



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-09-028

June 30, 2009

XXXXXXXXXXXXXXXXXXXXX.
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Re: income tax nexus

Dear XXXXXXXXX,

You request guidance regarding whether XXXXXXXXXXXXXXXXXXXXXXXXXXXX. (“Company”) has nexus with Colorado for state income tax purposes. I apologize for the delay in responding to your inquiry.

The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department’s regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

I will initially treat your request as one for a general information letter because the request does not contain the information necessary for a private letter ruling. You may resubmit this request as a request for a private letter ruling.

Issue

Does the Company have nexus for state income tax purposes?

Background

The Company writes a worker’s compensation insurance policy for a client that has employees in Colorado. The client’s main office is in California. The Company does not have employees located in Colorado, but it has obtained a Business Entity Insurance license from the Colorado Division of Insurance. The Company does not communicate with the client’s employees.

Discussion

The department typically does not make specific determinations regarding nexus in general information letters. These are fact intensive reviews are ill-suited for resolution in a general information letter.

We can, however, make a few observations. First, Colorado, as do most states, levies income tax on domestic and foreign C corporations that are “doing business in Colorado” and that derive income from sources within Colorado.¹ A corporation is doing business in Colorado when its activities in Colorado both exceed the minimum standards set forth in Public Law 86-272 (mere solicitation of sales by independent contractors)² and create sufficient nexus with Colorado to meet minimum Constitutional standards. This income statute is broadly construed to apply to all income that can be permissibly reached under the United States Constitution.

The crucial factor governing nexus is whether the activities performed in Colorado by or on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state. *Tyler Pipe*, 483 U.S. 232 at 250. In general, the department believes that the mere registration by a taxpayer with the secretary of state to do business in this state does not create nexus for income tax purposes. However, a license to conduct insurance business in Colorado may create a more substantial connection with the state, particularly if the licensee has important legal obligations vis a vis the insured employees and these obligations are performed in Colorado, such as participating in administrative proceedings in Colorado to resolve insurance claims. We have not examined Colorado law to determine whether or to what extent Colorado law imposes such legal obligations.

If you would like a determination regarding the particular facts of your company, you must submit the request as one for a private letter ruling.

Miscellaneous

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling 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 version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

¹ 39-22-301(1)(d), C.R.S.

² Department regulation 39-22-301.1 (“A corporation will be considered to be doing business in Colorado whenever the minimum standards of Public Law 86-272 are exceeded. Public Law 86-272 protects manufacturers whose only business activity conducted in a state is soliciting orders for sale of tangible personal property. Sales of services are not protected by Public Law 86-272. A “safe harbor” lease transaction, by itself, does not create nexus for Colorado income tax purposes.”).