

STATE OF COLORADO

DEPARTMENT OF REVENUE

Fair Share Section
1375 Sherman Street
Denver, Colorado 80261



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Dear

The Colorado Department of Revenue has detected that many motor vehicle dealerships have been solicited by businesses promoting the evasion of Colorado license plate fees and taxes. These businesses are contacting dealerships and encouraging practices contrary to Colorado statutes.

Specifically, their approach has been to encourage customers to form a limited liability company in another state and register the newly purchased vehicle under the company name in that other state. The LLC is set up for the purpose of evading Colorado tax and licensing fees. These are not legal methods of eliminating sales tax on vehicle purchases. The Department considers this type of activity to be tax evasion. Accordingly, the vehicle must be registered where the individual purchaser is domiciled.

As a reminder, it is the responsibility of every motor vehicle dealership to collect sales tax on purchases made by Colorado residents. Purchases exempted from tax and registration fees must be evidenced by sufficient documentation to validate the exemption. The Department can hold a dealership liable for any tax not properly collected and remitted. In cases of disputes between the customer and the vendor, sales tax must be collected. The customer can then file a claim for a refund with the Department requesting reimbursement.

For your information and review a summary of the existing Colorado statutes that addressing the applicability of Colorado sales tax on auto/RV purchases have been enclosed with this letter.

The Department requires dealerships to maintain on file a Form DR 0780 for every motor vehicle purchase that is to be licensed outside the State of Colorado. The completion of this form by a Colorado resident for the purpose of evading taxes and licensing fees is considered to be an act subject to criminal prosecution.

In conclusion, the Colorado Department of Revenue considers the creation of an LLC or other entities in another state for the purpose of evading tax to be illegal pursuant to CRS 39-21-118(1) and CRS 39-21-118(3). The Department will hold any dealer participating in this type of activity liable for the uncollected Colorado sales tax.

Questions regarding this issue should be directed to Sharon Stehr, Fair Share Manager at 303-205-8292 x5250 or via email to sstehr@spike.dor.state.co.us.

COLORADO STATUTES PERTAINING TO MOTOR VEHICLE PURCHASES

- Colorado Revised Statute C.R.S. 39-21-118(3): Any person required under any title administered by the department to pay any tax or estimated tax, or required under such title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such a return, keep such records, or supply such information, at the time or times required by law or regulations, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or one hundred thousand dollars in the case of a corporations, or imprisoned not more than one year, or both, together with the costs of prosecution.
- Colorado Revised Statute (C.R.S.) 42-6-139 addresses the requirement to register motor vehicles in the state of Colorado. C.R.S. 42-6-139(1) states: "For purposes of this section, a person's residence shall be his principal or primary home or place of abode, to be determined in the same manner as residency for voter registration purposes as provided in sections 1-2-102 and 31-10-201, C.R.S.: except that "voter registration" shall be substituted for "motor vehicle registration" as a circumstance to be taken into account in determining such principal or primary home or place of abode." C.R.S. 42-6-139(2) states: "Except as may be otherwise provided by rule or regulation of the director, it is unlawful for any person who is a resident of the state to register any motor vehicle owned by him or to obtain a license therefor or to procure a certificate of title thereto at any address other than: (a) For a motor vehicle which is owned by a business and operated primarily for business purposes, the address from which such vehicle is principally operated and maintained; or (b) For any motor vehicle, for which the provisions of paragraph (a) of this subsection (2) do not apply, the address of the owner's residence; except that, if a motor vehicle is permanently operated and maintained at an address other than the address of the owner's residence, such motor vehicle shall be registered at the address from which such motor vehicle is permanently operated and maintained."

C.R.S. 39-26-104 addresses the applicability of tax due on the purchase of motor vehicles. The statute deals with property and services taxed and states: "There is levied and there shall be collected and paid a tax in the amount states in section 39-26-106 as follows: (a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail." C.R.S. 39-26-106 (II) states: "On and after January 1, 2001, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of two and ninety one-hundredths percent of the amount of the sale to be computed in accordance with schedules or systems approved by the executive director of the department of revenue." Pursuant to C.R.S. 32-9-119(2)(a), the DOR also administers the collection of the Regional Transportation District tax at the rate of six-tenths of one percent upon every transaction or other incident with respect to which a sales tax is now levied by the state. The CDOR also administers the collection of the Metropolitan Football Stadium tax pursuant to C.R.S. 32-15-104 at the rate of one-tenth of one percent and the Scientific and Cultural District Tax pursuant to C.R.S. 32-13-107, also at the rate of one-tenth of on percent.

- Colorado Code of Regulations C.C.R. 39-26-104.1(a) reads: The tax is imposed upon the purchaser. However, if the transaction involves a licensed vendor, the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the state. In the event that a licensed vendor fails to collect the appropriate sales tax, the Department may assess the tax due against the vendor or against the purchaser, at its option. If no licensed vendor is involved in the transaction, or the vendor fails to collect the sales tax, the purchaser shall pay the sales tax directly to the Department of Revenue, (J.A. Tobin Construction Co. v. Hugh H.C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965).
- CDOR Regulation 39-26-105.1(c) reads: The vendor must establish that the sales is exempt and have records sufficient to demonstrate the validity of the exemption with reference to each sale. CDOR Form DR 780 is required to exempt a motor vehicle/RV purchases from Colorado sales tax.
- C.R.S. 39-21-118 (5) holds t6hat any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under any title administered by the department, or a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document, is guilty of a class 5 felony and upon conviction thereof, shall be punished as provided in section 18-1.3-401, CRS, or shall be punished by a fine of not more than one hundred thousand dollars in the case of a corporations, or by both such fine and imprisonment, together with the costs of prosecution.