

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive Director, Colorado Department of Revenue,

Defendant.

DECLARATION OF SHIRLEY L. STEVENS

I, Shirley L. Stevens, pursuant to 28 U.S.C. § 1746 depose and state as follows:

1. I am Manager, Discovery Section, Colorado Department of Revenue ("Department") and I am responsible for and familiar with the operations of the Discovery Section.

2. The Discovery Section has an ongoing Aircraft Project designed to collect sales/use tax due on aircraft sold to Colorado buyers.

3. The Aircraft Project works as follows:

a. The Department receives a monthly list from the FAA with the names and addresses of sellers and buyers and the year, make, model, tail number and serial number of the aircraft and date the FAA issued a certificate to the new owner.

b. For all aircraft that were not 1) sold to an aircraft dealer, 2) sold to an out-of-state address, 3) involved a government transaction or transaction by a commercial airline or 4) sold to a buyer that has an open use tax account and has paid the use tax, the Department sends an inquiry requesting a bill of sale or an explanation of why no sales/use tax is due.

c. Depending on the response, the Department will send to the buyer a tax bill or letter of further inquiry, or close the inquiry if verification of no tax due is received.

d. As a result of the project the Department collected \$4,965,666.00 for 2007/2008; \$7,189,817.00 for 2008/2009; and \$5,752,513.00 for 2009/2010.

4. The Department also collects sales/use tax from automobile purchases on which a dealer does not collect and remit sales tax. When a vehicle is registered with the appropriate county clerk and license plates for the vehicle are sought, the county clerk collects all sales/use tax and other fees due based on the bill of sale for the vehicle that is presented with the application for registration and remits the state sales/use tax amount to the Department.

5. I am familiar with the documents created and published by the Department entitled FYI Sales 79 "Sales of Taxable Items Over the Internet," Sample Annual Customer Notice and Template for Transactional Notice which are attached as Exhibits A, B and C respectively and which are true and correct copies of those documents. The documents are available on the Department website at <http://www.colorado.gov/revenue>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of November 2010.


Shirley L. Stevens



FYI Sales 79

Sales of Taxable Items Over the Internet

The sale of goods through the Internet is treated the same as the sale of tangible personal property through traditional selling methods.

Purchaser

If an individual in Colorado purchases goods over the Internet, they will owe sales tax on the purchase if buying from a seller that is also located in Colorado. If an individual is buying from a vendor not located in Colorado, they will probably not pay sales tax to the seller, but will pay a 2.9% use tax directly to the state of Colorado. If an individual is purchasing through the Internet within the Denver Metro area they will also owe the RTD/CD/FD tax. Use tax is paid on the Consumer Use Tax Return (DR 0252). [§39-26-106 and §39-26-202, C.R.S.]

MOTOR VEHICLE PURCHASES MADE THROUGH THE INTERNET

The purchase of a vehicle by an individual through the Internet is subject to sales tax. If the individual has paid tax to the vehicle dealer, the dealer will furnish them with a sales tax receipt showing sales tax has been collected. The individual will take the sales tax receipt and other vehicle purchase documents to their county motor vehicle department to initiate registering and titling the vehicle. If the purchaser has not paid sales tax to the vehicle dealer, they will pay the sales tax to the county motor vehicle department directly. The individual will not use the Consumer Use Tax Return (DR 0252) to pay tax on a vehicle purchase. Colorado state sales tax of 2.9% is due. The RTD/CD/FD tax is due if the vehicle is registered within the district. Be aware that many cities, counties, and special districts impose a use tax on a vehicle purchase that is registered within the city, county or special district. See FYI Sales 62 Guidelines for Determining When to Collect State-Collected Local Sales Tax and Colorado Sales/Use Tax Rates (DR 1002) for additional information.

Seller

A Web site that sells tangible personal property collects tax in the same manner as a mail order business that sends catalogs to customers to place phone or mail orders. If the seller and the customer are both located in the same taxing jurisdiction, then the seller must collect all applicable state and local sales taxes. For example, if a seller and the customer ordering from the seller are both located in Colorado, the seller must charge the 2.9% Colorado state sales tax. If the seller and the customer are both located in Estes Park, the seller must charge Colorado state sales tax in addition to any county and city tax for Estes Park that may apply. This example assumes the seller has no physical presence outside of the seller's local jurisdiction. If a seller delivers items to themselves or if they employ sales people to sell or advertise products in other jurisdictions, we advise the seller to seek the assistance of a tax professional to help keep track of the various tax rates and tax filing requirements in each jurisdiction. For further information on determining when to collect local taxes on shipped sales, see FYI Sales 62.

