

FYI – For Your Information

Leased Departments Within Stores

GENERAL INFORMATION

This FYI addresses the sales tax remittance obligations of both lessor and lessee in stores that have leased departments. The information in this FYI pertains to state and state-administered local taxes **only**. Home rule jurisdictions that administer their own sales taxes must be consulted directly for information on their tax regulations. A list of home rule cities is included in “Colorado Sales/Use Tax Rates” (DRP 1002), a Colorado Department of Revenue publication which is updated each January and July.

Definition: A “leased department” is floor space within a store that is leased and run as a separate business from the company that manages the store. It does not matter whether customers are aware that a particular department is a distinct business. An example of a leased department might be a department store that contains a shoe department that is actually run by a different company. This second company owns and controls the stock within the shoe department, but leases the space from the department store.

For the purposes of licensing under Colorado sales tax laws, the leased department is treated as a separate and distinct store, just the same as if such department were in a separate and distinct building. The fact that the department happens to be

within a larger store does not alter the fact that ownership and control of the merchandise is different in the leased department. Therefore, a leased department must have its own sales tax license. [§39-26-103 C.R.S.]

Where a store contains leased departments, each leased department must remit **separate** sales tax returns. The lessee must keep its books separately from the lessor’s books, and make sales tax collections on retail sales. If the lessor store keeps the books on behalf of lessee departments, the lessor must fill out **separate** returns for each such department and remit the taxes due. In cases where the lessor keeps the lessee’s books and remits the lessee’s sales taxes, the lessee is not absolved of the ultimate responsibility for remittance of the taxes due.

FAILURE TO PAY

In cases where the leased department fails to remit sales taxes and a distraint warrant is issued by the Department of Revenue, the property of the lessor **which is used by the lessee** (e.g., fixtures, display cases, etc.) is not immune from seizure even if the lessor does not control the leased department’s books. The lessor may protect its tangible personal property from seizure in any one of three ways:



Colorado Department
of Revenue
Taxpayer Service Division
1375 Sherman St.
Denver, Colorado 80261

Forms and other services:
(303) 238-FAST (3278)
Assistance:
(303) 238-SERV (7378)
www.taxcolorado.com

- File a copy of the lease with the county clerk in the county where the property is located.
- File with the Department of Revenue a “Memorandum of Lease” (DR 6514) describing the leased property. Send to Tax Auditing & Compliance Division, 1375 Sherman St., Room 504, Denver, CO 80261.
- Within ten days of seizure of the property by the DOR, notify the department’s Tax Auditing and Compliance Division of the existence of a lease, and provide a copy of it. [§39-26-117 (1) (b) C.R.S.]

In all cases, the lease must list the tangible personal property in such a way as to be identifiable to DOR investigators.

FURTHER INFORMATION

FYIs and commonly used forms are available on the Web at www.taxcolorado.com

For additional sales tax information visit the "Tax Information Index" at www.taxcolorado.com

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved these FYIs.