STATE OF COLORADO

DEPARTMENT OF REVENUE

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



John Hickenlooper Governor

Roxanne Huber Executive Director

GIL-11-012

June 14, 2011

Re: Application of City, County and Special District Sales and Use Tax on Online Internet Orders

Dear XXXXXXXXXXX.

You submitted on behalf of XXXXXXXXXX ("Company") a request for guidance on the application of city, county and special district sales and use tax on online internet orders. The department issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the department but not the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.taxcolorado.org > FYI/Publication > Rulings.

The department initially treats your request as one of a general information letter. If you would like the department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

ssue

What is Company's tax obligation for online internet purchases in counties, non-home-rule cities, and special taxing districts where Company may not have nexus?

Background

Company is a retail store with locations throughout Colorado. In addition to physical locations throughout Colorado, Company also sells its products online. The question at issue is

whether having nexus throughout the entire state requires Company to collect and remit all county, non home-rule city, and special taxing districts sales tax for online purchases?

Discussion

Colorado levies sales and use tax on the sale or use of tangible personal property. §§39-26-104(1)(a) and 202, C.R.S. The Colorado Department of Revenue also administers local sales taxes for all counties, cities (except home-rule cities and counties), and special districts¹ The department also collects use taxes levied by special districts, but not use taxes levied by cities or counties.

A retailer of tangible personal property who has a business presence in a city, county, and/or special district must collect all applicable local sales taxes on transactions consummated within those areas. For example, a retailer who has a brick-and-mortar store in a city must collect sales tax on purchases delivered to customers who are located in that city.

The sale of goods through the Internet is treated the same as the sale of tangible personal property through traditional selling methods. Thus, the Internet retailer who has a business presence in the local tax jurisdiction must collect that jurisdiction's sales tax. For example, if retailer operates a brick-and-mortar store in Estes Park and also sells goods on its web site or on its affiliate's web site, and the goods are sold to a purchaser who is also located in Estes Park, then the retailer has a business presence in Estes Park and must collect the Estes Park sales tax, the county sales tax, and state sales tax. Similarly, a retailer, who has a brick-and-mortar store located outside a special district, but who establishes a business presence in the special district by sending on a regular basis its repair trucks and employees to customers' homes, which are located in the special district, has a business presence in those special district and is obligated to collect the special district's use tax.

On the other hand, if a purchaser buys from a retailer who does not have a business presence in Colorado or in the local tax jurisdiction, then the retailer does not have an obligation to collect state or local taxes from the buyer. The buyer must report and pay state use tax to the state of Colorado and, if the buyer is also within a special district, then the buyer also owes the special district use tax. For further information on determining when to collect local taxes on shipped sales, see FYI Sales 62.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, noted above, the Department will make public a redacted version of this letter. Your letter requesting this general

¹ These include the Regional Transportation District/Cultural and Scientific Facilities District/Metropolitan Football Stadium District (RTD/CD/FD), rural transportation authorities, as well as others. See DRP 1002 for a list of all special districts.

information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist Colorado Department of Revenue