

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2007-23

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

December 4, 2007

Re: doing business in Colorado

Dear XXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated August 21 2007, re: taxability of sales of products. We apologize for the time it has taken to respond to your inquiry.

Issue

Does your company have the responsibility to collect sales or use tax?

Background

You state that you sell kitchen apparel, aprons and linens. You further state that you are trying to expand your sales territory by attending a trade show in [State]. Finally, you state that you do not have sales representatives living in Colorado, you do not store goods in Colorado, and you do not rent or own any storage facility in Colorado. You ask if you are obligated to collect sales tax on products shipped to Colorado.

Discussion

In general, a retailer must collect sales and/or use tax if the retailer is "doing business in this state." §39-26-102(3), C.R.S. "Doing business in this state" is defined as follows:

- (3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:
- (a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;
 - (b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

A number of federal court cases have limited the right of a state to impose on a retailer the obligation to collect state sales and use taxes. *Quill Corp. v North Dakota*, 504 US 298 , 112 S Ct 1904 , 119 L Ed 2d 91 (1992); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In general, these cases require that the retailer have substantial nexus with Colorado. In other words, a retailer must have some presence in the state, either directly, such as in the form of a store, or indirectly, such as through independent sales agents, and engage in regular, purposeful in-state sales activities specifically directed at in-state customers. *Tyler Pipe Industries, Inc. v. Wash. State Dept. of Revenue*, 483 U.S. 232, 250 (1987). For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

Based on the representations set forth in your letter, your company does not have an obligation to collect sales tax for goods shipped to Colorado. *Complete Auto Transit, Inc., supra*.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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