

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-5

Bill Ritter, Jr.
Governor

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Executive Director

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

December 4, 2007

Re: special event sales, doing business in Colorado

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated August 20, 2007, re: taxability of sales of products to [Company] members. We apologize for the time it has taken to respond to your inquiry.

Colorado Department of Revenue provides informational letter as a service to taxpayers. These letters represent the opinion of knowledgeable and experienced department staff and can be a valuable resource in making informed decisions regarding your tax obligations. However, these letters are not binding on the department. §24-35-103.5, C.R.S.

Issue

1. Are sales by [Company] exempt because [Company] is a charitable organization and sells only to its members?
2. Is [Company] responsible for collecting sales tax at special events held in Colorado?

Background

You state that [Company] is a non-profit entity and holds a 501(c)(3) certificate from the Internal Revenue Service. [Company] is located in [State]. Members are located throughout the country, presumably including Colorado. [Company] sells t-shirts, bibles, tracts and devotionals, but only to its members. I assume that orders for products are sent to [Company] in [State] and [Company] ships the goods by mail or common carrier to members in other states. [Company] also organizes special events around the country, presumably including in Colorado. It sells tangible personal products at these events, again presumably exclusively to its members.

Discussion

1. *Sales by [Company] exclusively to its members are not exempt from sales tax.*

Colorado imposes a sales tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. Although charitable organizations are exempt from tax when they purchase tangible personal property, the exemption does not apply when the charitable organization sells tangible personal property. §39-26-718(1)(a), C.R.S. See, also department publication FYI Sales 2 (Sales to charitable organizations). This means that [Company] members who purchase t-shirts, bibles, tracts and devotionals from [Company] must pay sales tax, even though [Company] sells only to its members.

[Company] must collect Colorado sales tax for sales at special events [Company] conducts in Colorado. See paragraph 2, below. Although not expressly raised in your letter, the circumstances of your case also raises the issue of whether [Company] has responsibility to collect and remit Colorado sales or use tax for sales that occur at times other than at the special events in Colorado (e.g., orders from Colorado members sent to [Company]'s headquarters in [State]). [Company] must collect Colorado sales or use tax for such sales if [Company] is "doing business 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 the retailer the obligation to collect state sales and use taxes. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In general, these cases require that the retailer have nexus with Colorado. In order to have nexus in Colorado, a retailer must have a some minimal physical presence in the state, either directly in the form of a store or indirectly through sales agents, and engage in regular, purposeful in-state sales activities specifically directed at in-state customers. *Complete Auto Transit, Inc., supra*. A number state and federal cases have held that occasional entry into a state on the part of a company's agents is enough to create nexus if that occasional entry is regular in nature and is part of a deliberate and on-going effort to do business within a state. See e.g. *Scripto Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 619, 4 L.Ed.2d 660 (1960) and *National Geographic Society v. California Board of Equalization*, 430 U.S. 551, 97 S. Ct. 1386, 51 L.Ed.2d 631 (1977). For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

Once nexus is established, a retailer is liable for tax on all sales made in the state even though the retailer's sales activities with respect to any particular sales would not be sufficient to create nexus. This means that while [Company]'s sales from its [State] headquarters into Colorado may not be sufficient, in and of themselves, to create nexus, [Company]'s sales activities during special events may be sufficient to establish nexus for sales that occur for some reasonable period of time after the special event. See, e.g., *Florida Dep't of Revenue v. Share Int'l, Inc.*, 667 So. 2d 226 (Fla. App. 1995), aff'd 676 So. 2d 1362 (Fla. 1996); Texas Policy Letter Ruling Nos. 8909L0960D12 and No. 7905L0195B02.

We are reluctant to offer advice regarding whether you have nexus based on the very limited information provided in your letter. For example, it is not clear whether or how often you hold special events in Colorado, the duration of those events, the level of sales activities at those events, the number of [Company] employees and representatives who attend, and the nature of their work at the events. If you would like to supply additional information regarding your activities in Colorado, I will be happy to review it.

2. *Sales by [Company] to members at special events in Colorado are subject to sales tax and [Company] is responsible for collecting the tax.*

If [Company] holds special events in Colorado, [Company] must register with the Department and obtain a special events sales tax license. See, FYI Sales 9. You can visit our web site, noted above, to obtain a registration form (CR 100). If the event is held in what is known as a "home-rule" city (these are listed on the DRP 1002), you should contact that city government because the Department does not administer its tax. You may also call our Call Center at (303)238-7378 for more assistance.

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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