

PRIVATE LETTER RULINGS AND INFORMATIONAL LETTERS

REGULATION 24-35-103.5

1) Scope.

This regulation describes the procedures for applying for and issuing Private Letter Rulings and Information Letters to a taxpayer in response to the taxpayer's request for an interpretation of tax law or application of tax laws to a specific set of facts. This regulation does not govern "For Your Information" Publications ("FYIs"), Department published "Questions & Answers," instructions, oral or email communications to or from the department, general correspondence, assessments, refunds, final determinations, forms, and other statements or publications issued by the department.

2) Definitions.

- a) "Authorized representative" means the attorney, agent, or person designated by the taxpayer as contact for the department pursuant to an executed DR 0145 (power of attorney).
- b) "Department" means the Colorado Department of Revenue.
- c) "General Information Letter" or "Letter" means a non-binding letter issued to a specific taxpayer in response to the taxpayer's written request for interpretation or application of any tax administered by the Department pursuant to title 29 or 39, C.R.S. General information letters are designed to provide general background information on topics of interest to a taxpayer and do not contain tax advice with respect to a specific factual setting. An information letter is advisory only and the provisions of section 10 of this regulation do not apply.
- d) "Person" includes individuals, corporations, partnerships, limited liability companies and others set forth in §39-21-101(3), C.R.S.
- e) "Private Letter Ruling" or "Ruling" means a binding letter issued by the department addressed to a specifically designated taxpayer in response to a written request by that taxpayer regarding the tax consequences of a proposed or completed transaction under any tax administered by the department pursuant to title 29 or 39, C.R.S.
- f) "Related Party" means a person required to be included in a Colorado combined report pursuant to §39-22-303, C.R.S., and regulations thereunder, or a related party or a member of an affiliated group of which the taxpayer is a member as defined by 26 U.S.C. §§ 267 and 1504 of the Internal Revenue Code of 1986.
- g) "Tax" means those state and local taxes (including interest and penalties related to those taxes) administered by the department (Titles 29 and 39, C.R.S.)

3) Subject Matter of Letters and Rulings.

- a) Matters subject to Letters and Rulings. A designee of the executive director of the department will issue Letters and Rulings in response to a taxpayer's inquiry on a broad range of subject matters that involve an interpretation of a tax law (including statute, resolution and regulation), the applicability of tax to a given set of facts, a taxpayer's tax status, and procedural issues relating to such taxes.
- b) Matters not subject to Letters and Rulings. Unless otherwise specifically agreed to by the department, the department will not issue Letters or Rulings regarding:
 - i) An issue, whether related to a prospective or a completed transaction, if the same or a closely related issue is before the department or Internal Revenue Service in connection with an examination or audit by the department or Internal Revenue Service of the same taxpayer for the same or any other period.

