



COLORADO
Department of Revenue

Taxation Division

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Denver, CO 80203

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Denver, CO 80217-0087

PLR-16-011

July 6, 2016

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Colorado Sales or Use Tax

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 1 CCR 201-1, 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Should Company collect sales tax or retailer's use tax on purchases by Colorado customers?

Conclusion

Company should collect retailer's use tax on purchases by Colorado customers.

Background

Company is part of an affiliated group of corporations. Company sells technologically sophisticated tangible personal property that is used in industrial and manufacturing applications. Company sells its products throughout the country, including to customers in Colorado. Company's physical assets are located entirely outside Colorado. It does not own or lease offices in Colorado and does not have employees working in Colorado. Contracts between Company and its customers state that sales of its products occur outside Colorado. Company ships its products "FOB origin" by common carrier from a place outside Colorado to customers located in Colorado. Company collects Colorado retailer's use tax from Colorado customers.

A corporate affiliate of Company has an office in Colorado. Affiliate company sells tangible personal property to a wide range of businesses and these products are primarily used for administrative office support. Although the underlying technology of the products of the two companies is somewhat related, the products are distinctly different in terms of function and target markets. Companies do not have shared employees, facilities, or

operations. Neither company utilizes the labor of physical assets of the other to solicit, negotiate, or accept sales offers.

Structure of Analysis

To determine whether Company is required to collect retailer's use tax, the Department will examine the following questions:

1. Is Company selling taxable goods for use, storage, or consumption in Colorado pursuant to either §§ 39-26-104(1)(a) or 204(2), C.R.S.?
 - a. At the time of such sale, are the goods subject to tax in Colorado?
 - b. If not, do such goods become taxable in Colorado at the time of such use, storage, or consumption in Colorado pursuant to § 39-26-204(2), C.R.S.?
2. Is an affiliate company acting in a representative capacity to Company?

Discussion

A retailer should collect Colorado retailer's use tax when it sells tangible personal property that is not taxable at the time of the sale but becomes taxable when it is used, stored, or consumed in Colorado.¹ Use tax applies, for example, when a retailer makes a retail sale outside of Colorado and ships the goods to a buyer inside Colorado. However, if the sale is made inside Colorado, then the retailer should collect sales tax.

Company is an out-of-state retailer and does not own any sales offices, warehouses, or inventory in Colorado. All sales orders are received, reviewed, negotiated, and accepted at its out-of-state headquarters. Based on these facts alone, we would conclude that the sale takes place outside Colorado and sales tax does not apply.

The issue is more complicated in this case because Company has an affiliate in Colorado. If Company's affiliate acts as the agent for Company for purposes of conducting sales, then the sale is in Colorado and sales tax is the appropriate tax to remit because both the seller (acting through its agent) and the buyer are located in Colorado at the time of sale.

Company represents that the affiliate does not act as an agent of Company in any capacity. We note in this regard that the products of the two companies are distinctly different. Company represents that the companies do not share employees or facilities. Company further represents that the affiliate does not solicit offers to buy or accept offers to buy on behalf of Company. Based on these representations, we do not see any basis on which we can conclude that the affiliate operates in a representative capacity for Company for purposes of conducting the sale. Therefore, Company is properly collecting Colorado's retailer's use tax rather than Colorado sales tax.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

¹ § 39-26-204(2), C.R.S.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Neil Tillquist
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.