

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2008-3

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

February 14, 2008

Re: wholesale sales

Dear XXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated January 10, 2008, re: wholesale sales.

Issue

Can the company accept a retailer's resale certificate if the company separately invoices the parts department for repair parts?

Background

You provide the following facts. The company is a wholesale distributor of automotive repair parts and shop supplies to dealerships located in Colorado. The company traditionally collects tax on repair and supply parts sold to dealerships because the parts and supplies are consumed in the service departments of the dealerships. Recently, however, dealerships have asserted that tax should not be collected on these items because the items are sometimes resold to the public by the dealership through its parts department. Dealerships assert that they collect sales tax from customers on such sales.

The company, however, cannot determine whether a product it sells will be consumed by the dealership or resold to customers. As an example, you state that brake cleaner could be used by the service department or it could be resold to customers through the parts department.

You ask whether you can accept a dealership's resale certificate if you separately bill the dealership's parts department. You also ask whether it is appropriate simply to accept the dealership's resale certificate and let the dealership collect and report tax to the department when the dealership removes items from inventory to sell to the public. It may be that the dealer is charging for shop supplies on which it charges tax, accounting for their resale claim.

Discussion

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104(1)(a), C.R.S. However, Colorado exempts from tax sales of tangible personal property that the purchaser intends to resell to another. See, §39-26-104(1)(a) (tax on retail sales) and 102(9) (retail sales do not include wholesale sales), C.R.S. A retailer who wishes to purchase goods at wholesale must provide the seller with its Colorado retail sales tax license number. A distributor who is asked to make an exempt sale must exercise due diligence in determining whether the sale is exempt. Where it is not clear whether a sale is exempt, the seller should collect tax and the purchaser may submit a claim for refund (Claim for Refund Form 0137).

A wholesaler can generally accept a retailer's Colorado retailer's license number as good and sufficient demonstration that the sale is a wholesale sale. The retailer is obligated to make a good faith estimate of that portion of its purchases from a distributor it will consume and that portion it will resell to the public. A retailer which does not make reasonable assumptions may be assessed substantial penalties.

The company's suggestion that it separately bill the parts department is one method that the department will accept as a reasonable measure by the company to determine which sales are exempt from tax. Alternatively, the distributor can allow the dealership to self-assess the tax. However, a distributor who knows or has reason to know that property it sells to a dealership will be consumed and not resold, must require the dealership to make a reasonable estimate of the property it intends to resell. It is inappropriate for a dealership simply to claim that all its purchases are for resell when it knows or has reason to know that some portion of its purchases is not for resale. Unless the distributor knows or has reason to know that the dealership's estimate is unreasonable, the distributor can accept the dealership's estimate.

As a wholesaler, you must maintain appropriate records to demonstrate that you have taken reasonable steps to determine whether a transaction is exempt. The department will presume that all sales are taxable retail sales and the distributor has the burden of establishing that the sale is a wholesale sale. For this reason, you may wish to ask the dealership provide you in writing its estimate of what purchases are likely to be for resale. As noted above, you must obtain the dealership's Colorado retailer's license number.

The department has a number of automated resources that allow you to verify whether a license is valid. You can visit us at our web site at: www.revenue.state.co.us and go to Taxation (under "Main Categories") > Sales Tax Information (under "On-line Services") > Sales Tax License Verification. You can also call our automated telephone system at (303)238-FAST (3278) for license verification and other sales tax information.

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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