

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-28

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: exemption certificates

Dear XXXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated June 21, 2007, re: exemption certificates. We apologize for the time it has taken to respond to your inquiry.

Issue

Will Colorado will accept an electronic version of the certificate or license which also includes an electronic signature of the customer as adequate documentation for these types of transactions upon audit?

Background

You state that [company] developed a new system for documenting tax free sales and you ask for some guidance regarding the department's requirements. You offer the following background. [company] operates over 900 retail stores nation-wide. Customers of point-of-sale transactions routinely request to make tax free purchases because they are either exempt organization or they are making a purchase for resale. Your current procedure is to have the customer complete a paper generic exemption / resale certificate at the register and supply the following information: name of organization, address of organization, registration / permit number / tax exempt number, name of person and title, driver's license number, and phone number.

The new system captures all the information noted above, including the customer's signature in an electronic version. The customer supplies the cashier with the information and the cashier enters the information into the system. The cashier then asks the customer to verify the information, which is displayed on a PIN pad. If the information is correct, the customer then signs on the PIN pad. The system electronically records and stores the signature. It appears from your description that the cashier is not required to ask the customer for a copy of the exemption certificate or wholesaler's or retailer's sales tax license, and, if presented by the customer, it is not reviewed nor copied and retained by the cashier.

Discussion

This system is a good step forward in automating the exemption process. In general, this system is acceptable, with the following reservations which are I think are manageable. First, we ask that the cashier examine the original or copy of the exemption certificate or wholesaler's or retailer's sales tax license. The information contained on these documents is public information and readily available. Therefore, it is important that the

cashier actually view the document as one measure for ensuring that the person presenting the document is the proper owner of the certificate or license.

Second, the cashier should verify that a retailer's or wholesaler's sales tax license is not expired. The expiration date is stated on the license. A request for a sale tax free must be denied when the customer's license is expired. Exemption certificates do not have an expiration date.

Third, when a customer presents a wholesaler's or retailer's sales tax license, the cashier must exercise reasonable judgment about whether the product being purchased is one that the customer is likely to resell. [company] is a retail operation and it should be fairly uncommon for someone to have a legitimate intention of purchasing a toy for resale. For example, a cashier should not approve a sale as exempt when the purchaser/retailer, whose license identifies it as an office supply store or an automotive parts supplier, is purchasing a child's toy. Similarly, if a buyer requests a wholesale sale exemption for the purchase of only a few items (rather making bulk purchases, which is more typical of a wholesale transaction), there is reason to doubt the appropriateness of the exemption. Although it may be these are purchases for resale, there is reason to doubt. When there is reasonable doubt about whether a transaction qualifies as a sale for resale, Colorado law requires that you to assess the tax and instruct the purchaser to submit to the department a claim for sales tax refund. By following this process, [company] can protect itself in audit and the department can ensure that the license is not being improperly used.

I should also note that, in cases when a sale is allowed to be made tax free, the cashier must make a record that describes of the product being purchased so that the Department can later determine what product was purchased. For example, "toy" is not a sufficiently detailed description. In the absence of such a record, the department will most likely find that [company] has not met its burden of establishing that the sale was exempt. See, §39-26-703(4), C.R.S. (taxpayer claiming exemption has burden of proof).

Fourth, in the case of a customer presenting an exemption certificate, the department requires that the purchaser complete an affidavit and follow certain guidelines. For example, the cashier must ensure that payment is either by the organization's check or credit card if the purchase is over \$100. The cashier cannot accept cash or payment by a credit card or check of the individual, unless the purchase is under \$100.

You also ask whether Colorado accepts out of state exemption or resale certificates. Colorado accepts exemption certificates and sales tax licenses issued by other states for purposes of making a sale tax free. For more information on these subjects and an example of the affidavit, please see department publication FYI Sales 1 and 3, which you can view and download from our web site at: www.revenue.state.co.us (go to Taxation > FYIs > Sales Tax).

Finally, the department offers a number of great services to assist retailers when a customer presents a certificate or license. The department's Sales Tax Information System allows a retailer to verify instantaneously whether a certificate or license is valid. You can access this system on the web at: www.revenue.state.co.us (go to Taxation > Online Services > Sales Tax License Verification (which also includes certificates)). The on-line system gives you NAIC code assigned to the licensee, which will assist you in exercising due diligence when asked by a buyer to make a tax free sale. You can also access this system via an automated telephone system. (303)238-FAST (3278).

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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