

Out-of-State Dealer Registration Enforcement Delayed

Important Notice 17-01 Provides New Out-of-State Dealer Registration Requirements

In January 2017, the Department issued Important Notice 17-01 (Notice 17-01) to explain the requirements of Tenn. Comp. R. & Regs. 1320-05-01-.129(2) (Rule 129(2)). Rule 129(2) provides that out-of-state dealers described in the rule must register by March 1, 2017, and begin to collect sales tax by July 1, 2017.

Notice 17-01 also states that the Department will certify that it will not audit or assess out-of-state dealers for tax periods that occur before the dealer begins to collect the tax, if the dealer meets the criteria set out in Notice 17-01.

Court Challenge of Rule 129(2) and Agreed Order

In March 2017, a lawsuit was filed in the Davidson County Chancery Court challenging Rule 129(2).

To avoid confusion and uncertainty in the marketplace, the Department agreed that taxpayers should not be required to collect and remit tax pursuant to Rule 129(2) while the court challenge is pending. Therefore, the Department, together with the challengers, asked the court to delay enforcement of Rule 129(2) while the challenge is pending before the court.

On April 10, 2017, the court issued an agreed order preventing the enforcement of Rule 129(2) while the lawsuit is pending.

Effect of the Agreed Order

While the agreed order is in effect, out-of-state dealers are not required to collect and remit sales

and use tax as a result of Rule 129(2). The agreed order does not affect any requirement to collect sales and use tax under any other provision of law.

Although an out-of-state dealer is not required to comply with Rule 129(2) while the agreed order is in place, the agreed order does not prevent out-of-state dealers from voluntarily registering and collecting and remitting the sales tax.

If an out-of-state dealer who meets the criteria set out in Notice 17-01 does begin to collect and remit tax on or before July 1, 2017, the Department will still certify that it will not audit or assess the business for periods prior to the date the dealer begins to collect and remit the tax.

A convenient registration portal is available at <https://revenue.webapps.tn.gov/outofstatedealerreregistration>.

Legislation Affecting Rule 129(2)

In May 2017, the Tennessee General Assembly passed legislation providing that "[t]he department of revenue shall be prohibited from collecting any internet sales or use taxes authorized under department rule [129(2)] and permitted under a ruling of any court, until such court's ruling has been fully reviewed and rule [129(2)] has been approved by the general assembly pursuant to § 4-5-226." Senate Bill 53/ House Bill 261, 110th General Assembly (2017) (as amended).

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.