
Tax Compliance Guide

Direct Sales Companies Topic 371

(09/2009)

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Direct sales companies market goods through a network of independent “person-to-person” distributors rather than from retail outlets. Relationships between these companies and their distributors vary, as do the specific marketing schemes; however, one common model is for the distributor, an independent contractor, to recruit a hostess (or host) to hold a party in her home. During the party the distributor solicits sales from attendees. Attendees place orders with the distributor, who delivers the goods directly to the attendee some time later.

Sales Tax on Goods Sold by Distributors

Under this model, the distributor would be considered a retailer, and the company would be considered a wholesaler. If the distributor operates their business from a commercial or residential location in Westminster, they are required to obtain a general business or home occupation license. This license is also a sales and use tax license. Distributors who operate from another City but solicit sales at parties in the City, or make deliveries to attendees in the City, will need to obtain a temporary or permanent sales and use tax license depending upon the frequency of their contacts in the City.

The *Westminster Municipal Code* imposes a sales tax upon the purchase price paid for tangible personal property sold at retail. A licensed distributor selling goods is required to collect and remit City sales tax on the purchase price paid for the goods. Delivery fees and other miscellaneous handling fees must also be included in the taxable purchase price. Distributors may not avoid collecting Westminster sales tax by collecting and paying tax for another City based upon their home location or the location of the party.

Westminster sales tax only applies to transactions where delivery of the goods occurs in the City. Distributors need not collect Westminster sales tax on items delivered outside the City, even if the party was held and orders for the goods were taken in the City. Distributors located outside of Westminster making deliveries into the City must collect Westminster sales tax. In determining whether or not a specific address is inside or outside the

City, distributors are encouraged to use the electronic location databases certified by the Colorado Department of Revenue pursuant to *Colorado Revised Statutes* § 39-26-105.3. Distributors are cautioned that mailing addresses and zip codes do not coincide with City boundaries and are not a reliable source for determining taxability.

Sales tax collected by any distributor on behalf of the City remains property of the City at all times. Retailers hold these taxes in trust for the sole use and benefit of the City until paid. All City sales tax collected by a retailer must be remitted directly to the City. Remittance to the Colorado Department of Revenue or any other taxing authority does not relieve a distributor of their liability to the City. Retailers are encouraged to deposit City sales tax in a separate account to segregate it from other business funds. Should a retailer collect tax in excess of the computed tax due, such tax must be reported as excess tax (line 6) and paid to the City.

In some cases, direct sales companies have been granted permission to collect tax from all of their distributors and remit it to the City on their behalf. Distributors should not assume, however, that payment of tax to a direct sales company relieves them of liability. Distributors must ensure that Westminster tax is collected based upon the location where the goods are delivered. Distributors may contact the Sales Tax Division to confirm if their company is permitted to remit on their behalf. Direct sales companies may also contact the Sales Tax Division to request such permission.

Purchases by Distributors

Goods purchased exclusively for resale by licensed distributors are exempt from Westminster sales and use tax. As discussed above, some distributors may remit collected sales tax to the direct sales company who will, in turn, remit it to the City on their behalf. Distributors must pay Westminster sales tax to the company for goods used for demonstration and display purposes. If Westminster sales tax is not paid to a company licensed and authorized to collect the same at the time of purchase, then a use tax must be remitted directly to the

City. Distributors must also pay Westminster sales or use tax on other non-resale purchases such as party supplies, food, decorations, and door prizes.

Hostess Gifts and Credits

In exchange for holding the party, the hostess often receives a gift or receives credits toward the purchase of goods. In some cases, the value of the gift or the amount of credits received is dependent upon the level of sales generated by the party. In any case, because of the *quid pro quo* nature of the exchange between the company/distributor and the hostess, the goods given to the hostess cannot be considered bona fide gifts. In fact, this transaction qualifies as a sale of such goods to the hostess and, therefore, Westminster sales tax is due. The tax is measured based upon the retail price of the goods, with no discount based upon the amount of cash actually surrendered by the hostess.

Examples

1. Distributor A sells home décor for Company B, a direct sales company. Company B has permission from the City to remit tax on behalf of its Distributors. Distributor A operates from his home in Westminster, and holds a home occupation license from the City. Distributor A makes arrangements with Hostess C to hold a demonstration party at her home in Westminster.
 - a. Distributor A buys snacks for the party at a Westminster grocery store. Distributor A must pay Westminster sales tax on the snacks and cannot use his tax license to avoid the sales tax.
 - b. At the party, Distributor A takes an order from Customer X for \$500 in merchandise. Customer X lives in Thornton where Distributor A will deliver the merchandise in 3 weeks. Because the merchandise will be delivered outside Westminster, Distributor A should not collect Westminster sales tax from Customer X.
 - c. Customer Y, a Westminster resident, also orders \$500 in merchandise. Because Distributor A will deliver the merchandise to Customer Y in Westminster, he must collect Westminster sales tax. Distributor A will remit the tax to Company B when he places the order and Company B will send it to the City on his behalf.
 - d. Because the party generated \$1,000 in sales, Hostess C is entitled to take a 50% discount on one item in the catalogue. Hostess C selects an item priced at \$100 (\$50 after her discount). Distributor A must collect Westminster sales tax on the full \$100 price (not the discounted price).

Related Topics

Coupons, Discounts, & Promotional Items
 Deliveries Outside the City
 Electronic Location Databases
 Occasional Sales
 Samples, Demonstrations, & Displays

Citations

Westminster Municipal Code
 § 4-1-5. Retailer Responsible for Collection and Payment of Tax
 § 4-1-2. Exemption; Burden of Proof
 § 4-1-6. Trust Status of Tax in Possession of Retailer
 § 4-1-7. Filing Returns; Due Date
 § 4-2-2. Definitions
 § 4-2-3. Rate; Imposition and Collection; Distribution
 § 4-2-5. Exemptions from Sales Tax
 § 5-2-2. License Required
 § 5-3-2. License Required
 § 5-4-2. License Required

THIS GUIDANCE IS A SUMMARY IN LAYMEN'S TERMS OF THE RELEVANT WESTMINSTER TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS PROVIDED FOR THE CONVENIENCE OF TAXPAYERS AND IS NOT BINDING UPON THE CITY. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE WESTMINSTER MUNICIPAL CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A CITY TAX POLICY.

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