

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-14-005

April 28, 2014

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Mail Order Sales

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance on whether Company should be collecting sales tax or use tax on its mail order sales.

The 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 > 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

Is Company required to collect sales tax or use tax on its mail order sales?

Background

Company is located outside of Colorado and sells promotional merchandise. Company has a sales representative who resides in Colorado and rents an office in Arvada for which Company reimburses the employee. The office is used only as an office for the employee to solicit new business and maintain customer relationships. Company does not have inventory or own property in Colorado. All orders are received, accepted, approved, and

shipped from outside of Colorado. Company ships its products to the end users using common carriers. Company is currently collecting Colorado use tax on products it sells to customers located in Colorado.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property in Colorado.¹ The obligation to collect sales or use tax requires two elements: nexus with Colorado (sometimes referred to as a “doing business” in Colorado) and a taxable event. An out-of-state retailer is “doing business” in Colorado if it engages in any of the following activities:

- (3) “Doing business in this state” means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:
 - (a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;
 - (b)
 - I. The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.²

Company appears to be doing business in Colorado as defined in subsection (3) because it maintains a place of business in Colorado and has a representative in this state soliciting sales from Colorado consumers. Thus, Company appears to have nexus with Colorado for purposes of state sales and use taxes.

Colorado is relatively unique in that cities, counties, and special districts (e.g., the regional transportation district (“RTD”)) can and do levy their own sales and, in some cases, use

¹ §§39-26-104(1) and 202, C.R.S.

² §39-26-102(3), C.R.S.

taxes. A retailer has an obligation to collect sales tax (or, if appropriate, use tax) for state-administered local tax jurisdictions only if the retailer has nexus with them. For the reasons cited above, Company has nexus in the city of Arvada, which is located in, depending on where Company maintains its business, Adams or Jefferson County and in the RTD and Scientific and Cultural Facilities District ("CD") special districts.

A taxable event also occurs in Colorado. A sale generally takes place when and where the retailer delivers goods to the buyer. In this case, delivery takes place when the common carrier delivers the goods to the buyer in Colorado. Thus, a sale takes place in Arvada if the goods are delivered to a buyer who resides in Arvada. Similarly, a sale takes place in Jefferson County if the goods are delivered to the buyer in Jefferson County.

If a sale is deemed to occur outside Colorado, then Company must collect retailer's use tax from the buyer if the local tax jurisdiction levies a use tax and Company has nexus with the local tax jurisdiction.³

Because Company has nexus in Jefferson or Adams County and in the RTD and CD special districts, Company must collect sales tax if and when it delivers goods to buyers in those local tax jurisdictions. Company may also have an obligation to collect sales tax for the city of Arvada, but the Department does not administer Arvada's taxes. Company should contact the city for information regarding its tax obligations. Finally, if Company delivers goods to a buyer in a state-administered local tax jurisdiction with which it does not have nexus, then Company is not required to collect that tax, even though the sale occurs in that jurisdiction.⁴

Thus, if Company has a direct or indirect location in Colorado, Company must report and collect local sales taxes for sales shipped into local jurisdictions in which their direct or indirect location is located.⁵ If Company ships product into a local jurisdiction in which it does not have a direct or indirect location, then Company should report the sale on its Retailer's Use Tax Account and collect state use tax and, if the customer is within a special district that levies a use tax, any applicable special district use tax.⁶ If no tax is due, Company must file a "zero" return.

³ There is some question whether a retailer can contractually set the place of sale to occur at a time and place other than the place of delivery. For a list of state-administered local tax jurisdictions that levy a use tax, see Department form DR 1002, which, together with statutes, regulations, and other publications, can be viewed at www.Colorado.gov/revenue/tax > Forms > Sales Forms.

⁴ The Department is presently reviewing its FYIs. The Department will be revising FYI Sales 58 to be consistent with this general information letter.

⁵ Department [publication DRP 1002 lists all local tax jurisdictions in Colorado. This form can be found at www.colorado.gov/revenue/tax > Forms > Sales.

⁶ State-administered cities and counties do not levy a use tax. Special districts levy a use tax on the same items to which state use tax applies. Special district use taxes are reported to the Department on the Retailer's Use Tax Return. Special districts that currently levy use taxes are the Regional Transportation District (RTD), Cultural District (CD), four rural transportation authorities (RTAs), and Pitkin County Mass Transit Authority (MTA).

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.tilquist@state.co.us