

# STATE OF COLORADO

**DEPARTMENT OF REVENUE**  
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GIL-2007-9

Bill Ritter, Jr.  
Governor

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Executive Director

XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX

December 4, 2007

Re: Taxability of water treatment solutions

Dear XXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated August 10, 2007, re: taxability of water treatment solutions. We apologize for the time it has taken to respond to your inquiry.

## Issue

1. Does [Company] have nexus with Colorado?
2. Are [Company]'s leases of equipment exempt from tax?

## Background

[Company] is located in [State]. You have not indicated whether your company has any presence in Colorado. You state that you lease certain oil and gas equipment to companies operating in Colorado.

## Discussion

1. *Doing business in Colorado.*

Colorado levies sales tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. A "sale" includes the leasing or licensing of tangible personal property. §39-26-102(23), C.R.S. Although not particularly clear from your letter, it appears that [Company] either sells, leases or licenses tangible personal property to coal bed methane operators who operate in Colorado.

[Company] must collect Colorado sales or use tax if it is "doing business in this state." "Doing business in this state" is defined (§39-26-102(3), C.R.S.) to include the following activities:

- (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.

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).

Your letter does not provide sufficient information for me to determine whether [Company] is doing business in this state. If [Company]'s only presence in Colorado is to make occasional deliveries, then it does not have the responsibility to collect Colorado taxes. *Quill Corp. v. North Dakota*, supra. However, if [Company] has other contacts in Colorado, then it may be doing business in Colorado and have the responsibility to collect Colorado taxes. For example, if [Company] regularly sends employees to repair or maintain equipment, to consult or assist customers, or sends sales representatives to solicit business, then these activities will likely create nexus.

In addition to state sales and use taxes, the department also collects a variety of special district sales and use taxes, and sales taxes for state administered cities and counties. These special districts, cities and counties, and their tax rates, are listed on the Department's publication DRP 1002, which you can view and download from our web site at: [www.revenue.state.co.us](http://www.revenue.state.co.us) (go to Taxation > Forms > Businesses > Sales Use Tax).

## 2. Exemptions from sales and use taxes.

Although there are a number of exemptions for sales and use taxes, it is not clear whether any apply to your product. There is an exemption for machinery, machine tools, and parts thereof, used solely and exclusively for manufacturing in an enterprise zone. Manufacturing is defined to include mining of natural resources. See, §39-30-106, C.R.S. Department publication FYI Sales 69 explains this exemption in greater detail. You can view and download this publication at: [www.revenue.state.co.us](http://www.revenue.state.co.us) (go to Taxation > FYIs > Sales Tax). Form DR 0074 lists the names and location of enterprise zones. See, [www.revenue.state.co.us/PDF/dr0074.pdf](http://www.revenue.state.co.us/PDF/dr0074.pdf).

Cities and counties have the option to impose sales tax (but not use tax) on manufacturing equipment. Please refer to DRP 1002 for a list of cities and counties that impose this tax on manufacturing equipment. Please note that the department does not collect sales and use taxes for "home-rule" cities and counties, which are also listed on DRP 1002. Please contact those governments for information about their taxes.

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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