

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
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John W. Hickenlooper  
Governor

Barbara J. Brohl  
Executive Director

GIL-14-011

April 28, 2014

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: S Corporation Colorado Source of Income

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXX ("Company") a request for guidance to determine whether Company will be subject to filing a Colorado income tax return.

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 Rule 24-35-103.5 at [www.colorado.gov/revenue/tax](http://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 Department Rule 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. Is Company subject to Colorado income taxes?
2. Is Company required to register with the Department?

## Background

Company is an S Corporation located in another state that provides IT consulting services and designs accounting software systems to meet client's needs. All work by Company is completed remotely outside of Colorado. Company provides its services by connecting to

the client's system through a virtual private network (VPN); there is no travel to Colorado to perform Company's services. A portion of the work is subcontracted to another company located outside of the United States and that work is also performed remotely outside Colorado.

Company would like to know if it needs to register in Colorado because one of its clients is located in Colorado, and whether Company is liable for Colorado income taxes for this particular assignment.

### **Discussion**

An S-Corporation's members, partners, owners, shareholders or beneficiaries must file a Colorado income tax return if the S Corporation does business in Colorado or derives income from Colorado sources. A corporation is considered to be doing business in Colorado if it has substantial nexus with Colorado. Substantial nexus is established when a business entity organized outside of Colorado has property, payroll or sales that exceed any of the following thresholds in any tax period:

- (i) a dollar amount of \$50,000 of property; or
- (ii) a dollar amount of \$50,000 of payroll; or
- (iii) a dollar amount of \$500,000 of sales; or
- (iv) twenty-five percent of total property, total payroll or total sales.<sup>1</sup>

Company states it has neither property nor payroll in Colorado. Sales are apportioned to Colorado based on the percentage of costs incurred by Company in Colorado to perform the service. It appears that Company does not incur costs in Colorado to perform the service, although this is not clear from the relatively few facts provided. If Company does not satisfy any of these three criteria, then it has no obligation to file a Colorado income tax return.

If Company incurs in Colorado a cost to perform the service, then Company must either file a composite return and pay Colorado income tax based on the apportionment of the service revenues to Colorado, withhold Colorado income taxes from distributions to shareholders, or Company can submit Form 107 in which shareholders agree to be subject to the laws of Colorado and to file and pay all taxes related to their share of distributions of Company's income earned from Colorado sources.<sup>2</sup>

### **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

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<sup>1</sup> Department Regulation 39-22-301.1

<sup>2</sup> See, 39-22-601(2.5), C.R.S.

general information letter.

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  
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Email: [neil.tillquist@state.co.us](mailto:neil.tillquist@state.co.us)