



COLORADO

Department of Revenue

Taxation Division

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PLR 23-005

September 6, 2023

XXXXXXXXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXXXXXXX

Re: Affiliation of Retail Marijuana Business Licensees for the Purpose of Determining Excise Tax

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (“Company A”) to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Whether common ownership is a requirement for affiliation.
2. Whether Company A is under common control with the dispensaries.
3. Whether Company A is affiliated with the dispensaries.

Conclusions

1. No, common ownership is not a requirement for affiliation.
2. Yes, Company A is under common control with the dispensaries.
3. Yes, Company A and the dispensaries are “affiliated marijuana business licensees” as that phrase is defined in section 39-28.8-101(1), C.R.S.

Background¹

Company A is a cultivation center that cultivates marijuana. Company A is under contract with Company X. Pursuant to this contract, Company X licenses strain names to Company A; directs which licensed strains and the quantity of licensed strains per month Company A must cultivate; may request samples of the licensed strains for inspection and approval; determines the wholesale price of licensed strains that are cultivated and sold by Company A; directs Company A as to which dispensaries the licensed strains may be sold; provides Company A with branded packaging for the licensed strains from Company X; directs Company A as to how to package the licensed strains; markets the licensed strains that are cultivated and sold by Company A; and receives a ten percent royalty fee on the wholesale of the licensed strains cultivated and sold by Company A.

Company X also operates under contracts with multiple dispensaries. Pursuant to the dispensary contracts, Company X licenses its intellectual property, trademarks, and trade names (the “Brand”) to the dispensaries; requires the dispensaries to remodel its retail sales space and operate as Company X’s brand; substantially controls and manages the dispensaries’ day-to-day operations; requires the dispensaries to purchase marijuana from Company A, all of which are the licensed strains; requires the dispensaries to dedicate not less than fifty percent of their retail sales to the sale of the licensed strains; determines the point-of-sale system that the dispensaries must use in connection with operating as the Brand; determines the wholesale price paid by the dispensaries to Company A; determines the retail sales price of the marijuana sold by the dispensaries to consumers; and receives a four percent royalty fee on the retail sale of all marijuana sold by the dispensaries.

There is no common ownership between Company A, Company X, and the dispensaries.

Discussion

Colorado imposes an excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility.² The excise tax is fifteen percent of the contract price for the unprocessed retail marijuana if the transaction is between unaffiliated retail marijuana business licensees.³ For affiliated retail marijuana business licensees, the excise tax is fifteen percent of the average market rate of the unprocessed retail marijuana.⁴ Retail marijuana business licensees must therefore determine affiliation to establish the appropriate excise tax due.

“Affiliated marijuana business licensees” are statutorily defined as “marijuana business licensees that are owned or controlled by the same or related interests”⁵ Because the marijuana business licensees may be either owned or controlled by the same interests to be

¹ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

² Section 39-28.8-302(1)(a)(I), C.R.S.

³ *Id.*

⁴ *Id.*

⁵ Section 39-28.8-101(1), C.R.S.; see also paragraph (2) of 1 CCR 201-18, Rule 39-28.8-101.

affiliated, the plain language of the statute does not require common ownership to determine affiliation.

The Colorado Marijuana Code defines “control” and “under common control with” as “the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, *by contract*, or otherwise.”⁶ Because Company X licenses strain names to Company A, determines the wholesale price of the licensed strains, directs the dispensaries to which Company A sells their licensed strains, and directs the packaging and marketing for the licensed strains that Company A cultivates, among other things, Company X has control via contract over Company A. Similarly, Company X has control via contracts over the dispensaries because Company X requires the dispensaries to remodel their sales spaces and operate as Company X's brand, substantially controls and manages the day-to-day operations of the dispensaries, requires the dispensaries to purchase substantially all of their marijuana from Company A, and determines the retail sales price of the retail marijuana sold by the dispensaries. Based on these facts, both Company A and the dispensaries are under the control of Company X, and Company A is under common control with the dispensaries.

In considering whether Company A and the dispensaries are affiliated, we look again to the statutory definition of “affiliated marijuana business licensees.”⁷ According to this definition, affiliated retail business licensees are those “that are owned or controlled by the same or related interests....”⁸ Because Company X controls both Company A and the dispensaries, meaning Company A and the dispensaries are controlled by the same interest, Company A and the dispensaries are affiliated marijuana licensees.⁹

Miscellaneous

This ruling is premised on the assumption that Company A has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company A has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company A's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

Thank you for your request.

⁶ Section 44-10-103(12), C.R.S. (emphasis added); see also 1 CCR 212-3, Rule 1-115 – Definitions, “Control.” Under 1 CCR 201-18, Rule 39-28.8-101(1), terms defined in section 44-10-103, C.R.S., and 1 CCR 212-3, Rule 1-115, have the same meanings when used in the Retail Marijuana Tax rules.

⁷ Section 39-28.8-101(1), C.R.S.

⁸ *Id.*

⁹ The conclusions in this Private Letter Ruling are for Colorado tax purposes only. Except for the definitions addressed above, this letter does not include analysis of any statutes or rules beyond those in the tax statutes in title 39, C.R.S., including, but not limited to, the Colorado Marijuana Code, article 10 of title 44, C.R.S., or the Colorado Marijuana Rules, 1 CCR 212-3. Determinations regarding the Colorado Marijuana Code, the Colorado Marijuana Rules, or the application of those to any particular facts are outside the scope of this Private Letter Ruling.

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Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.