RETAILERS THAT ARE NOT REQUIRED TO COLLECT COLORADO SALES OR USE TAX AND CHOOSE NOT TO COLLECT COLORADO SALES OR "NON-COLLECTING RETAILERS"

If such retailers have total annual gross sales in Colorado of \$100,000 or more, such retailers must:

Provide notice with each purchase (the "transactional notice")

The transactional notice must:

- State that the retailer does not collect Colorado sales or use tax.
- State that the purchase is not exempt from Colorado sales or use tax merely because it is made over the Internet or by other remote means.
- State that State of Colorado requires Colorado purchasers to file a sales or use tax return at the end of the year for all taxable Colorado purchases that were not taxed, and pay tax on those purchases
- The notice must be easily seen and located near the total price.

The notice may also state that the retailer will provide an end-of-year summary of Colorado purchases to the customer, and that the retailer is required by law to provide the Colorado Department of Revenue with an annual report of the total dollar amount of the customers Colorado purchases at the end of the year. (Details of how and when to file may be found at the Colorado Department of Revenue's Web site, www.TaxColorado.com)

WHEN NOTICE MUST BE GIVEN:

1. If a retailer does not indicate that no sales tax is due on the transaction, the retailer may provide notice at any point in the transaction, including sending the notice on a separate sheet of paper with the delivered goods.

Example: Transaction summary that does not indicate that no sales tax is due on the transaction

Item	\$1,000.00
Shipping and handling	\$45.00
Sales tax collected by [COMPANY NAME]	\$0.00

2. If the retailer does indicate that no sales tax is due on the transaction, then the retailer must direct the customer to a notice every time such an indication is made that no sales tax is being collected.

Example: Transaction summary that indicates no sales tax is due on the transaction

Item	\$1,000.00
Shipping and handling	\$45.00
Sales tax	\$0.00

3. If the retailer knows that a purchase is exempt from Colorado tax (ex: the sale of non-candy food items for home consumption), then the retailer need not provide any notice at all.

Provide an annual summary of purchases (the “annual customer report”) to Colorado customers that have more than \$500 in annual purchases.

The annual customer report to each customer who spent more than \$500 in a calendar year may be sent without regard to whether the customer has more than one account with a retailer. For example, retailers are not required to determine whether customer John P. Smith, customer John Peter Smith, and customer J.P. Smith, Inc. are the same individual for taxation purposes unless the retailer knows in the regular course of its business that such customers are all the same individual or entity. Similarly, retailers are not required to determine whether customers are part of a single household. Retailers also do not need to determine whether customers are part of the same entity unless the retailer knows in the regular course of its business that such customers are all part of the same entity. For example, retailers do not need to determine whether two different individuals with the same business address are part of the same business entity.

The annual customer report must:

- Be sent by first class mail to the last known address by January 31 of the following year in an envelope prominently marked with the words “Important Tax Document Enclosed”.
- Summarize the date(s) of purchase(s), a general description of the item(s) (e.g., “books”, “consumer electronics”, “household appliances”) and the dollar amount(s) of the purchase(s).
- State that the State of Colorado requires that the consumer file a sales or use tax return at the end of every year and pay the tax on Colorado purchases that did not include tax. (Details of how to file this return may be found on the website www.TaxColorado.com under the Sales Tax or Use Tax web pages.)
- Indicate that the retailer is required by law to provide the Colorado Department of Revenue the total dollar amount of purchases made by Colorado consumers, however no information about the purchases other than the dollar amount will be provided.

On or before March 1, 2011 and each year thereafter retailers not collecting the tax and have at least one customer with total annual purchases that are over \$500, must also provide an annual report (the “annual retailer report”) to the Colorado Department of Revenue.

The annual retailer report must include:

- The name(s) of all the Colorado purchasers
- The billing address of all the Colorado purchasers
- The shipping addresses of all the Colorado purchasers
- The total dollar amount of purchases made by each customer in Colorado for the previous year.

