

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-29

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

December 4, 2007

Re: independent distributor sales tax

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated July 2, 2007, re: taxability of product shipped directly to customers or indirectly through independent distributors. We apologize for the time it has taken to respond to your inquiry.

Issues

You ask a series of questions, noted below, regarding the sales tax collection responsibilities of a multi-level marketing company.

Background

You state that your company is a multi-level marketing company located in [State]. The company markets its products through independent distributors who are located throughout the United States, including Colorado. You ask whether tax should be calculated based on the suggested retail price (SRP) or on the actual retail sales price charge the customer or distributor under three different scenarios.

1. You ask if the company ships the product directly to customers in Colorado on behalf of the distributor is the tax computed based on the SRP or the sales price actually paid by the retail customer. *Response:* The tax is computed on amount of money received or due in cash and credits, not the suggested retail price. DOR Regulation (39-)26-102.7(a).
2. In other cases, the company ships the product to distributors who use the product for their own consumption. The distributor does not pay the SRP but, rather, a discounted value. *Response:* Tax is computed on the discount value.
3. Finally, the company may ship product to distributors who state that they provide the product as samples to potential customers. The distributor does not pay the SRP but, rather, a discounted sales price. *Response:* Tax is computed on the discounted sales price.

The company states that it is a direct sales organization which collects sales tax on behalf of the distributors located in Colorado. You ask a series of questions regarding resale certificates.

1. You ask whether the company, as a multi-level marketing company, can accept resale certificates from the distributors. *Response.* Colorado law authorizes the department to treat distributors as agents of a vendor. §39-26-103(9)(e), C.R.S. Thus, your distributors are treated as your agents and you are the retailer making sales to the customers. The distributors are not required to have a sales tax license. See FYIs Sales 9 and 62. You can view and download this publication by visiting our web site at: www.revenue.state.co.us (go to Taxation > FYIs > Sales Tax).
2. You ask in questions 2 through 4 whether the company can accept a resale certificate if the distributor operates out of a retail location, health care office or hospital, or an office building. *Response:* See response to question 1, immediately above.
3. You ask whether the company is liable for sales tax in the event that the distributor fails to collect or remit the sales tax from customers. *Response:* Yes, the distributors are agents of the company and the company is treated as the retailer. Therefore, the company is liable for uncollected or unremitted sales tax.

Please note that the department does not collect sales and use taxes for “home-rule” cities and counties. You can find a list of these jurisdictions by visiting our web site at:

www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use > DRP 1002)

Please contact those governments for information about their taxes.

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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