

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2007-26

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

December 4, 2007

Re: taxability of sales

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated April 9, 2007, re: taxability of sales of [Company]] in Colorado. We apologize for the time it has taken to respond to your inquiry.

Issue

Do the activities of [Company]] within Colorado create nexus for sales tax purposes?

Background

You state that since 1992 [Company]] has operated under two company names: The [Company A] and [Company B]. For purposes of this letter, we refer to both entities as [Company]. [Company] has sold to over 110,000 customers and generated over \$450 million in revenues nation-wide

[Company] has used the following business plan since its inception. [Company] mails fliers two to four times a year to nurses who work in Colorado, inviting them to sales seminars. The seminars are often held in large metropolitan areas in local hotels. [Company] sends several salaried sales people to run the seminars. These sales representatives usually give seminars in the state for two to four weeks at a time each seminar cycle. In the seminars, the sales representatives write up sales contracts for products sold at the seminar, arrange financing for the purchase of the products sold at the seminars, collect down payments for the products sold at the seminars, and deliver the product sold at the seminars to the end users of the products. The names of nurses who did not purchase any product at the seminar are provided to [Company] commissioned sales staff who follow up and arrange to meet locally with the nurse and attempt to close the sale at the nurse's home of place of employment. Almost without exception, all [Company] sales transactions are completed at the point of sale during the seminar or at in-home sales transactions.

Discussion

A retailer must collect and remit sales tax if the retailer is doing business in Colorado and the sale takes place in Colorado. "Doing business in this state" is defined (§39-26-102(3), C.R.S.) to include 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) 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.

A number of federal court cases have limited the right of a state to impose on a retailer the obligation to collect state sales and use taxes. *Quill Corp. v North Dakota*, 504 US 298 , 112 S Ct 1904 , 119 L Ed 2d 91 (1992); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In general, these cases require that the retailer have substantial nexus with Colorado. In other words, a retailer must have some presence in the state, either directly, such as in the form of a store, or indirectly, such as through independent sales agents, and engage in regular, purposeful in-state sales activities specifically directed at in-state customers. *Tyler Pipe Industries, Inc. v. Wash. State Dept. of Revenue*, 483 U.S. 232, 250 (1987). For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

Based on the facts set forth in your letter, [Company] is doing business in Colorado. It rents commercial facilities (hotel meeting rooms) in which it transacts business, sends several sales representatives to solicit and complete sales transactions, and delivers products to customers. These seminars are two to four times a year. [Company], through its agents, is physically present in Colorado and its contacts in Colorado are substantial.

The department has a voluntary disclosure program that is structured to assist taxpayers to become current on delinquent taxes. If you are interested in more details regarding this program, please call Sharon Stehr (303) 205-8292 x 5290, who is the manager of our Fair Share unit and who is responsible for the Voluntary Disclosure program.

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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