

LR 6203

April 2, 2010

Dear Applicant:

This is a letter ruling issued by the Director of Revenue under Section 536.021.10, RSMo, and Missouri Code of State Regulations 12 CSR 10-1.020, in response to your letter dated February 22, 2010.

The facts presented in your letter ruling request and telephone conference with Legal Counsel Stephen P. Sullivan are summarized as follows:

Applicant is a corporation located in Missouri that sells first aid products. At times, Applicant sells its products to out-of-state retailers. Certain of these out-of-state retailers resell the products to Missouri customers. Applicant drop ships the products sold to the out-of-state retailers directly to the retailers' customers in Missouri. The out-of-state retailers are not registered for sales tax in Missouri.

ISSUE:

Is Applicant required to collect and remit state and local sales tax on the amount charged for products sold to out-of-state retailers that are not registered for sales tax in Missouri when Applicant drop ships the products to the Missouri customers of these out-of-state retailers?

RESPONSE:

No. Applicant is not required to collect and remit state and local sales tax on the amount charged for products sold to out-of-state retailers that are not registered for sales tax in Missouri when Applicant drop ships the products to the Missouri customers of these out-of-state retailers. The out-of-state retailers are required to collect and remit state and local sales tax on the amount charged for products to their customers.

Section 144.020.1, RSMo, imposes a sales tax "upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state."

Section 144.010.1(10), RSMo, defines "sale at retail" as any:

transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration[.]

Missouri Regulation 12 CSR 10-113.200(1) provides that "a sale of tangible personal property is subject to sales tax if title to or ownership of the property transfers in Missouri[.]"

A drop shipment is a sale in which the seller (Applicant's customer/out-of-state retailer) accepts an order from a customer, places the order with a third-party supplier (Applicant), and directs the third-party supplier (Applicant) to deliver the item directly to the seller's customer. On delivery of the order to seller's customer, title to the item sold passes from the third-party supplier (Applicant) to the seller (Applicant's customer/out-of-state retailer) and then title to the item passes from the seller (Applicant's customer/out-of-state retailer) to the seller's customer in Missouri.

Applicant is making a sale for resale, which is excluded from sales tax. Applicant's customers, the out-of-state retailers, are making sales at retail in Missouri, and should collect and remit state and local sales tax to the state of Missouri based upon the location of the out-of-state retailers' customers in Missouri. Applicant should obtain and retain a Form 149 Sales/Use Tax Exemption Certificate from each out-of-state retailer to substantiate that its sales are for resale. Failure to maintain a Form 149 Sales/Use Tax Exemption Certificate

from each out-of-state retailer may subject Applicant to being held liable for the state and local sales tax due on the sales to Missouri customers.

This letter ruling is binding upon the Department of Revenue with respect to Applicant for three (3) years from the date of this letter and is subject only to statutory changes by the General Assembly and to changes in the interpretation of law by the courts or administrative tribunals. If a change occurs, the taxpayer who relies upon an outdated interpretation may be subject to additional taxes, interest and penalties, which may be imposed prospectively from the date of the change. For this reason, the interpretation set forth above should be reviewed on a regular basis. Please note that any change in or deviation from the facts as presented will render this ruling inapplicable.

Should additional information be needed, please contact Legal Counsel Stephen P. Sullivan, General Counsel's Office, Post Office Box 475, Jefferson City, Missouri 65105-0475 (phone 573-751-0961), or me.

Sincerely,

Alana M. Barragán-Scott