



**COLORADO**  
Department of Revenue

Taxation Division  
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PLR-14-005

July 28, 2014

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Internet Wine Sales

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling.

**Issue**

Will the presence of Company's employee in Colorado establish sufficient nexus in Colorado to require Company to charge sales tax on online sales to Colorado residents?

**Conclusion**

The presence of Company's employee in Colorado will establish sufficient nexus in Colorado to require Company to charge sales tax on online sales to Colorado residents.

**Background**

Company sells wine over the internet. Company acquires wine from wine cellars throughout the United States, transports the wine to Company's location (outside of Colorado), and sells the wine over the Internet. Company currently does not have employees in Colorado but intends to hire a full-time employee who will be based in Colorado. The employee's only job will be to identify wine cellars in Colorado to be acquired by Company. The employee will not be a sales representative for Company and will not promote Company's internet sales. The employee's only responsibility will be to locate wine cellars and facilitate Company's acquisition of the wine.

The employee will work out of his or her home and Company will not compensate the employee for the use of their home. When the employee locates wine cellars to be acquired, a small team of employees based outside of Colorado will fly to the specific location to inspect and taste the wine to be acquired. If the acquisition is successful, the

team of employees will return to Company's out-of-state location with the wine and then sell it over the Internet.

## Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property in Colorado.<sup>1</sup> 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...<sup>2</sup>

Company engages in two activities that constitute doing business in this state. First, Company's employee, although not directly soliciting or promoting Company's Internet sales, is performing work in Colorado in connection with Company's sales of tangible personal property in Colorado because the employee is locating and facilitating Company's acquisition of wine to sell. Therefore, Company is doing business in Colorado and has established sufficient nexus in Colorado to require Company to collect and remit sales or use taxes on sales to Colorado residents

We note that 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.

The second activity that constitutes doing business in Colorado relates to the other employees who are temporarily in Colorado. Company will send a team of employees into Colorado to possibly acquire wine cellars. As is the case with the employee permanently located in Colorado, these other employees are engaged in activities related to sales of wine that will be consumed in Colorado and, therefore, fall within the scope of the nexus statute.

As a result, Company must collect Colorado sales tax on wine sales that are delivered to a buyer located in Colorado. Company also has an obligation to collect Colorado use tax if the sale occurs outside Colorado but is delivered into Colorado to the buyer for use, storage, or consumption in 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

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<sup>1</sup> §§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](http://www.Colorado.org) > Taxes > Tax Library > Statutes.

<sup>2</sup> §39-26-102(3), C.R.S.

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/revenue/tax](http://www.colorado.gov/revenue/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,

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