- ii) An issue if that issue or a closely related issue is pending appeal with the tax conferee, executive director, or courts.
 - iii) A matter involving the tax consequence of any proposed federal, state, or local legislation.
 - iv) Whether "reasonable," "good cause," "good faith," or other similar standard exists in circumstances where such criteria is a requirement of tax law.
 - v) Whether a proposed transaction would subject the taxpayer to civil fraud or criminal penalty.
 - vi) Questions of fact, such as valuation.
 - vii) Factual scenarios that require documentation or facts so voluminous as to be onerous to resolve, including but not limited to questions of "business purpose" and "economic substance."
 - viii) Federal law or state constitutional law.
 - ix) Only part of an integrated or step transaction, unless as a part of a Ruling regarding the entire transaction (see also subsection (4)(b)(vi) of this regulation relating to required disclosures in this regard).
 - x) Issues brought forward by business, trade or industrial associations, or other similar groups, to the extent such request relates to their members' or constituency's tax status or liability.
- c) The department will decline to issue Rulings and Letters if it lacks sufficient resources to prepare a response to the same. If the department lacks resources generally and will be unable to respond to most or any requests for Rulings, it will issue a notice of such fact and publish such notice on a Letter-Ruling page on its Web site.
- d) The department reserves the right not to issue Rulings or Letters when it determines that it would not be in the best interest of the State. The taxpayer may request that any Ruling request denied pursuant to this paragraph be reviewed by the executive director of the department.
- 4) Applications for Letters and Rulings.
- a) Letters. In general, a request for a Letter can be informal and not as comprehensive as is required for a request for a Ruling. The Letter request should contain a reasonable description of the facts and identification of issues. Citation to statutes or legal authority is helpful, but not necessary. The department does not charge a fee for issuing a Letter.
 - b) Rulings. The following must be included in every request for a Ruling.
 - i) A statement that the taxpayer is requesting a Ruling pursuant to this regulation.
 - ii) Statement of facts and issues. The request must include a complete and detailed statement of all relevant facts. This statement will, unless expressly agreed to by the department, constitute the factual basis for the Ruling. Therefore, relevant and material facts contained in documents submitted with the request must be specifically set forth in the statement of facts, together with specific citations to the pertinent documents where such facts are contained. It is insufficient disclosure to incorporate by reference factual material contained in documents (e.g., "See Sales Contract for more details.").
 - iii) A discussion of the business reasons for the transaction.
 - iv) True and complete copies of all documents relevant to the Ruling.

- v) A statement that the same or substantially similar issue is not being considered by the department or Internal Revenue Service in connection with an active examination, audit of the taxpayer or related party.
- vi) For requests that pertain only to one step of a large integrated transaction, documents relating to the entire transaction.
- vii) If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transaction shall be submitted. If the request relates to a prospective transaction, the most recent balance sheet shall be submitted.
- viii) A statement as to whether the taxpayer, related party, or member of an affiliated group, has made the same or similar request for a Ruling relating to the same or similar issue to the Internal Revenue Service or the taxing authority of another state or local jurisdiction. The request to, and Ruling of (if issued), the Internal Revenue Service or other taxing jurisdiction must be attached.
- ix) The taxpayer should furnish a discussion of the relevant issues underlying its request for a Ruling. A taxpayer should make its best efforts in this regard, although it is not required that taxpayers utilize external counsel.
- x) Identification of the taxpayer. A request for Letter may be submitted without disclosing the taxpayer's identity. A request for Ruling may be submitted initially so as not to disclose the identity of the taxpayer. A taxpayer may maintain its anonymity through its receipt of the draft of the department's ruling. Upon receiving the draft, unless the taxpayer withdraws the ruling request, the taxpayer must disclose in writing the following to the department before the department will issue the Ruling:
 - (1) Name and trade name, if any.
 - (2) Address of physical location and, if different from the location address, mailing address.
 - (3) Social Security Number (SSN), Colorado Tax account number, and Federal Employment Identification Number (FEIN), if any.
 - (4) Telephone numbers and email addresses of the taxpayers about whom the request is made.
 - (5) The same information required in subsection 4(b)(x)(1-4) for each person with respect to whom the taxpayer expects the Ruling to apply.
- c) The taxpayer must supplement the request with any additional statements, facts, arguments, citations of authority (including relevant Colorado statutes and published court decisions issued or enacted after the request was submitted but before the Ruling is issued), not previously disclosed but known to the taxpayer at any time prior to the issuance of the Ruling.
- d) At the time of disclosure of the taxpayer's identity to the department, as set forth in subsection 4(b)(x), the taxpayer must also submit:
 - i) A request signed by the taxpayer and, if submitted by an authorized representative, also by the authorized representative. The signature of the signer shall be accompanied by a declaration that the signer, "declares that I have examined this request, including the accompanying documents, and, to the best of my knowledge and belief, the facts and representations presented in support of the request are true, correct, and complete." The request must be signed by a person authorized to sign on behalf of the entity, and if such person does not have personal knowledge of each of the relevant facts contained in the request, the request must include signed affidavits from those who have such knowledge.
 - ii) If submitted by an authorized representative, an executed DR 0145 must be submitted with the request unless an effective authorization is already on file with the department.

