



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-17-005

February 24, 2017

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Sales of Mobile Devices

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance regarding Company’s obligation to collect Colorado sales and 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

Does Company have an obligation to collect Colorado sales and use taxes?

Background

Company is in the business of selling mobile telecommunication devices. Its headquarters is outside Colorado. Company does not have any offices or other assets in Colorado but has one employee in Colorado who works from home and solicits sales on Company’s behalf. Company sells mobile devices in one of two ways: (1) it sells mobile devices directly to customers who then contract with a mobile telecommunications provider for wireless services or, (2) a mobile telecommunications provider sells Company’s mobile device to customers and Company ships the device to the customer by common carrier. All devices are shipped from a location outside Colorado.

Structure of Analysis

To determine whether Company has an obligation to collect Colorado sales and use tax, the Department will examine the following question:

1. Is Company doing business in Colorado pursuant to § 39-26-102(3), C.R.S.?

Discussion

A retailer must collect Colorado sales or use tax if the retailer is “doing business in Colorado.”¹ A retailer is doing business in Colorado if it has employees in Colorado soliciting sales.² In the facts provided, Company appears to be doing business in Colorado because it has an employee who is located in Colorado and who solicits sales on behalf of Company. Therefore, Company appears to have an obligation to collect sales or retailer’s use tax, depending on where the sale occurs.³ Company is not liable for tax on sales of mobile devices sold to mobile telecommunications carriers because Company is not the retailer in such cases.

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 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
Office of Tax Policy Analysis

¹ § 39-26-103(1)(a) and 204(2), C.R.S.

² § 39-26-102(3)(b), C.R.S.

³ If Company has a place of business in Colorado, such as a retail store, then sales tax is due. § 39-26-102(3)(a), C.R.S. If the retailer does not have a place of business in Colorado, then the retailer will collect retailer’s use tax. § 39-26-102(3)(b), C.R.S.