



State Capitol Annex  
P. O. Box 17087  
Denver, CO 80217-0087

John Hickenlooper  
Governor

Barbara J. Brohl  
Executive Director

GIL-16-016

August 5, 2016

XXXXXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Re: Consignment Warehouse

Dear XXXXXXXXXXXXXXXX,

You submitted on behalf of your client a request for guidance regarding the application of sales tax to the sale of merchandise owned by a foreign corporation (“German Company”) and sold from a consignment warehouse located in Colorado.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but 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 on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

**Issue**

1. Does Colorado sales tax apply to merchandise owned by German Company and held and sold on consignment at a warehouse located in Colorado?
2. Is the German Company doing business in Colorado?

## Background

German Company would like to establish a consignment warehouse located in Colorado. The German Company will not have employees located in Colorado. The daily business will be provided by a local U.S. company. Invoices will be issued outside the United States and sent directly to customers in the United States.

## Structure of Analysis

To determine whether sales tax applies to goods held and sold on consignment in a warehouse located in Colorado, the Department will examine the following questions:

1. Is German Company doing business in Colorado for purposes of collecting Colorado sales tax pursuant to § 39-26-102(3), C.R.S.?
2. Is there a sale of tangible personal property under § 39-26-104, C.R.S.?
3. If the sale does not take place in Colorado, is the retailer liable for retailer's use tax because the property is delivered to a buyer in Colorado pursuant to § 39-26-204(2), C.R.S.?

## Discussion

Colorado imposes sales tax on the sale of tangible personal property.<sup>1</sup> A retailer is responsible for collecting, reporting, and remitting sales tax if the retailer is doing business in Colorado.<sup>2</sup> A retailer is doing business in Colorado if it acts through agents or independent contractors who are located in Colorado and who engage in sales activities in this state.<sup>3</sup> Maintaining a warehouse, either directly or through agents, also constitutes doing business in Colorado.<sup>4</sup>

In the facts you provide, goods are held on consignment by a local company on behalf of the German Company for the purpose of facilitating sales. The German Company is likely doing business in Colorado because it holds inventory in a warehouse in Colorado. Therefore, it appears that the German Company must collect, report, and remit sales tax for taxable sales in Colorado.

A retailer is liable for sales tax if the sale occurs in Colorado. A sale takes place in Colorado if possession transfers from the seller to the buyer in Colorado.<sup>5</sup> For example, a retailer who sells goods from a Colorado warehouse to a buyer that takes delivery of such goods in Colorado is liable for sales tax on such sales. Sales of goods from a consignment store are treated as any other retail establishment.

On the other hand, sales of goods on consignment are not subject to sales tax if the goods are shipped by common carrier out of state where the buyer takes possession of the consigned goods.<sup>6</sup> For example, if a retailer sells goods from a Colorado warehouse and ships them by

---

<sup>1</sup> § 39-26-104, C.R.S.

<sup>2</sup> A retailer is "doing business in this state" if the retailer if, among other activities, the retailer maintains, within this state, directly or indirectly or by subsidiary, of a warehouse, storage place, or other similar place of business; or by soliciting, either by direct representatives or indirect representatives, manufacturing agents, from people located in this state and by reason thereof receiving orders from, selling tangible personal property to such person for use, storage or consumption in this state. A person is presumed to be doing business in this state if, among other things, they or a third-party acting on their behalf maintains a warehouse in this state to facilitate the delivery of taxable goods sold by such person. § 39-26-102(3), C.R.S.

<sup>3</sup> See footnote 2, above.

<sup>4</sup> See footnote 2, above.

<sup>5</sup> Department Rule 1 CCR 201-4, 39-26-102.10.

<sup>6</sup> Department Rule 1 CCR 201-4, 39-26-704.2(4).

common carrier to a location outside Colorado, the retailer is not liable for sales tax because possession of the goods is transferred to the buyer outside Colorado.

### **Miscellaneous**

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at [www.colorado.gov/tax](http://www.colorado.gov/tax) for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter 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 letter.

Sincerely,

Neil Tillquist  
Colorado Department of Revenue  
Office of Tax Policy & Analysis