

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400



GIL-2008-5

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

February 28, 2008

Re: taxability of merchandising and related services

Dear XXXXXXXXX,

This letter is in response to your letter, both dated January 17, 2008, to the Colorado Department of Revenue regarding the taxability of merchandising and related services.

Issue

Does sales tax apply to the following:

1. Merchandising
2. Signage
3. Fixtures

Background

The company is contemplating performing merchandising and related services in Colorado. The company's customers will be large retail stores. The company will provide only labor. Customers will own any tangible personal property, such as fixtures, merchandise, signage, etc. The company will provide three types of service.

Merchandising. The company will stock, arrange, or rearrange, the store's merchandise on the store's shelves and display fixtures, in a manner that will achieve the most efficient and attractive placement.

Signage. The company will hang up the store's large signs and displays, usually on aircraft cables draped over rafters and secured by zip ties. Signs are intended to stay up for five to six years.

Fixtures. Stores will provide their own gondolas, shelves, and similar display fixtures. These units may be new or used and will be disassembled when provided to the company. The company will assemble the fixtures prior to stocking them with merchandise. Most of the fixtures will be free

standing, although the company occasionally will have to secure a unit to the floor by metal anchor straps in order to meet seismic requirements.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104 and 204, C.R.S. In general, Colorado does not levy sales tax on services, except in limited circumstances that are not relevant here. The activities you describe as merchandising, signage, and fixtures, appear to be services. You represent that the company does not own the merchandise, signage, or fixtures. You do not disclose, and, therefore, I assume that, the company is not an affiliate, subsidiary, or in some other fashion related to customers (other than as parties to the contracts for services described above). If my assumption is not correct, my determination here may be different. Under the circumstances you present, the company does not incur sales or use tax liability for the activities you describe.

The company's customers clearly have a number of sales and/or use tax obligations regarding the merchandise, signage, and fixtures. However, these are not the company's obligation under the facts disclosed here. I do not understand you to request a determination of the sales or use tax obligations of the company's customers.

Please note that the information in this response concerns sales and use taxes administered by the department. These taxes include state administered city, county, and special district sales and use taxes. Colorado has a number of home-rule cities and counties that are not administered by the department. Moreover, the department does not administer business personal property taxes. For information about state administered local taxes, home-rule cities and counties, and the taxes they levy, see department publication DRP 1002. You can view and download this publication and a variety of other sales and use tax information by visiting our web site at: www.revenue.state.co.us and go to Taxation > Forms > Business Taxes > Sales Tax > DRP 1002.

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,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us