- e) The department may determine, after examining the request, that additional information is needed. The department shall request this information from the taxpayer and the taxpayer must submit such information as is requested.
- f) The request for a Ruling or Letter shall be addressed to:

Colorado Department of Revenue
Policy Group Division
P.O. Box 17087
Denver, Colorado 80217-0087
- g) A taxpayer who desires a conference to discuss the request should indicate such desire in writing when filing the request.

5) Fee for Rulings.

- a) Pursuant to §24-35-103.5(6), C.R.S. the department charges a fee in order to offset the direct and indirect costs of the Private Letter Ruling program. The following fee tiers are established for Rulings:
 - i) First Tier Ruling, Initial fee and base evaluation - \$500
 - ii) Second tier Ruling - \$1,000
 - ii) Third tier Ruling - \$2,500
 - iii) Fourth tier Ruling - \$5,000
 - iv) Fifth tier Ruling - \$7,500
 - v) Sixth tier Ruling – highest complexity – Fee in excess of \$10,000
- b) Fee Process
 - i) The base fee is charged on all Rulings and must accompany the initial request. In the case of some simple Rulings, the department may be able to perform the initial evaluation and prepare a Ruling for the \$500 base fee.
 - ii) The department will evaluate the Ruling request and determine into which fee tier the request falls.
 - (1) Such analysis is based on the amount of time the department estimates will be taken in order to complete the Ruling. Such an estimate is necessarily uncertain but will be made by the department in good faith.
 - (2) The number of hours will be multiplied by \$60.00 per hour, which represents the department's initial estimate of direct and indirect costs associated with the employees who will evaluate the request and draft and review the Ruling.
 - (3) In the case of a Ruling for which the department estimates the fee to exceed \$10,000, the fee shall be the number of estimated hours times the applicable rate.
 - iii) Once the fee tier (or the fee amount, if a sixth tier Ruling) has been set, it will not be modified except as indicated below.
 - iv) Except in cases of a first tier Ruling, the department shall give notice of the fee tier (or the fee amount, if a sixth tier Ruling) to the taxpayer, at which time the taxpayer must accept and pay the fee or withdraw the request.
 - v) Except as noted below, the fee is non-refundable.

- (1) If, during the pendency of a Ruling request, the department discovers facts that were not initially disclosed in the request, which facts both have a material effect on the department's determination and require material additional time to complete the Ruling, the department may change the fee tier or the fee amount, if a sixth tier Ruling, upward. The taxpayer shall be given notice of the change in fee or fee tier and may withdraw the request in lieu of paying the higher fee.
- (2) If, during the pendency of a Ruling request, the taxpayer decides to withdraw the request, the department shall cease work on the Ruling and evaluate the amount of time devoted to the request. If the amount of time already devoted is materially less than the amount of time initially estimated, then the department shall refund the difference between the amount paid as the fee and the amount arrived at by multiplying the number of hours already devoted by the then operative hourly rate noted in (5)(b)(ii)(2). However, no refund of the fee shall be made if a taxpayer withdraws its request after receipt of the draft of the ruling.

6) Conferences.

- a) If a conference has been requested by the taxpayer or if the department determines that such a conference will be useful in understanding the request, the department will give notice of the date, time and place of the conference.
- b) The department will hold only one conference. To promote a free and open discussion of the issues, the conference will be held after the department has had an opportunity to study the case.

7) Issuance of Ruling.

- a) The department shall issue a Ruling within 90 days of receipt of the request, unless the department declines the request
- b) The department may place proper conditions on the Ruling, which conditions shall be consistent with statute.

8) Withdrawal of Requests.

