



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-18-001

January 9, 2018

XXXXXX

Attention: XXXXXX

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Re: Reporting Requirements for Non-Collecting Retailers

Dear XXXXXX,

You submitted a request for guidance on behalf of your client ("Company") to determine proper reporting practices for a business that qualifies as a Non-Collecting Retailer.

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 but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Must a Non-Collecting Retailer issue a recurring monthly Transactional Notice to customers who subscribe to a monthly shipment when payment is automatic and no invoice is generated?
2. When the purchaser of a monthly subscription-based shipment is located outside of Colorado, but the subscription shipment is delivered to and

consumed by a Colorado resident, must Company provide the out-of-state buyer with the Transactional Notice and Annual Purchase Summary, as well as include the out-of-state buyer in the Annual Customer Information Report?

Background

Company, located outside of Colorado, provides a subscription-based shipment of sample-sized products to customers across the country, including Colorado. Customers are billed for the shipment automatically each month, with no new invoice being generated for each payment. Company does not charge or collect sales or use tax from Colorado-based customers.

Discussion

Colorado levies sales tax on sales of tangible personal property in Colorado and use tax on the use, storage, or consumption of tangible personal property within Colorado. Retailers are generally responsible for collecting Colorado sales and use taxes.¹ Retailers who sell tangible personal property to Colorado Purchasers² but do not collect Colorado sales or use tax are considered “Non-Collecting Retailers” and are subject to certain notice and reporting requirements.³ A Non-Collecting Retailer must provide a Transactional Notice⁴ to the Colorado Purchaser for every Colorado Reportable Purchase at the time of the Colorado Reportable Purchase.⁵ A Non-Collecting Retailer must also provide an Annual Purchase Summary⁶ to all Colorado Purchasers, and provide an Annual Customer Information Report⁷ to the Department.

1. Must a Non-Collecting Retailer issue a recurring monthly Transactional Notice to customers who subscribe to a monthly delivery when payment is automatic and no invoice is generated?

A Transactional Notice is due for every Colorado Reportable Purchase. However, the newly-adopted version of this rule, effective January 1, 2018, expressly addresses the requirements for Transactional Notices for subscriptions and memberships:

“With respect to any subscription or membership whereby the retailer ships products to a customer at regular intervals, without any additional action by the customer (commonly referred to as subscription boxes or “_____ of the month” clubs), a Transactional Notice is required only

¹ §§39-26-105, -204 C.R.S.

² Department Regulation §39-21-112(3.5)(2)(c). (Defining Colorado Purchaser).

³ §39-21-112(3.5), C.R.S.; Department Regulation § 39-21-112(3.5)(2)(f).

⁴ Department Regulation §39-21-112(3.5)(2)(h). (Defining Transaction Notice).

⁵ Department Regulation §39-21-112(3.5)(2)(d). (Defining Colorado Reportable Purchase).

⁶ Department Regulation §39-21-112(3.5)(5).

⁷ Department Regulation §39-21-112(3.5)(6).

with respect to any transaction whereby the customer subscribes, enrolls or renews her or his subscription or membership. Separate Transactional Notices are not required for the subsequent, repeated shipment of products to the customer made automatically and without additional action by the customer.”⁸

If a taxpayer’s monthly subscription business meets the criteria above, a recurring Transactional Notice is not required for the subsequent, repeated monthly shipments.

2. When the purchaser of a monthly subscription-based shipment is located outside of Colorado, but the subscription shipment is delivered to and consumed by a Colorado resident, must Company provide the out-of-state buyer with the Transactional Notice and Annual Purchase Summary, as well as include the out-of-state buyer in the Annual Customer Information Report?

A Non-Collecting Retailer must furnish a Transactional Notice and Annual Purchase Summary to all Colorado Purchasers. A Colorado Purchaser is “a purchaser who makes a Colorado Reportable Purchase.”⁹ The applicable regulation explains that “[i]f tangible personal property is purchased by one party, who may be inside or outside of Colorado, and is shipped to another party in Colorado, the Colorado Purchaser is the purchaser of the tangible personal property, not the recipient of the tangible personal property.”¹⁰ Therefore, Company must provide the out-of-state purchaser with the Transactional Notice and Annual Purchase Summary and include the out-of-state purchaser in the Annual Customer Information Report sent to the Department.

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 here 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 home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

⁸ Department Regulation §39-21-112(3.5)(4)(e).

⁹ Department Regulation §39-21-112(3.5)(2)(c).

¹⁰ *Id.*

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter 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 letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue