STATE OF COLORADO

DEPARTMENT OF REVENUE

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Bill Ritter, Jr. Governor Roxy Huber

Executive Director

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December 28, 2007

Re: Taxability of drug screening medical kits

Dear XXXXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated June 2, 2007, re: taxability of drug screening medical kits. We apologize for the time it has taken to respond to your inquiry.

Issues

- 1. Are a urine test kit and swabs exempt from tax?
- 2. Is your company obligated to collect Colorado sales or use tax?

Background

You state that your company, which is located in California, must collect sales tax for urine test kits and oral swabs it sells for drug screening.

Discussion

1. Test kits and oral swabs for drug screening are exempt.

Section 39-26-717, C.R.S states that urine and blood testing kits and materials are exempt. It appears that the urine test kit is exempt. It is not clear from your letter how the swabs are used, but if they are used for the purpose of urine testing and are part of the urine test kit, then they are also exempt. See, also, Department publication FYI Sales 68 (which lists urine and blood tests that are exempt, but the list is not exhaustive).

- 2. Your company is not responsible for collecting Colorado sales or use taxes. Your company, which I assume is located only in California, is not responsible for collecting sales tax unless you are "doing business in Colorado." "Doing business in this state" is defined (§39-26-102(3), C.R.S.) to include the following activities:
 - (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).

I assume that you receive orders at your office in [State] from purchasers who are located in Colorado. If you ship the product by U.S. mail or common carrier (Federal Express, etc.), and you do not have offices, warehouses, sales representatives, or any other physical presence in Colorado, then, based on the very limited facts set forth in your letter, it does not appear that the company is doing business in Colorado. For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

Although you are not doing business in Colorado and, therefore, are not required to collect Colorado sales or use tax, purchasers of your product must pay sales tax if the sale takes place in Colorado (typically, the place where the product is delivered) or use tax if the sale takes place outside of Colorado, but the purchaser uses, stores or consumes the test kits and oral swabs inside Colorado.

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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