

¶110 Survey Questions

Question 1

If the Manufacturer is registered in the Consumer's state (Your State) but the Distributor is not, is the Manufacturer required to collect sales tax on its sale to the Distributor? Are there any factors regarding location of inventory or delivery method that can change the answer?

Question 2

If the Manufacturer is required to collect the tax on the sale to the Distributor, what is the tax basis—the selling price to the Distributor, the Distributor's price to Consumer, or some other value? Are there any factors regarding location of inventory or delivery method that can change the answer?

Question 3

If the Manufacturer is required to collect tax from the Distributor, can the Distributor reimburse itself for the tax amount paid to the Manufacturer by passing through the tax paid on its invoice to the Consumer? If so, how should this tax reimbursement be displayed on the Distributor's invoice? Does this tax reimbursement amount reduce the Consumer's use tax base?

Question 4

If the Manufacturer is not required to collect tax on its sales to the Distributor, what documentation can the Manufacturer accept from the Distributor?

- a) Home state resale certificate of the Distributor?
- b) Consumer state (Your State) resale certificate with a no-nexus statement of Distributor?
- c) Affidavit/statement of no nexus in Consumer state by the Distributor?

Question 5

If the Distributor's home state certificate is acceptable documentation, but the Distributor's only presence is in a state without sales tax, what alternate documentation will be accepted since the Distributor will not have a home state sales tax registration number or certificate?

Question 6

If the Consumer qualifies for an exemption (resale, direct pay, exempt organization or exempt use) can the Distributor provide the Consumer's exemption certificate to the Manufacturer to exempt the transaction between the Manufacturer and the Distributor?

Question 7

If the Manufacturer acts as a fulfillment agent in the Consumer's state for the out-of-state Distributor, does this activity create nexus for the Distributor in the Consumer's state? Which of the following activities creates this nexus when performed by the Manufacturer?

a) Packing and shipping orders when inventory is owned by the Manufacturer until the Manufacturer is directed by the Distributor to ship to the Consumer?

b) Packing and shipping orders of inventory owned by the Distributor before the Manufacturer receives any shipping instructions from the Distributor?

c) Operating an order fulfillment service on the Distributor's behalf, including: Accepting phone and mail orders addressed to Distributor, processing payments made payable to Distributor, and packing and shipping inventory that is owned by the Manufacturer prior to shipment to the Consumer?

d) Operating an order fulfillment service on the Distributor's behalf, including accepting phone and mail orders addressed to the Distributor, processing payments made payable to the Distributor, and packing and shipping inventory owned by the Distributor before shipment to the Consumer?

e) Accepting and processing product returns on the Distributor's behalf, including evaluation of product defect, crediting the Consumer and maintaining product return inventory which is charged back to the Manufacturer by the Distributor such that the Manufacturer owns the returned inventory?

f) Accepting and processing product returns on the Distributor's behalf, including evaluation of product defect, crediting the Consumer and maintaining product return inventory owned by the Distributor?

Question 8

What authority (statutes, regulations, administrative rules or court cases) supports your conclusions?