



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

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

PLR-15-007

November 16, 2015

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Custom-Made Closet Organizer

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX (“Company”) a request for a private letter ruling to the Colorado Department of Revenue (“Department”) pursuant to Department Regulation 24-35-103.5. This private letter ruling cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Is a separately stated charge for installing Product into a home included in the calculation of sales and use tax?

Conclusion

The separately stated charge for installing Product into a home is included in the calculation of sales and use tax.

Background

Company is a retailer of home organizational products. Company operates both brick and mortar retail locations and an internet business. Company is introducing a new product (“Product”) to help organize its customers’ closets. Company custom-designs each Product based on specifications and measurements provided by each customer (“Customer”).

Product rests on the floor but it is not connected or attached in any manner to the floor. Product can be placed against walls or freestanding in the center of a closet. Customer can customize Product design to include various implements for storing items or other functionalities such as retractable mirrors or hampers.

After Company designs Product to Customer's specifications, Customer provides a down payment covering the costs of both materials and installation for Product. Company then orders Product from the supplier ("Supplier"). Supplier custom-builds Product components to Company's specifications and then ships the components to Customer's location. Supplier does not assemble product before shipment.

Company hires subcontractors to assemble Product on Company's behalf. The subcontractors assemble Product at Customer's location using components shipped by Supplier. After assembly, Product is placed freestanding in the center of a room or against a wall according to design specifications.

If Product is placed against walls, it is secured by an anti-tip bracket that connects Product to the wall with two screws and generally consists of one anti-tip bracket per wall. Product can be augmented with rear paneling to give the appearance of installed cabinets. Finishing nails secure such rear paneling if desired. Because of this, damage to Customer's real property is limited to two screw holes for each anti-tip bracket installed and any small holes from finishing nails used to secure the rear paneling. Additionally, any freestanding Product does not require anti-tip brackets.

Upon completion of Product installation, Company collects remaining balance from Customer. Company presents Customer with a final receipt that separately states charges for Company's assembly and placement costs (i.e., "installation") and Company's material costs for Product purchased from Supplier. Both installation and product costs include a profit markup.

Discussion

Charges for the sale of tangible personal property are subject to sales and use tax. Charges for services are generally not subject to sales tax. However, a charge for certain services is included in the calculation of sales tax if the service is incurred in connection with the manufacturing of a taxable product made to order. Specifically, section 39-26-102(12), C.R.S. states, in pertinent part, that sales tax is calculated on the,

full purchase price of articles sold after manufacture or having been made to order and includes the full purchase price for materials used and the service performed in connection therewith ... (emphasis added)

We understand that Product is an article "made to the order" for each customer. Product is not fully finished until it is assembled. We assume that a significant portion, if not most, of the charge for "installation"¹ is actually for assembling the Product prior to installation. The assembly portion of the charge is subject to tax as part of the labor used to manufacture Product to a finished state. However, charges for installation are generally exempt from tax because they are not part of the labor used to manufacture Product into a finished state. Because the charge for assembling the product is not separately stated from the portion of the charge for installation, the whole charge for the installation and

¹ The request for ruling indicates that the process for installing the fully assembled Product is relatively simple.

assembly of Product is subject to tax and there is no need to determine whether the true installation portion of the charge is taxable.²

However, if Company were to charge separately for assembly and installation, we generally treat installation charges for custom-made goods as separable and non-taxable if the buyer has a reasonable option to purchase only the finished Product and not the installation service.³ On the other hand, if the customer must purchase the installation charge in order to purchase the finished Product, then the installation charge is inseparable from the sale of the Product and sales tax is calculated on the full purchase price, including any separately stated charge for installation.

Finally, and as noted in your letter, sales tax applies to the sale of tangible personal property, not real property. If personal property “loses its identity” by becoming “an integral and inseparable part of reality” and is removable only with substantial damage to the premises”, then the sale of the property may not be subject to sales tax.⁴ It does not appear from the facts you provided that the Product qualifies as real property. Product is physically attached to Customer’s real property only if it is placed against walls and, even then, it can be removed without substantial damage (usually limited to two screw holes for each anti-tip bracket installed and any small holes from finishing nails used to secure the rear paneling). Therefore, Product is not real property.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company’s representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this

² To the extent there is any actual installation of Product.

³ *A.D. Store Co. v. Department of Revenue*, 19 P.3d 680 (Colo. 2001). *A.D. Store* is not to the contrary. The sale of a dress and the sale of alteration services were separable because the dress was fully manufactured at the time of sale and, therefore, sales tax is computed only on the price of the dress;

⁴ See 1 CCR 201-4, Reg. 26-102.15; *Noble Energy v. Department of Revenue*, 232 P.3d 293 (Colo. App. 2010)

redacted version of the ruling 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 version of the ruling.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.