

IN FACT AND IN LAW

Business Law

September 2001

Must You Collect and Remit Sales Taxes in the United States if You Do Business There?

By Luc Pariseau, Stéphanie Séguin and
Diane Bellavance

In the preceding bulletin, we briefly explained the income tax rules applicable to corporate taxation in the United States. In this bulletin, we will examine the rules applicable to sales taxes.

There are two types of taxes in the United States which are found in most States and counties, as well as some municipalities: a sales tax and a use tax. Neither of these taxes is imposed by the federal government.

The sales tax generally applies to the retail sale of tangible personal property and to the use of a good or service. The vendor of the good or service is responsible for collecting and remitting the taxes payable to the state or municipality, just as is the case with the Quebec QST and the federal GST.

In order to determine whether or not the sales tax applies, one must determine whether there is a "nexus" with the State in question. For the purposes of the sales tax, the notion of "nexus" is the element that determines whether or not there is an obligation to collect sales taxes in a given State. In summary, the concept of "nexus" refers to the existence of a minimum connection between a foreign business and a State. In general, it is easier to establish a sufficient connection with a State for the purposes of sales taxes than for the purposes of corporate income tax.

There are certain principles that are common to each State as regards the application of the various sales taxes. For example:

- all the States impose the sales tax on tangible property delivered to customers who are located in the State in question;

- in general, the place where the merchandise is received is independent of its point of origin;
- the tax payable is determined according to the vendor's gross revenues and no deduction is available for the vendor's operating costs or for any other expenses incurred.

Vendors must be particularly vigilant in collecting taxes on goods and services. The failure to collect these taxes may entail the vendor's liability therefor.

In conclusion, every company selling products or services in the United States should be aware of its obligations regarding the sales tax. A tax adviser will be able to inform you on the laws and regulations which might be relevant to your situation. For information, please do not hesitate to contact the following *Lavery, de Billy* lawyers: Luc Pariseau at (514) 877-2925, Stéphanie Séguin at (514) 877-2982 or Diane Bellavance at (514) 877-2907.



Luc Pariseau has been a member of the Quebec Bar since 1989 and specializes in Taxation

Stéphanie Séguin has been a member of the Quebec Bar since 1997 and specializes in Taxation

Diane Bellavance has been a member of the Quebec Bar since 1988 and specializes in Business Law and Intellectual Property Law

You can contact any of the following members of the Business Law group in relation with this bulletin.

at our Montréal office

Diane Bellavance
Fabienne Benoit
Pascale Blanchet
Michel Blouin
Valérie Boucher
Serge Bourque
René Brachaud
Patrick Buchholz
Pierre Cadotte
Pierre Caron
André Champagne
Andrea L. Daniels
Pierre Denis
Richard F. Dolan
Georges Dubé
David Eramian
Réal Favreau
Brian Forget
Marie-Andrée Gravel
Martin Joyal
Isabelle Lamarre
André Laurin
Alexandra Lee
Larry Markowitz
Jean Martel
Nicole Messier
Charles Nieto
Philip Nolan
André Paquette
Luc Pariseau
Jacques Paul-Hus
Douglas S. Pryde

Johanne L. Rémillard
Stéphanie Séguin
Michel Servant
Yves St-Cyr
Eric Stevenson
Marc Talbot
Vincent Tanguay
Sébastien Vézina

at our Québec City office

Pierre Beaudoin
Michel C. Bernier
Danielle Côté
Christian R. Drolet
Martin J. Edwards
Nicolas Gagné
André Gagnon
Pierre-C. Gagnon
Laurier Gauthier
Jacques R. Gingras
Claude Larose
Louis X. Lavoie
Simon Lemay
Marie-Élaine Racine
Jean-Philippe Riverin
Louis Rochette
Jean-Pierre Roy
François Vallières

at our Laval office

Michel M. Dagenais
André B. Gobeille
Claire Gonville

Montréal
Suite 4000
1 Place Ville Marie
Montréal, Quebec
H3B 4M4

Telephone:
(514) 871-1522
Fax:
(514) 871-8977

Québec City
Suite 500
925 chemin Saint-Louis
Québec, Quebec
G1S 1C1

Telephone:
(418) 688-5000
Fax:
(418) 688-3458

Laval
Suite 500
3080 boul. Le Carrefour
Laval, Quebec
H7T 2R5

Telephone:
(450) 978-8100
Fax:
(450) 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa, Ontario
K1R 7X7

Telephone:
(613) 594-4936
Fax:
(613) 594-8783

Web Site
www.laverydebilly.com

All rights of reproduction reserved. This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.