



COLORADO
 Department of Revenue
 Taxation Division

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GIL-15-016

June 8, 2015

XXXXXXXXXXXXXXXXXX
 Attn: XXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXX

Re: Employee Create Nexus

Dear Mr. Healy,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine whether the presence of Company's employee in Colorado establishes nexus 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 Regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department treats this request as one for 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 a retailer would like the Department to issue a private letter ruling on the issue raised here, the retailer can resubmit a request and fee in compliance with Department Regulation 24-35-103.5.

Issue

1. Will the presence of Company's employee in Colorado establishes sufficient nexus in Colorado to require Company to charge sales tax on sales into Colorado?
2. If not, is retailer's use tax due?

Background

Company sells and distributes lithographic and electronic arts equipment. Company is incorporated outside Colorado and has no office or inventory in Colorado. On occasion, Company sells spare parts of such equipment at retail in Colorado. The remainder of Company's sales are wholesale sales. Such parts and equipment are shipped from outside Colorado.

Company hired two employees who presently reside in Colorado. One is transferring to the state in which Company is located and the other will remain in Colorado and support the Company's activities in the western part of the country.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property in Colorado. A retailer has an obligation to collect sales and use taxes if the retailer is doing business (i.e., has nexus) in Colorado. "Doing business in this state" is defined to include the following activities:

"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...

Because Company sells and delivers spare parts at retail in Colorado, Company is doing business in Colorado. In addition, Company also has an employee in Colorado that creates nexus for constitutional purposes. Therefore, Company has established sufficient nexus in Colorado to require Company to collect and remit sales or use taxes on sales into Colorado.

Even if the employee is not performing sales work in connection with the sale of Company's equipment in Colorado, constitutional nexus does not require that the activity creating nexus relate to the taxable transaction at issue. In *National Geographic Society v. California Board of Equalization*, 430 US 551 (1977), the Court ruled that a seller has nexus in a state if it maintains employees in that state, even if the activities of the employees are completely unrelated to the sales transaction at issue.

Company should collect retailer's use tax from the purchaser on any sales made into Colorado, including any special district use taxes. State-administered cities and counties do not have a use tax applicable to the goods sold by Company and, thus, no use tax is due.

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 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 L. Tillquist
Colorado Department of Revenue