



COLORADO
Department of Revenue

Taxation Division

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Denver, CO 80203

Mailing Address:
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Denver, CO 80217-0087

GIL-17-015

August 21, 2017

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Nexus

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX (“Company”) to determine whether Company has nexus in the state of Colorado for sales and use tax, and income tax purposes.

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 Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as 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 Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Does Company’s presence in Colorado create nexus sufficient to require the collection of sales or use tax?
2. Does Company’s presence in Colorado create nexus sufficient to require corporate income tax filing and payment?

Background

Company manufactures and distributes tables and chairs. Company is incorporated outside of Colorado and has no office, equipment, or employees in Colorado. Company does not directly advertise in Colorado and Company uses

common carriers to deliver its products. Company performs warranty work in Colorado, which has totaled three days of work in the past three years.

Discussion

Company has asked the Department to make a determination on whether Company's in-state work meets the standards of nexus so as to require Company to remit Colorado sales and use tax and corporate income tax. The department will not make a determination of nexus in a General Information Letter and would require more information from Company to do so. However, the following information provides some general guidance.

1. Does Company's presence in Colorado create nexus sufficient to require the collection of sales or use tax?

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property in Colorado.¹ Colorado can impose on a retailer a duty to collect sales and use tax if the retailer has established a sufficient connection with the state to meet the "substantial nexus"² requirements of the United States Constitution and, in addition, the retailer's activities in Colorado satisfy the Colorado statutory requirements of "doing business in this state."³

The United States Supreme Court has ruled that the test for determining whether a retailer has "substantial nexus" with the taxing state is "whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sale."⁴ An employee or an independent contractor working on behalf of the out-of-state seller to establish or maintain a market will often be sufficient to create substantial nexus.⁵

Colorado statutes require that a retailer collect and remit sales and use tax if the retailer is "doing business in the state" as defined in Colorado law.⁶ "Doing business in the state" includes not only a retailer's own activities within Colorado, such as advertising, but includes the activities of a third party within Colorado on the retailer's behalf.⁷

2. Does Company's presence in Colorado create nexus sufficient to require corporate income tax filing and payment?

Corporations must file a Colorado corporate income tax return if they are "doing business in Colorado."⁸ An out-of-state corporation is doing business in Colorado for income tax purposes when the corporation exceeds the minimum standards of

¹ §§39-26-104(1) and 202, C.R.S.

² *Quill Corp. v. North Dakota*, 504 US 298, 112 S Ct 1904., 19 L Ed 2d 91 (1992)

³ §39-26-102(3), C.R.S.

⁴ *Tyler Pipe Indus. V. Wash. Dep't of Revenue*, 483 U.S. 232, (1987)

⁵ *Id.*

⁶ §39-26-102(3), C.R.S.

⁷ §39-26-102(3)(e)(I)(C), C.R.S.

⁸ §39-22-301(1)(d)(I)(H), C.R.S.

Public Law 86-272 (15 U.S.C. 381)(hereafter “P.L. 86-272”)⁹ and that corporation has a substantial nexus to Colorado.¹⁰

First, the Department would look to whether P.L. 86-272 prohibits Colorado from imposing a corporate income tax. The Multistate Tax Commission’s National Nexus Program, of which Colorado is a member, classifies making repairs or providing maintenance to the property sold in state as an unprotected activity that causes a loss of protection by P.L. 86-272.¹¹

In addition, Colorado statute¹² requires an out-of-state corporation to file and remit corporate income tax if that corporation has “substantial nexus” with Colorado as defined in Department Regulation 39-22-301.1(2)(b).¹³ A corporation has “substantial nexus” in Colorado if, during a tax period, its property, payroll, or sales in Colorado exceed any of the following thresholds:

- 1) A dollar amount of \$50,000 of property; or
- 2) A dollar amount of \$50,000 of payroll; or
- 3) A dollar amount of \$500,000 of sales; or
- 4) Twenty-five percent of total property, total payroll or total sales.¹⁴

If Company does not exceed any of these thresholds, then it does not have substantial nexus with Colorado and is not required to file a corporate income tax return.

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

⁹ Imposition of Net Income Tax, 15 U.S.C. § 381 (1959)

¹⁰ Department Regulation §39-22-301.1(1)

¹¹ Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272, (July 29, 1994, as revised July 27, 2001)

¹² §§39-22-301(1) and 601(2), C.R.S.

¹³ “Substantial nexus” for Colorado corporate income tax is defined by Department Regulation, where “substantial nexus” for sales and use tax is a standard defined by the United State Supreme Court.

¹⁴ Department Regulation § 39-22-301.1(2)(b)

me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Ryan Doerflein
Colorado Department of Revenue
Office of Tax Policy & Analysis