

Aggressive New Colorado Sales Tax Rules Impact Out-of-State Retailers

Colorado recently enacted legislation that affects out-of-state retailers in two ways, beginning **March 1, 2010**. If you are an out-of-state retailer and you make sales into Colorado, one of the two changes below will apply to you.

- 1. Nexus Presumption:** Remote retailers that are part of a controlled group that includes a retailer with a physical presence in Colorado are now presumed to have nexus and must collect Colorado sales tax. If you are part of a controlled group with a member physically in Colorado, you **must** collect and remit Colorado sales tax as of March 1, 2010.
- 2. Notification Requirements:** Every retailer that sells taxable tangible personal property or services to Colorado customers without collecting Colorado sales tax (regardless of nexus) must meet notification and filing requirements in Colorado. Such retailers must provide certain notification to customers on **each invoice**, and file **annual notices** to purchasers and the Colorado Department of Revenue by January 31 and March 1 of the following year, respectively.

Failure to provide such required notice will result in penalties as follows: \$5 per invoice, \$10 per annual notification to purchaser, and \$10 per purchaser not included in the annual notification to the Department. The Department will waive interest and penalties for failures between March 1, 2010, and April 30, 2010, only if the noncollecting retailer begins to provide the required notices (or begins to collect) by May 1, 2010.

Exemption : According to emergency regulations, any affected retailer that made total gross sales in the prior year of less than \$100,000 is exempt from the notification requirements. If you are not part of a controlled group with a Colorado member, but sell to customers in Colorado, and if you either made total sales last year of \$100,000 or more, or reasonably expect to this year, then you must begin attaching the required notices to your invoices sent on May 1, 2010, and thereafter. Please note that companies are applying political pressure to encourage Colorado to adapt or repeal this legislation, and lawsuits are expected. Additional guidance or changes may occur.

Details of Notification Requirements

Notice Required on Each Invoice

A retailer that does not collect sales tax must provide a notice on each invoice, or provide a separate statement at the time of sale if an invoice is not provided, that states substantially the following:

“Although we, as the seller, are not obligated to collect Colorado sales tax, this purchase is subject to Colorado sales tax unless it is specifically exempt from taxation. This purchase is not exempt merely because it is made over the Internet or by other remote means. The State of Colorado requires that you file a sales/use tax return at the end of the year reporting all of your purchases that were not taxed and pay tax on those purchases. Retailers that do not collect Colorado sales tax, including ourselves, must provide you an end-of-year summary of your purchases to assist you in filing that report. Details of how to file this return may be found at the Colorado Department of Revenue’s website, www.taxcolorado.com. Please note that we are required by law to provide the Colorado Department of Revenue with a report of the total amount of all of your purchases from us at the end of the year.”

This notice must be clearly legible and reasonably prominent on the invoice. The notice must be accompanied by a notice, in bold typeface in the same size font as other text on the invoice, that says, “Please see important sales tax information.”

(continued)

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Annual Notification to Purchasers

Each retailer that does not collect sales tax must notify Colorado purchasers of sales and/or use tax obligations resulting from certain purchases made from the retailer. The retailer must notify all Colorado purchasers by January 31 of each year of such information, as the Colorado Department of Revenue shall require, including but not limited to, the dates of purchases, amounts of each purchase, total Colorado purchases, and the category of the purchase, including, if known by the retailer, whether the purchase is exempt or not exempt from taxation.

Annual Notification to Colorado Department of Revenue

Each retailer that does not collect sales tax must file an annual statement for each purchaser to the Department of Revenue on such forms as are provided or approved by the Department showing the total amount paid for Colorado purchases of such purchasers during the preceding calendar year or any portion thereof, and such annual statement shall be filed on or before March 1 of each year.

If you have any questions regarding the new Colorado sales tax reporting requirements, please contact your Baker Tilly advisor or send an e-mail to tax@bakertilly.com.

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