

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2007-11

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: third party drop shipments

Dear XXXXXXXXXXX,

This letter is in response to your undated letter to the Colorado Department of Revenue, we received on April 24, 2007, re: taxability of third party drop shipments. We apologize for the time it has taken to respond to your inquiry.

Issues

1. Is [Company] responsible for collecting Colorado's sales tax on goods sold to an out-of-state purchaser but delivered to an in-state third party?
2. What does [Company] need to document that the material is for resale?
3. Can we accept our customer's home state resale certificate?
4. Does our customer need to be registered with Colorado?
5. Would their customer's Colorado resale certificate, exemption certificate, or direct pay number follow through?

Background

You state that you are located in Wisconsin. You have a customer, who is not registered with the state of Colorado, is having you drop ship material to its customer. For purposes of clarity, I will refer to your customer as the "retailer" and the retailer's customer as the "consumer."

Discussion

1. *[Company] is not responsible for collecting Colorado state and state-administered local sales and use taxes on drop shipments to third parties.*

[Company] has an obligation to collect Colorado sales and use taxes if it is “doing business in this state.” “Doing business” in Colorado means:

(3) “Doing business in this state” means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:

(a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;

(b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

§39-26-102(3), C.R.S.

A number of federal court cases have limited the right of a state to impose on a retailer the obligation to collect state sales and use taxes. *Quill Corp. v North Dakota*, 504 US 298 , 112 S Ct 1904 , 119 L Ed 2d 91 (1992); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In general, these cases require that the retailer have substantial nexus with Colorado. In other words, a retailer must have some presence in the state, either directly, such as in the form of a store, or indirectly, such as through independent sales agents, and engage in regular, purposeful in-state sales activities specifically directed at in-state customers. *Tyler Pipe Industries, Inc. v. Wash. State Dept. of Revenue*, 483 U.S. 232, 250 (1987). For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

I assume for purposes of this response that [Company] does not: directly or indirectly maintain a store, warehouse, or other facilities in Colorado; have employees in Colorado; solicit sales in Colorado; delivers goods to consumers either in your vehicles or by common carrier; and that retailer is in the retail business selling taxable tangible personal property. Based on these limited facts and my assumptions, it appears that you are not doing business in Colorado and, therefore, you do not have an obligation to collect or remit Colorado sales or use tax on the drop shipments to Colorado consumers. If these assumptions are not correct or if there are additional facts that are relevant and not disclosed, my advice may be different.

2. *You do not have an obligation to document the sale for resale because you are not responsible for collecting or remitting taxes to Colorado.*

Because you are not doing business in Colorado, you are not under a legal obligation to comply with Colorado law regarding documenting a exempt sale for resale transactions. However, if you would like to document these sales for your own purposes, please review our publication, FYI Sales 1. You can view and download this publication by visiting our website at www.revenue.state.co.us (go to Taxation > FYIs > Sales Tax).

3. *You can accept our retailer's home state resale certificate.*

See response to Question 2, above. FYI Sales 1 states that Colorado will accept retail sales tax licenses of another state as satisfactory proof for a sale for resale exemption.

4. *Your obligations to Colorado do not depend on whether the retailer registers with Colorado.*

See response to Question 2, above. We cannot determine whether the retailer has an obligation to register in Colorado. However, whether the retailer must register will not affect whether you must comply with Colorado law.

5. *You do not have an obligation to document the retailer's Colorado resale certificate, exemption certificate, or direct pay number.*

See response to Question 2, above. FYI Sales 1 states that Colorado will accept retail sales tax licenses of another state as satisfactory proof for a sale for resale exemption.

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,

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