



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL 26-003

June 25, 2026

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Via Electronic Mail: XXXXXXXXXX

Re: Taxability of Inventory for Promotional Giveaways and Nexus for Marketplace Sellers

Dear XXXXXXXXXX:

You submitted a request for a general information letter regarding use tax obligations and physical nexus. 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.

Issues

1. Whether inventory withdrawn from within Colorado and shipped to another state for promotional or giveaway purposes is subject to use tax in Colorado.
2. Whether inventory withdrawn from another state and shipped into Colorado for promotional or giveaway purposes is subject to use tax in Colorado.
3. Whether Colorado allows a credit for use tax paid legally to another state that the inventory was shipped to or withdrawn from.
4. Whether a marketplace seller is doing business in Colorado if the marketplace seller owns inventory that is stored and controlled within Colorado by a third-party marketplace facilitator.

Discussion

Colorado imposes a sales tax on all sales of tangible personal property purchased at retail.¹ Additionally, Colorado imposes a use tax upon the privilege of storing, using, or consuming tangible personal property within the state.² "Storage" or "storing" means any keeping of, retention of, or exercise of control over tangible personal property in Colorado.³ Tangible

¹ Section 39-26-104(1)(a), C.R.S.

² Section 39-26-202(1)(b), C.R.S.

³ Section 39-26-201(3), C.R.S.

personal property that is purchased tax-exempt as a wholesale purchase and is later pulled from inventory, used, or made available for use by the purchaser is subject to the use tax.⁴

Use tax is imposed when property is used or made available for use by the purchaser after taking possession of the property, even if such use is temporary.⁵ Use tax applies regardless of the manner in which the purchaser uses the item withdrawn from inventory, including to be used as promotional prizes or gifts.⁶

When tangible personal property previously purchased at wholesale is withdrawn from inventory in Colorado for promotional or giveaway purposes for which no valuable consideration is received from the recipient, that tangible personal property is subject to Colorado use tax at the time of withdrawal.⁷ The purchaser of such tangible personal property is deemed to be the user-consumer of the property and is responsible for remitting the use tax directly to the Department if the purchaser did not pay sales tax at the time of purchase.⁸ The use tax is calculated on the purchase price the retailer paid to acquire the item.⁹

If a person, business, or other legal entity purchases taxable property outside of Colorado and brings that property into Colorado for use in this state, the property is subject to Colorado consumer use tax.¹⁰ However, a taxpayer may claim a credit against the Colorado use tax due for any legally imposed use tax previously paid to another state.¹¹ These rules apply whether the property brought into the state was purchased at retail outside the state or purchased at wholesale and pulled from inventory outside the state.

Credits for tax paid to another state and any subdivision thereof are applied first to state-level use tax owed and then to any subdivision, such as a special district, that imposes a use tax.¹² If the use tax paid to another state and any subdivision thereof is less than what is owed to Colorado, then the taxpayer would owe additional use tax to Colorado.¹³ If the use tax paid to another state and any subdivision thereof is equal to or greater than that owed to Colorado, then the taxpayer would not owe additional use tax to the state but may still owe use tax to a subdivision.¹⁴ Credit is not allowed if the tax paid to the other state was not legally due under the laws of the other state.¹⁵

Every retailer doing business in this state is required to obtain a sales tax license and collect sales tax on any retail sale of tangible personal property or taxable service made in Colorado.¹⁶ A retailer is doing business in Colorado and subject to all sales tax licensing and collection requirements if the retailer maintains any place of business in Colorado directly, indirectly, or by

⁴ See *Int'l Business Machines Corp. v. Charnes*, 601 P.2d 622, 625 (Colo. 1979) (explaining that wholesale transactions were transformed into retail transactions upon the company's ultimate election to use the items purchased in its own business operations rather than reselling them).

⁵ 1 CCR 201-4, Rule 39-26-202, paragraph (3).

⁶ *Id.*; 1 CCR 201-5, Special Rule 21. See also 1 CCR 201-4, Rule 39-26-718, paragraph (6)(b) (explaining that a donor who withdraws an item from inventory and donates it to a charitable organization is liable for use tax upon the withdrawal).

⁷ 1 CCR 201-5, Special Rule 21.

⁸ *Id.*

⁹ 1 CCR 201-4, Rule 39-26-713-3; 1 CCR 201-5, Special Rule 21.

¹⁰ Section 39-26-202(1)(b), C.R.S.

¹¹ Sections 39-26-713(2)(f) and 24-60-1301(Article V), C.R.S.

¹² Section 24-60-1301(Article V), C.R.S.; 1 CCR 201-4, Rule 39-26-713-4.

¹³ Section 39-26-713(2)(f), C.R.S.

¹⁴ Section 24-60-1301(Article V), C.R.S.; 1 CCR 201-4, Rule 39-26-713-4.

¹⁵ 1 CCR 201-4, Rule 39-26-713-4.

¹⁶ Sections 39-26-103(1)(a), 39-26-105(1), and 39-26-106(2)(a), C.R.S.

a subsidiary. Such a place of business may include an office, distribution facility, salesroom, warehouse, storage place, or home office of a Colorado resident employee.¹⁷ A retailer may be doing business in Colorado even if that retailer maintains no place of business in the state if the retailer solicits business and receives orders from Colorado residents by any means whatsoever.¹⁸ Any retailer who does not maintain a place of business in Colorado is exempted from state sales tax licensing and collection requirements if the retail sales of tangible personal property, commodities, and/or services made annually by the retailer into Colorado in both the current and previous calendar years are less than \$100,000.¹⁹

Marketplace facilitators and marketplace sellers are types of retailers.²⁰ A marketplace facilitator is doing business in Colorado if they either maintain a place of business in Colorado or their retail sales into the state exceed \$100,000 in the current or previous calendar year.²¹ Marketplace facilitators must include all sales made by marketplace sellers in and through its marketplace in the calculation of the economic nexus threshold.²² Even though they may be doing business in Colorado, a marketplace seller does not have the rights, obligations, and liabilities of a retailer with respect to sales facilitated by a marketplace facilitator in or through a marketplace.²³ However, if the marketplace seller also offers tangible personal property, commodities, or services for sale through other means—such as their own store, or on their own website—the marketplace seller is subject to all of the same licensing, collection, remittance, filing, and recordkeeping requirements as any other retailer with respect to those sales.²⁴

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 for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

¹⁷ Section 39-26-102(3)(a), C.R.S.

¹⁸ *Id.* at (3)(b).

¹⁹ *Id.* at (3)(c).

²⁰ Section 39-26-102(8), C.R.S.

²¹ Section 39-26-102(3)(c) and (8), C.R.S.

²² Section 39-26-102(8), C.R.S.; 1 CCR 201-5, Special Rule 44, paragraph (3)(b).

²³ Section 39-26-105(1.5)(c), C.R.S.; 1 CCR 201-5, Special Rule 44, paragraph (4)(a).

²⁴ See 1 CCR 201-5, Special Rule 44, paragraph (4)(b)(ii).