

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-010

February 24, 2009

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Colorado income tax

Dear XXXXXXXXXXXX,

You request guidance regarding the applicability of Colorado income tax to your company. The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law 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. You may resubmit this request for a private letter ruling.

Issue

Is your company subject to Colorado income tax if one of its employees is located in Colorado?

Background

Your company is based in XXXXX [another state]. The majority of its employees are based overseas providing analytical support to the United States military. The company has three administrative support employees who work in direct support of the headquarters and are involved in recruitment, accounting, and business development activities for the company and not directly supporting a paying customer.

The company is interested in hiring another administrative support employee to support the company's headquarters and he would like to perform his duties out of a home he has in Colorado. He would not be working in support of a customer or directly generating revenue for the company but would be strictly supporting the company in an overhead capacity. The company does not wish to extend an offer of employment to him in the event having him work out of his home office location in Colorado will make the company subject to Colorado corporate income taxes or other business/state taxes.

Discussion.

Colorado levies a tax on income of corporations who derive income from sources in Colorado. §39-22-301(1)(a), C.R.S. Whether income is derived from sources within Colorado will depend on the nature of the income (e.g., income generated from the sale of goods, real property, services, interest income, franchises, etc.). Income generated from services will generally be sourced to the state where the service is performed. A service is performed in Colorado if, and to the extent that, the costs of performing that service are incurred in Colorado. For example, if a company's only cost in generating service income is the labor cost of its employees, and only one of its employees is located in Colorado, then the company's service income will be apportioned to Colorado in proportion to the cost of the one Colorado employee to the total cost of all its employees. Finally, a company that has an employee residing in Colorado will generally have nexus for income tax purposes.

As noted earlier, this is a general information letter that provides a general and nonbinding discussion of Colorado tax law and does not provide a determination regarding the specific circumstances of your company.

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,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us