



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

PLR-17-008

October 3, 2017

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Sales Tax Nexus

Dear XXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXX. (“Company”) 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

Does the presence of Company’s employee in Colorado establish sufficient nexus in Colorado to require Company to charge sales tax on sales into Colorado?

Conclusion

The presence of Company’s employee in Colorado establishes sufficient nexus in Colorado to require Company to charge sales tax on sales into Colorado.

Background

Company is an online retailer of tangible personal property. Company has no office or inventory in Colorado. Shipments originate outside Colorado. Company has an employee who resides in Colorado and who works remotely with the Company’s main headquarters. The employee engages in research and contract negotiations but Company represents that the employee is not a sales representative and does not promote online sales.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property in Colorado¹. 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:

¹ §§39-26-104(1) and 202, C.R.S. You can view this statute, as well as other Department publications, by visiting the Department’s website at www.Colorado.org > Taxes > Tax Library > Statutes.

“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...²

Because Company sells taxable goods at retail to Colorado customers, Company is doing business in Colorado. In addition, Company has an employee in Colorado. Constitutional nexus does not require that the Company’s employee located in Colorado 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. Therefore, Company has substantial nexus in Colorado and therefore must collect and remit taxes on sales to Colorado customers.³

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
Office of Tax Policy Analysis

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

² §39-26-102(3), C.R.S.

³ See, also, GIL 15-016