat. 2681) bars state and local governments from imposing multiple or discriminatory taxes on electronic commerce, including taxes on Internet access, for a period of three years from its enactment date of October 21, 1998. The moratorium does not apply to taxes that were imposed and enforced prior to October 1, 1998.

● ***Discriminatory taxes***

Prohibited discriminatory taxes are:

-- taxes imposed on electronic commerce transactions that are not generally imposed and legally collectible on other transactions that involve similar property, goods, services or information;

-- taxes imposed on electronic commerce transactions at a different rate from that imposed on other