

COLORADO DEPARTMENT OF REVENUE

STATEMENT OF BASIS AND PURPOSE

AUCTIONEERS

39-26-102.1

1 CCR 201-4

Basis

The statutory basis for this rule is §39-21-112(1), §39-26-102(1.3), §39-26-102(10), §39-26-118, and §39-26-204, C.R.S.

Purpose

The purpose of this amendment is to eliminate the distinction between disclosed and undisclosed agents in the regulation, to clarify the application of local sales taxes to auction sales, and clarify the application of tax to fees charged in connection with auctions.

The existing regulation imposes the obligations of a retailer on auctioneers who acting as undisclosed agents of owners. Thus, an auctioneer is not a retailer under the regulation if the auctioneer disclosed that it was acting as an agent of the owner and, presumably, disclosed the name of the principal to the buyer. This is inconsistent with the statute which makes the auctioneer a retailer and only relieves the auctioneer of the obligations of a retailer if the owner is holds a retail license issued by the Department. The amendment to this regulation removes the disclosed v. undisclosed criteria and brings the regulation in line with the statute.

An auctioneer is not a retailer if the owner holds a Colorado retailer's sales tax license issued by the Department, or if the property or services sold are not subject to state or state-administered sales or use taxes. However, any person who collects such taxes must hold the same in trust for the state and must report and remit such taxes. §§39-26-118 and 204, C.R.S. A buyer can only discharge its sales or use tax responsibilities by paying a licensed retailer or the Department.

Therefore, an auctioneer must disclose to the buyer the name of the licensed owner if the auctioneer is not legally required to collect the tax and is doing so only as agent of the owner. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965)

Auctioneers often charge fees related to auction sales. When a retailer charges a fee which is inseparable from the purchase price, then the fee is included in the calculation of sales tax. See *A.D. Stores v. Department of Revenue*, 19 P.3d 680 (Colo. 2001). In general, a fee is inseparable if the purchaser does not have the option to not pay the fee.

An auctioneer is liable for both state and state-administered local taxes. Sales taxes are due when the auctioneer has a substantial nexus with the local tax jurisdiction. A sale takes place when and where title or possession is passed to the buyer. Department Regulation 39-26-102.10.