



COLORADO
Department of Revenue
Taxation Division

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PLR-16-0010

April 18, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Local Tax Obligation

Dear XXXXXXXXXXXX,

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. This ruling is binding on the Department to the extent set forth in Department Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

Does Company have an obligation to collect state-administered local jurisdiction sales tax?

Conclusion

Company does not have an obligation to collect state-administered city and county sales taxes unless it creates a business presence in the local jurisdiction. Based on the facts presented, Company does not have a business presence in the state-administered cities and counties. However, Company does have an obligation to collect the state retailer's use tax and state-administered special districts use tax.

Background

Company provides integrated prepress solutions consisting of consumables, hardware, software, and services for production workflow, project, and color management. Company also provides inks for various applications and supplies computer-to-film, computer-to-plate, digital proofing systems, large format printing, professional software that controls the prepress process and digital inkjet printing presses for industrial applications. Company sells products to distributors, wholesalers, retailers and end users. In connection with the products it sells, Company also provides installation services. From

2012 to 2014, all of these installation services were performed in home rule cities.

Company also sells service contracts that provide repair and maintenance services for the products it sells. Company does not have a service facility in Colorado. The repair and maintenance services made pursuant to the service contracts are performed on the customer's site by Company's employees. In 2012, Company had only one service contract with a customer located in a state-administered local tax jurisdiction.

Company is headquartered outside of Colorado. None of Company's sales and administrative offices, warehouses or distribution centers are located in Colorado. Company does not maintain any inventory in Colorado. Company only arranges to ship goods into Colorado customers by common carriers from Company's locations outside of Colorado. Company does not have inventories that are consigned to customers located in Colorado. All sale orders are subject to credit check by Company and subject to Company's acceptance and approval at its headquarters outside of Colorado.

Company has three employees who are Colorado residents. Their responsibilities are:

1. A sales representative who works out of her home soliciting sales orders from potential customers in a region covering several states, including Colorado.
2. A field service technician who provides on-site services for Company's customers throughout the United States, but rarely works in Colorado.
3. A systems technical consultant who provides on-site software support functions to Company's customers across the United States and Canada, but rarely works in a state-administered city or county.

Company has no other agents (independent or otherwise) acting on its behalf in Colorado. Other than reimbursing the Colorado resident employees for the internet and telephone expenses, Company does not pay any of the expenses relating to and maintaining the employees' home offices.

Structure of Analysis

To determine whether Company is required to collect state-administered local jurisdiction taxes, the Department will examine the following questions:

1. Does Company have substantial nexus with Colorado for state and state-administered sales tax purposes?
2. If Company has substantial nexus, does Company have a physical presence in the relevant local taxing jurisdiction?
3. Does Company collect state sales tax or state retailer's use tax?

Discussion

Company clearly has substantial nexus with Colorado, as a taxing jurisdiction, because Company has employees working in this state soliciting sales and performing customer support activities. The more difficult question is whether Company has a business presence¹ in state-administered local tax jurisdictions. Company represents that it does not have physical assets or employees performing work in state-administered local jurisdictions. Company represents that it has made only one sale of a product to a customer in a state-administered local tax jurisdiction in the last three years. Section 29-

¹ § 29-2-105(1)(b), C.R.S.

2-105, C.R.S. states that when a seller ships goods to a destination outside where it is located the seller does not have an obligation to collect sales tax for the state-administered city and county. Based on these facts, Company does not have a business presence in the state-administered cities and counties and, therefore, Company does not have an obligation to collect state-administered city and county sales tax.

Section 29-2-109, C.R.S. prohibits cities and counties from creating ordinances that implement a use tax, with the exception of motor vehicles and building materials. The Department does not administer the limited use tax for state-administered cities and counties. As a result, Company also does not have an obligation to collect state-administered city and county use tax to the Department.

However, special districts, such as the Regional Transportation District, Scientific and Cultural Facilities District and Regional Transportation Authority's, do have the statutory authority to impose a use tax, and such use tax is administered by the Department.² Therefore, the vendor collects retailer's use tax on deliveries into the state and special districts because the goods are shipped from out-of-state.³ Thus, Company must collect retailer's use tax for both the state and, if goods are delivered to a buyer in a special district, special district use tax.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter.

² § 43-4-605(1)(j), C.R.S.; C.R.S. § 32-13-107 (1)(a), C.R.S.; *Howard Electric v. State Department of Revenue*, 748 P.2d 1321 (Colo. App. 1987) ("section 32-9-119(2) explicitly authorized imposition of an RTD sales tax and implicitly authorized an RTD use tax").

³ Retailers use tax is the retailer collecting the consumer's use tax on behalf of the consumer because the consumer will be making a taxable use of the good in Colorado. Note that this advice will change if and when Marketplace Fairness or a similar bill passes Congress. If and when that occurs, the vendor will be obligated to collect sales tax on deliveries into the state.

Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling

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.