



# COLORADO

Department of Revenue

Taxation Division

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GIL 19-002

November 27, 2019

XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

Re: Vehicles Sold at Estate Sales

Dear XXXXXXX,

You submitted, on behalf of XXXXXXX ("Company"), a request for a general information letter on the collection of sales tax on motor vehicles sales.

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 1 CCR 201-1, Regulation 24-35-103.5.

## Issue

We frame your question as follows: Is a company that facilitates the sale of property owned by its clients at sales conducted at its clients' homes required to collect sales tax on motor vehicles sold?

## Background

Company's business activity consists primarily of selling the contents of clients' homes. Company typically holds a three-day sale open to the general public. Company does not take ownership of any personal property during the sale, but sells items on behalf of their clients, collecting a commission on all items sold. Company collects sales tax on all items sold. Occasionally, a client will include a motor vehicle among the items for sale.

## Discussion

Colorado law requires that a retailer of tangible personal property collect sales tax from the buyer.<sup>1</sup> A retailer's agent may be treated as jointly liable with the retailer for the collection and payment of sales tax if he or she operates under the retailer's direction, obtains tangible personal property from the retailer to sell on the retailer's behalf, or solicits

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<sup>1</sup> §§ 39-26-105, 106(2)(a), C.R.S.

business on behalf of the retailer.<sup>2</sup>

However, an auctioneer is not required to collect sales tax on motor vehicles sold at an auction sale if the auctioneer is not a licensed auto dealer.<sup>3</sup> An auction sale is a sale conducted by an auctioneer who solicits offers to purchase tangible personal property or services until the highest offer is made.<sup>4</sup>

An auctioneer is generally not required to obtain an auto dealer's license if the auctioneer is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only.<sup>5</sup> Any auctioning of motor vehicles by an auctioneer must be incidental to the primary business of auctioning goods.<sup>6</sup>

If Company is a licensed auto dealer or is required to obtain an auto dealer's license, Company is required to collect sales tax on all sales of motor vehicles. If Company is not a licensed auto dealer and is not required to obtain an auto dealer's license, Company is not required to collect sales tax on motor vehicles sold at auction sales as defined above, but is required to collect sales tax on any motor vehicle sold by methods other than an auction sale.

### **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 self-collected home-rule cities. 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](http://www.colorado.gov/tax) for more information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue

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<sup>2</sup> § 39-26-103(9)(e), C.R.S.

<sup>3</sup> § 39-26-113(7)(a) and (b), C.R.S.

<sup>4</sup> 1 CCR 201-4, Regulation 39-26-102(1.3)(1)(a)(i); and § 39-26-102(1.3), C.R.S.

<sup>5</sup> § 44-20-102(17) and (18)(f), C.R.S.

<sup>6</sup> § 44-20-102(17), C.R.S.