

STATE OF COLORADO

DEPARTMENT OF REVENUE
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Governor

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GIL-12-013

November 6, 2012

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Training Classes for Corporations

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on training classes to corporations.

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 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 regulation 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 regulation 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 liable to collect and remit any taxes due to occasionally sending tutors into Colorado to teach a negotiating course to a corporation?

Background

Headquartered outside of Colorado, Company provides negotiating training classes to corporations throughout the country. Company's employees live and work outside of Colorado. Company solicits sales for their services over the telephone and Internet. Company's only physical presence in Colorado occurs when it occasionally sends two tutors to Colorado to teach. The issue is whether Company is liable for any taxes because Company occasionally sends employees to teach a negotiating course to a corporation in Colorado.

Discussion

It is unclear whether you are requesting guidance on sales tax or income tax that may be due. We address both.

The Department generally treats the provision of education and training as non-taxable services. For example, private schools are generally considered service providers and, therefore, charges for instruction are not subject to sales tax. We presume from the limited facts provided to us that the material is presented by an instructor (tutor) either in person or via a video feed and, therefore, substantially similar to non-taxable educational services provided in more traditional settings.

In some cases, tangible personal property is transferred from the educational service provider to the student, which raises the issue of whether the transfer of such property creates a sales tax liability. This can be a more difficult issue to resolve. In general, the Department views the educational service provider as the user of such materials. In such cases, the provider is liable for use tax when it acquires the material and/or uses the materials in Colorado. However, if the student is charged a separate fee for the materials, the Department views such charges as the sale of materials to the student, which obligates the service provider to collect tax on the materials. Finally, in cases where the materials themselves are the "true object" of the transaction and the educational services are incidental, then the transaction will generally be viewed as the sale of taxable tangible personal property and the entire charge, including the charge for non-optional but incidental educational services, are taxable. See, General Information Letter 08-010 (Home study course material subject to sales tax).¹

Colorado imposes income tax on corporations that derive income from sources within Colorado.² For out-of-state corporations, there are at least two issues to address. First, has the corporation derived income from sources within Colorado? Second, does the corporation have sufficient nexus with Colorado to permit Colorado to levy income tax on such income? Your reference to the employees occasionally within Colorado

¹ You can view this general information letter on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > Rulings > Rulings by Number

² §39-22-301(1)(a), C.R.S. You can view this statute on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > Statutes

suggests that you are interested in the latter question of whether such activity constitutes sufficient nexus.

Colorado has adopted a test to determine whether a Company's activities within this state to create nexus. Department Regulation 39-22-301.1(2)(b) (Doing Business in Colorado) generally states that a corporation will have nexus with Colorado if it exceeds one of the following four criteria: (1) sales exceed \$500,000 per year, or (2) corporate property in Colorado exceeds \$50,000, or (3) corporate payroll for employees located in Colorado exceeds \$50,000, or (4) twenty-five percent of the company's total sales, total payroll, or total property is in Colorado.³

When a corporation carries on a trade or business in Colorado and in other states, Colorado apportions the corporation's income using a single sales factor apportionment formula, which is a ratio of sales within Colorado to total sales. §39-22-303.5, C.R.S. Income from the sales of services rendered in Colorado is included in the numerator of the apportionment formula. For more information about how income is apportioned, see Department Regulation 39-22-303.5.4(a), "Calculation of Sales Factor."⁴ You should also be aware that employees who are performing services in Colorado are liable for Colorado income tax and the Company is liable for wage withholding tax on those employees. For more information about wage withholding, see Department Publication FYI Withholding 5 (Colorado Withholding Tax Requirements).⁵

If you would like a specific ruling on the issues you raise, you can request a private letter ruling by submitting a request with more specific information and fee in compliance with Department Regulation 24-35-103.5.

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.

³ You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > Rules and Regulations > Final Tax Regulations > Income and Withholding Tax . 39-22-301.1.

⁴ You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > Rules and Regulations > Final Tax Regulations > Income and Withholding Tax > 39-22-303.5.4(a).

⁵ You can view this FYI on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > FYI Publications > Withholding.

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,

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