



# COLORADO

Department of Revenue

Taxation Division

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

DOR\_TaxPolicy@state.co.us

GIL 24-002

March 4, 2024

XXXXXXXXXX  
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXX

Re: Noncollecting Retailer Use Tax Information Reporting

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding sales and use tax notice and reporting requirements for noncollecting retailers under section 39-21-112(3.5), C.R.S. 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, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

### Issue

Whether a person who neither maintains any place of business in Colorado nor solicits business in Colorado making sales in Colorado at or exceeding the economic nexus thresholds is required to comply with the sales and use tax notice and reporting requirements for noncollecting retailers.

### Discussion

Your request indicated the following: (1) your business was once a licensed retailer in Colorado; (2) you closed the license because your business’s retail sales were less than the economic nexus thresholds set forth in section 39-26-102(3)(c), C.R.S.; and (3) in 2023, your business made some retail sales in Colorado but did not collect Colorado sales tax because you were not doing business in the state. Nevertheless, you want to know if you are required to comply with the sales and use tax notice and reporting requirements for noncollecting retailers under section 39-21-112(3.5), C.R.S.

Colorado imposes a sales tax on most sales of tangible personal property at retail, as well as certain services.<sup>1</sup> Every person who meets the definition of a “retailer” under section 39-26-102(8), C.R.S. is required to obtain a sales tax license from the Department prior to making any retail sales in Colorado.<sup>2</sup> Indeed, retailers have several duties with respect to taxable sales

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<sup>1</sup> See Section 39-26-104, C.R.S.

<sup>2</sup> Section 39-26-103, C.R.S.; Paragraph (1) of 1 CCR 201-4, Rule 39-26-103.

made in this state. Principally, every retailer must add the sales tax imposed to the sale price.<sup>3</sup> And as the state's collecting agent, every retailer must collect the tax from the purchaser.<sup>4</sup> However, irrespective of the amount collected each retailer is liable and responsible to the state for the payment of an amount equal to the tax imposed upon all taxable sales made by the retailer in the state, less certain allowances for the costs of remittance and collection.<sup>5</sup>

Every person storing, using, or consuming tangible personal property in Colorado has a separate duty to self-assess and pay a use tax on such property.<sup>6</sup> The use tax is supplementary to the sales tax,<sup>7</sup> and it is due only when a sufficient Colorado sales or use tax has not been paid.<sup>8</sup> To aid persons subject to the use tax in this duty, section 39-21-112(3.5), C.R.S., requires each retailer that does not collect Colorado sales tax to notify Colorado purchasers that sales or use tax is due on certain purchases made from the retailer and that the state of Colorado requires the purchaser to file a sales or use tax return.

For purposes of the sales tax obligations discussed above, and the notice and reporting statute, a "retailer" is defined by reference to section 39-26-102(8), C.R.S. That section defines a retailer, in relevant part, as "a person *doing business in this state* known to the trade and public as such, and selling to the user or consumer, and not for resale."<sup>9</sup> A person is doing business in this state if that person:

- (a) maintains directly, indirectly, or by a subsidiary any place of business in Colorado listed in section 39-26-102(3)(a), C.R.S., regardless of the amount of that person's retail sales in Colorado; or
- (b) solicits business in Colorado in the manner described in section 39-26-102(3)(b), C.R.S., and makes retail sales in Colorado at or exceeding the economic nexus thresholds prescribed by section 39-26-102(3)(c), C.R.S.<sup>10</sup>

If a person is not doing business in this state, that person is not a "retailer."<sup>11</sup> Nevertheless, a person who is making sales in Colorado, but whose business activities do not meet the definition of doing business in this state under section 39-26-102(3), C.R.S., may voluntarily obtain a sales tax license and collect all applicable state and state-administered local sales taxes for the convenience of their customers.<sup>12</sup> Such a person who maintains a sales tax license but does not do business in the state, as described in section 39-26-102(3), C.R.S., is liable for collecting all applicable Colorado sales taxes.<sup>13</sup> Otherwise, if the sales tax is not collected—regardless of whether the seller provides the notices described in 1 CCR 201-1, Rule

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<sup>3</sup> Section 39-26-106(2), C.R.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 39-26-105(1)(a)(I)(A), C.R.S.

<sup>6</sup> Section 39-26-202(1)(b), C.R.S.

<sup>7</sup> *Howard Elec. & Mech., Inc. v. Dept. of Revenue*, 771 P.2d 475, 477 (Colo. 1989)

<sup>8</sup> See section 39-26-204(2)(a) and (b) (requiring a return only if a person storing, using, or consuming property "has not paid the sales or use tax imposed by this article [26]"); section 39-26-713(2)(a) (exempting property from the use tax if the sale of the property was already subjected to the sales tax).

<sup>9</sup> Section 39-26-102(8), C.R.S. (emphasis added).

<sup>10</sup> Paragraph (1) of 1 CCR 201-4, Rule 39-26-102(3).

<sup>11</sup> Section 39-26-102(8), C.R.S.

<sup>12</sup> Paragraph (4) of 1 CCR 201-4, Rule 39-26-103.

<sup>13</sup> *Id.*

39-21-112(3.5)—the purchaser is liable for the payment of use tax on any tangible personal property purchased at retail that the purchaser stores, uses, or consumes in Colorado.<sup>14</sup>

### **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 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 self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at [Tax.Colorado.gov](http://Tax.Colorado.gov) for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue

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<sup>14</sup> Section 39-26-202(1)(b), C.R.S.; Section 39-26-204(1)(b), C.R.S.