

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-8

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: resale licenses for health practitioners

Dear XXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated July 5, 2007, re: wholesale sale to Colorado retailers. We apologize for the time it has taken to respond to your inquiry.

Issue

Whether Colorado requires the businesses and/or health practitioners that buy wholesale from a supplier are required to charge a sales tax and, therefore, need to apply for a sales tax license.

Background

[Company] is located in [State] and presumably does not have a store in Colorado. [Company] receives orders for its products from businesses and health practitioners located in Colorado. These companies indicate to [Company] that they wish to buy tax free because they will resell the product in Colorado.

Discussion

A sale to a retailer, who intends to resell the product, is exempt from Colorado sales and use tax. §39-26-102(12) and 104(1)(a), C.R.S. When making a wholesale sale, the wholesaler should obtain the retailer's Colorado sale tax license number in order to document that the sale was to a retailer. In the absence of that retailer's sale tax license, a sale will be presumed to be a taxable retail sale.

However, if you are not doing business in Colorado, you are not responsible for collecting Colorado sales or use tax. "Doing business in this state" is defined as follows:

- (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.
§39-26-102(3), C.R.S.

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 very limited facts you have provided, I doubt that you have sufficient nexus in Colorado to require you to collect Colorado sales or use tax.

I hope this is helpful. Please let me know if you have any additional questions.

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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