Details of how to file this report can be found on the department’s Web site under “Sales tax” for “Non-collecting retailers”.

INTERNET ACCESS SERVICES

Colorado does not tax Internet access services. Internet access (general use of the Internet), e-mail services, Web site hosting and domain name registration are nontaxable services.

However, if service providers sell tangible personal property to customers in Colorado, then sales tax must be charged on those items. [§ 39-26-104 , C.R.S.]

FEDERAL RESTRICTIONS ON INTERNET TAXATION

It is sometimes argued that federal law does not allow states to impose sales tax on items purchased via the Internet. This is not the case. The Internet Tax Nondiscrimination Act restricts the following through November 1, 2003:

(1) taxes on Internet access, unless the tax was generally imposed and actually enforced prior to October 1, 1998;

and

(2) multiple or discriminatory taxes on electronic commerce.

Colorado is in compliance with these requirements as there is no Colorado sales tax on Internet access and the sales and use taxes imposed are not discriminatory (at a higher rate than that imposed on other businesses or applied solely to online computer services or Internet access).

Definitions

“Internet” means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks. [§24-79-102(2)(a) and §29-1-1001(3)(a), C.R.S.]

“Internet access services” means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services. [§24-79-102(2)(b) and §29-1-1001(3)(b), C.R.S.]

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.

TEMPLATE FOR TRANSACTIONAL NOTICE

In an effort to assist non-collecting retailers in complying with their notice obligations to consumers, the Department of Revenue has created a sample notice that retailers may use, which complies with DOR's regulations. Retailers need not use this notice, however, and are free to provide any form of notice that meets the requirements outlined in Regulation 39-21-112.3.5.

SAMPLE NOTICE TO CONSUMERS:

[COMPANY NAME] is not required to, and does not, collect Colorado sales or use tax. Under Colorado law, purchases are not tax-exempt merely because they were made over the Internet or because a seller is not required to collect Colorado tax. Colorado law requires Colorado purchasers to review untaxed purchases and, if any tax is owed, file a Colorado use tax return and pay any tax due.

OPTIONAL ADDITIONAL LANGUAGE (RETAILERS MAY INCLUDE ALL OR SOME OF THE POINTS BELOW):

- In order to assist you in filing your Colorado use tax form, if you purchase more than \$500 worth of goods from us, we will send you a summary at the end of the year of all of your purchases from us.
- Details of how and when to file your Colorado use tax return may be found at www.taxcolorado.com under the topic "use tax".
- Please be aware that we are required to provide the Colorado Department of Revenue with an annual report of the total dollar amount of your purchases. We will not provide any details about your purchases, only the total dollar amount that you spent on goods purchased from us.

SAMPLE ANNUAL CUSTOMER NOTICE

In an effort to assist non-collecting retailers in complying with their notice obligations to consumers, the Department of Revenue has created a sample annual notice to consumers that retailers may use, which complies with DOR's regulations. Retailers need not use this notice, however, and are free to provide any form of notice that meets the requirements outlined in Regulation 39-21-112.3.5.

TEXT OF SAMPLE ANNUAL NOTICE TO CONSUMERS:

During 2010 you purchased items from us that you had shipped to the State of Colorado. Because we did not collect any tax on those purchases, Colorado law requires that we send you the attached summary of your purchases to assist you in filing your Colorado use tax/sales tax form.

If you made taxable purchases during the year on which no sales tax was collected, Colorado law requires that you file a use/sales tax return and pay any tax due on your taxable purchases.

[OPTIONAL LANGUAGE: You may find details of how and when you must file your return at the Colorado Department of Revenue's website: www.taxcolorado.com.]

Colorado law requires that we also provide the Colorado Department of Revenue with the total amount of your purchases from us. We will not provide any details of what your purchases were or include any description of the type of items that you purchased. The attached detailed notice is provided only to you.

SAMPLE ANNUAL NOTICE LAYOUT:

Purchase date	Item type	Amount paid*
1/12/2010	Books	\$27.50
2/17/2010	Electronics	\$560.00
12/20/2010	Kitchen utensils and gardening tools	\$200.00
12/28/2010	Electronics	\$600.00

*Shipping and handling charges may be separately stated or may be included in the item amount.