



**COLORADO**  
**Department of Revenue**

Taxation Division

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Denver, CO 80217-0087

GIL-17-009

April 3, 2017

XXXXXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Re: Retailer’s Use Tax on Leases

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance regarding the application of retailer’s use taxes.

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**

Is Company required to collect use tax on sales of taxable tangible personal property shipped into Colorado?

**Background**

Company is incorporated outside of Colorado and its principal place of business is outside of Colorado. Company does not own or lease tangible personal property or real property in Colorado. Company does not have an office, salesroom, warehouse, or similar place of business in Colorado. However, Company is considering hiring an employee who resides in Colorado and who will work from their home.

Company is a retailer of tangible personal property which is sold from locations outside Colorado. Shipment is either by a third party carrier (hired by either Company or the

buyer), by the buyer, or by the buyer's representative. Upon the sale of the goods, Company issues an invoice to the buyer. Company retains possession of the property until it receives payment. At the time of sale, Company may not know the destination of the goods. Once payment is received by Company, title transfers outside of Colorado<sup>1</sup> and possession passes to the third party shipper, the buyer, or the buyer's representative outside Colorado.

### **Structure of Analysis**

To determine whether Company is required to collect use tax, the Department will examine the following question:

1. Is Company doing business in Colorado?

### **Discussion**

Colorado imposes a use tax on consumers for the use, storage, or consumption of tangible personal property in Colorado.<sup>2</sup> A retailer who sells such goods to a Colorado consumer must collect retailer's use tax if the sale of the goods occurs outside Colorado and the retailer has Colorado nexus (i.e., is doing business in Colorado).<sup>3</sup> Company will have nexus in Colorado if it hires an employee who works in Colorado.<sup>4</sup>

Department Regulation 1 CCR 201-4, 39-26-102.10 states that a sale occurs when the buyer takes either ownership or possession of the goods. Company's represents that ownership and possession of the goods take place outside Colorado.<sup>5</sup> Because ownership and possession occur outside of Colorado and Company will be doing business in Colorado when it hires an employee who works in Colorado, Company must collect retailer's use tax on sales shipped to Colorado once an employee works in Colorado.

### **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](http://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 me

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<sup>1</sup> We accept only for purposes of discussing the application of retailer's use tax Company's representation that title passes outside Colorado. We note, however, that title generally passes when the buyer takes possession of the goods.

<sup>2</sup> § 39-26-202(1)(b), C.R.S.

<sup>3</sup> § 39-26-204(2), C.R.S.

<sup>4</sup> § 39-26-102(3), C.R.S.

<sup>5</sup> Department Regulation 1 CCR 201-4, 39-26-102.10. ("Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.")

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  
Office of Tax Policy Analysis