

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-13-006

April 18, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Resale Exemption Certificates

Dear XXXXXXXXXXXXX,

You submitted on behalf XXXXXXXXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance about resale exemption certificates.

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 and 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 regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

1. Does Colorado accept resale certificates from other states? If so, what form should a drop shipment customer fill out to exempt themselves from taxes (i.e., multijurisdictional form, streamlined form, or Department's own form)?
2. If a drop shipment seller does not have an exemption certificate or Colorado resale certificate, but the customer has such a certificate, can Company accept the consumer's certificate?
3. If a drop shipment is made to an installer, fabricator, or freight-forwarder, does the exemption certificate need to be for that address or for the end user?

Background

Company, which is located outside Colorado, makes drop shipments of its products to consumers located in Colorado. Company has a sister company who has a service agency office in Colorado. This affiliated company creates nexus for Company in Colorado. In drop shipment transactions, sellers, installers, prefabricators may have a sales tax license. In other cases, the consumer may have an exemption certificate. In the case of a freight-forwarder, the Department assumes that the Company delivers goods to a freight-forwarder engaged by either seller or buyer, and either the seller has a sales tax license or the buyer has an exemption certificate.

Discussion

Colorado allows Company, as a wholesaler, to accept a sales tax license issued by another state.¹ For example, Company sells its product to a retailer, who is not located in Colorado, and retailer then resells the product to a consumer in Colorado. Retailer does not have nexus with Colorado. Company's sale to the retailer is an exempt sale for resale and Company is not required to collect sales tax from the retailer. Company can accept retailer's out-of-state sales tax license in order to document the resale exemption. Company must retain a copy of the sales tax license or, if there is no expiration date on the license or the retailer provides only a license number, Company must verify with the other state that the sales tax license is currently valid.² Company should have out-of-state retailer sign the form "Sales Tax Exemption Certificate: Multi-Jurisdiction (DR 0563)."

If the retailer has a Colorado sales tax license or exemption certificate, Company can verify the validity of the Colorado exemption number at www.colorado.gov/revenue/tax > Online Services > Sales and Use Taxes > Other Services (Verify Sales Tax License). For more information about how retailers must document exempt sales tax transactions, see Department FYI Sales 1 "How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders."³ It is the burden of Company to verify the validity of the license or certificate.⁴

Colorado also allows a retailer to accept an exemption certificate issued by another state.⁵ If Company contracts to sell its product directly to the consumer and the consumer has an exemption certificate issued by another state, then Company is not required to collect sales tax from the consumer. However, if Company sells its product to a retailer and the retailer does not have a sales tax license or exemption certificate issued by Colorado or another state, then Company must collect sales tax from the retailer, even if the ultimate consumer

¹ Colorado does not have a specific resale certificate. The State accepts the Multistate Tax Compact Uniform Sales & Use Tax Certificate—Multi-jurisdiction, issued by the Multistate Tax Commission; however, Colorado does not permit the use of the certificate to claim a resale exemption for the purchase of a taxable service for resale.

² Department Publication Sales 1 "How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders." This publication can be viewed at www.colorado.gov/revenue/tax > Tax Library > FYIs > Sales.

³ This publication can be viewed at www.colorado.gov/revenue/tax > Tax Library > FYIs > Sales.

⁴ §39-26-105(1)(c)

⁵ Department Publication Sales 3, "Out-of-State Sales Tax-Exempt Organizations Doing Business in Colorado." This publication can be viewed at www.colorado.gov/revenue/tax > Tax Library > FYIs > Sales.

has an exemption certificate issued by Colorado or another state. In such cases, the consumer can file a claim for refund using Department Form DR 0137.

A fabricator or installer must possess a sales tax license in its own name in order to make a purchase that qualifies as a sale for resale exemption.⁶ The fabricator or installer can also claim the exemption certificate of the consumer for real property fixtures, such as built-in stoves and ovens, if the consumer is a government, charitable organization (including churches and synagogues), or public (but not private) school.⁷ Building materials for leased buildings may also be purchased tax free if paid for by the tax-exempt organization.⁸ Company must retain records sufficient to establish the exemption (see discussion above).

The Department is not clear under what circumstances a freight forwarder would be required to have or obtain a resale exemption certification. It is the Department's understanding that a freight-forwarder is not buying or selling Company's product, but rather is acting as an agent of Company, retailer, or buyer to deliver the product.

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/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,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303) 866-5627
Email: neil.tillquist@state.co.us

⁶ Fabricators and installers may fall within the Contractor rule if they use a lump sum contract and be treated as the ultimate consumer of materials installed in real property. As such, they are not entitled to claim the sale for resale exemption. However, Company is not required to determine whether the fabricator or installer is entitled to the resale exemption, and is allowed to honor the fabricator's or installer's request for a resale exemption.

⁷ §39-26-708(1), C.R.S.

⁸ §39-26-708, C.R.S.