



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-15-005

January 30, 2015

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Re: Cattle ID Tags and Verification of Marketing Claims

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales or use tax on identification tags used on cattle and other protein species.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with Department Rule 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

1. Are cattle and other protein species identification tags subject to Colorado sales or use taxes?
2. Are Company's audits or verifications of marketing claims not subject to Colorado sales or use taxes?

Background

Company audits various marketing claims on meat products (i.e., "grass-fed beef", "non-hormone treated cattle", and "humanely-handled"). Company represents that it ensures compliance with governmental and private standards by providing

transparency and value in food products for both producers and consumers worldwide. Company believes this service is not subject to Colorado sales and use taxes.

Additionally, Company sells cattle identification (ID) ear tags. Most of the tags Company sells are plastic ID tags but on occasion, Company also sells tags with an electronic ID chip embedded internally. Company notes that cattle identification systems used at a dairy farm in connection with the production of raw milk are specifically exempt from sales tax under the farm equipment exemption in section 39-26-716(1)(c), C.R.S. and that, by extension, all identification tags on all cattle groups would be exempt from sales tax.

Discussion

Colorado levies sales and use tax on the sale, use, consumption, or storage of tangible personal property, unless an exemption applies.¹ In this case, Company asks us to consider whether the farm equipment exemption² applies to Company's identification tags. We note that exemptions are narrowly construed and are applied only if the transaction clearly falls within the exemption.³ In addition, the presumption is against exemption and the burden is on the taxpayer claiming exemption to establish clearly the right to such relief."⁴

Colorado exempts 'farm equipment', which includes 'cow identification systems' used at a dairy operation in connection with the production of raw milk. However, there is no similar language for other operations involving cattle. In fact, the legislature seemed to contemplate the idea that this exemption should only apply to dairy cows producing raw milk because the statute explicitly states, "[t]o the extent the farm dairy is also involved in the production of pasteurized, separated milk products for retail sale, only the equipment used exclusively in the production of raw milk constitutes dairy equipment for purposes of this section."⁵ The tags at issue here simply identify the owner and the specific cow in the herd. If the cow is sold, it usually receives a new tag to identify the new owner. Thus, cattle identification systems that are not used at a farm dairy in connection with the production of raw milk are not exempt as "cow identification systems", and the Department is not in a position to extend the exemption any further than what the statute specifically prescribes.

We then look to whether any such exemption applies in the broader definition of farm equipment. Farm equipment means,

"any farm tractor, as defined in section 42-1-102(33), C.R.S., any implement of husbandry, as defined in section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment " also includes, regardless of purchase price, attachments and bailing wire, binders twine, and surface wrap used primarily and directly in any farm operation. On and after July

¹ §§39-26-104(1)(a), and 202 C.R.S.

² §39-26-716(1)(d), C.R.S.

³ *General Motors v. City and County of Denver*, 990 P.2d 59, 70 (Colo.1999).

⁴ *Maurer v. Young Life*, 779 P.2d 1317, 1333 n.20 (Colo. 1989)

⁵ §39-26-716(1)(c), C.R.S.

1, 2000, "farm equipment " also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this paragraph (c), all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. On and after July 1, 2001, "farm equipment " also includes, regardless of purchase price, dairy equipment...."⁶

The statute is very specific and refers to an exclusive list of exempt items and does not include identification systems or tags. Therefore, it appears that identification tags on cattle are not exempt from Colorado sales or use tax.

Finally, Company represents that it provides auditing services on marketing claims and asks the department to confirm that this activity is a nontaxable service. Colorado generally levies sales and use tax only on tangible personal property and not services.⁷ The Department would likely view the auditing activities Company provides as a service and not subject to sales or use tax. However, Company is liable for sales and use taxes on its own purchases of tangible personal property it uses to provide auditing services.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue

⁶ §39-26-716(1)(d), C.R.S.

⁷ §39-26-104, C.R.S.