



**COLORADO**  
Department of Revenue

Taxation Division

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Denver, CO 80203

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

PLR18-001

February 22, 2018

XXXXXX  
Attn: XXXXXX  
XXXXXX  
XXXXXX

Re: Place of Sale

Dear XXXXXX,

You submitted a request for a private letter ruling on behalf of your client, XXXXXX (“Taxpayer”), 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**

1. Are transactions entered into between a Colorado printing company and out-of-state Taxpayer subject to sales tax when the printed material is delivered by the Colorado printing company to a common carrier and then by the common carrier to recipients inside and outside Colorado?
2. Are transactions entered into between a Colorado printing company and out-of-state Taxpayer subject to sales tax when the printed material is delivered by the Colorado printing company to a contract carrier and then by the contract carrier to a distributor located outside Colorado?

**Conclusions**

1. Transactions entered into between a Colorado printing company and out-of-state Taxpayer are not subject to sales tax when the printed material is delivered by the Colorado printing company to a common carrier and then by the common carrier to recipients outside Colorado but are subject to sales tax when the catalogues are delivered to recipients located in Colorado.
2. Transactions entered into between a Colorado printing company and out-of-state Taxpayer are not subject to sales tax when the printed material is delivered by the Colorado printing company to a contract carrier and then by the contract carrier to a distributor located outside Colorado.

## Background

Taxpayer is an out-of-state company that distributes catalogs to recipients. Taxpayer hires a printing company (Printer), which is located in Colorado, to print the catalogs. Printer's standard contract states that the printed material is "free-on-board" (FOB) at the Printer's place of business if Printer does not agree to provide shipping. If Printer agrees to provide shipping, Printer agrees to ship catalogues to the destination and Printer invoices Taxpayer for shipping. In the facts for this ruling, Taxpayer requests that Printer deliver the catalogues to recipients designated by Taxpayer.

After printing, Printer packages the catalogues, contacts a common carrier to pick them up, and provides the carrier with the location of recipients designated by Taxpayer. Recipients are located both inside and outside Colorado. The common carrier's website for ordering shipments is filled out by Printer and offers users the option to designate a person other than user to pay for shipping. Taxpayer and Printer agree to use this option to directly bill Taxpayer for shipping in order to make accounting more efficient. Taxpayer has no interactions with the common carrier other than paying the common carrier's invoice.

For some orders, Printer ships catalogues to a Taxpayer's customer (Distributor) who is located outside Colorado. The sale contract between Taxpayer and Printer is the same as the contract for catalogues delivered to recipients. Printer hires a contract carrier to pick up the catalogues and deliver them to the Distributor. The contract carrier's bill of lading identifies Printer as the "shipper." Distributor is billed directly by the contract carrier.

## Discussion

Department rule 39-26-704.2 states that the sale of goods to an out-of-state buyer is not subject to sales tax if the goods are shipped by a common carrier hired by the vendor to a destination outside Colorado for use outside Colorado. The issue raised in this request for ruling is whether Printer hires the carriers (and, therefore, the transactions fall within the scope of this rule) or whether Taxpayer's agreement to be billed directly by the carriers means that Taxpayer hires the carrier.

Printer contacts the carriers and makes all the arrangements for shipping. Taxpayer has no interaction with the carriers other than paying the carrier's invoice. Given the contractual obligation in the sales contract,<sup>1</sup> it is more accurate to view the carriers as fulfilling Printer's obligation to deliver rather than viewing the carriers as taking possession on behalf of Taxpayer solely on the basis that Taxpayer is directly billed by the carriers. Therefore, the Department rules that catalogues delivered by the common and contract carriers to recipients and to the Distributor located outside Colorado are not subject to Colorado sales or use tax. Catalogues delivered by the common carrier to recipients located in Colorado are subject to sales tax.<sup>2</sup>

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<sup>1</sup> Printer's contractual obligation regarding shipment would be clearer if it stated that Printer ships catalogues "FOB Destination."

<sup>2</sup> When the property is not delivered to the buyer's place of business but, rather, to a place designated by the buyer, then possession is presumed to pass where the goods are actually delivered. See, e.g., *Ark. Regs. GR-76 Determination of Tax Due - Sourcing Transactions*, para D(1)(b).

### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption or 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. 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.**