- a) The taxpayer's request for Ruling may be withdrawn at any time prior to the issuance of the Ruling.
- b) Unless otherwise agreed to by the department, all documents and information provided as part of the request will be retained in the department and will not be returned to the taxpayer even though a request is withdrawn or declined.

9) Oral or Email Advice to Taxpayers.

The department does not issue Letters or Rulings upon oral or email requests. Although taxpayer may receive technical assistance from the department, either orally or through email, such informal advice by the department is advisory only and is not subject to the provisions of section 10, below.

10) Effect of Rulings.

- a) The department shall be bound by and give effect to the tax determinations set forth in a Ruling, unless and until the Ruling is revoked or modified. A Ruling submitted in bad faith, or that omits or misstates relevant and material facts, shall be void to the extent that such bad faith, omission or misstatement is relevant and material to the determination set forth in the Ruling.
- b) A Ruling later determined by the department to be in error may be modified or revoked in accordance with the procedures of this regulation.
- c) The Ruling shall be revoked or modified by any of the following:
 - i) With respect to a Ruling determined to be in error pursuant to (b), by written notice to the taxpayer to whom the Ruling was issued by mailing notice of the same to the taxpayer's

last known address and by e-mailing notice of the same to e-mail addresses provided by the taxpayer at the time of the Ruling request.

- ii) Enactment of legislation that contradicts the tax determinations in the Ruling and that becomes effective subsequent to issuance of the Ruling.
 - iii) A contrary decision by the Colorado Court of Appeals or the Colorado Supreme Court.
 - iv) Enactment of department regulation that is contrary to the Ruling that becomes effective subsequent to the issuance of the Ruling.
- d) A taxpayer may not rely on a Ruling issued to another taxpayer, including a related party, unless such person is disclosed in the request and the department expressly agrees to apply the Ruling to such persons.

11) Appeals from adverse Rulings.

There is no right to appeal a Letter or Ruling.

12) Taxpayer not bound by Ruling.

A Letter or Ruling does not bind a person. However, such Letter or Ruling may be evidence relevant to the assessment of penalties and other issues of good faith.

13) Confidentiality.

- a) Taxpayers requesting a Letter or Ruling must do so on the basis that the redacted text of any Ruling may be open to public inspection in accordance with §24-35-103.5(5), C.R.S as described below.
- b) Taxpayer information excluded from the public version shall be kept confidential except as permitted or required by law.
- c) Before making any Letter or Ruling available for public inspection under subsection 14 of this regulation, the department shall delete:
 - i) the names, addresses, and other identifying details of the person to whom the Ruling pertains and of any other person identified therein;
 - ii) information specifically exempted from disclosure by any statute which is applicable to the department;
 - iii) trade secrets and commercial or financial information obtained from a person and privileged or confidential; and
 - iv) Information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- d) The department shall submit to the taxpayer, at the time the Letter or Ruling is issued to the taxpayer, a proposed "public" version of the Letter or Ruling that the department proposes to make available to the public. The taxpayer shall, thereafter, file with the department within 60 days from the date of mailing of such proposed "public" draft Letter or Ruling any written objection to the disclosure of the "public" version of the Letter or Ruling. The department shall submit such proposed version by both mail and e-mail, if an e-mail address is provided. Failure to file an objection shall be deemed a waiver of any claim that the same contains confidential information. The objection must be detailed and specifically cite the objectionable text, provide a detailed and complete statement of the basis of the objection to the disclosure of the text, and propose specific alternative text. The department will take into consideration any objections, but the department shall make the final determination of the contents of the text of the "public" Letter or Ruling.

14) Publication of Letters and Rulings.

- a) The department will make available to the public "public" versions of Letters and Rulings to the extent permitted by Colorado law, including, if completed, "public" versions of Letters and Rulings that were withdrawn by the taxpayer.
- b) The department may, in its discretion, make "public" Letters and Rulings available to the public through the department's publications, web site, emails, and other public information and educational resources.